



City of San Leandro

Meeting Date: September 8, 2015

Staff Report

File Number: 15-506 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.R.

TO: City Council

FROM: Chris Zapata
City Manager

BY: David Baum
Finance Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for Resolutions to Collect Communication Utility Users' Tax (UUT) and Emergency Communication System Access Tax (9-1-1) on Prepaid Wireless Service and to Authorize Examination of Prepaid Mobile Telephone Services Surcharge and Local Charge Records

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council authorize the City Manager to execute certain documents required by the California State Board of Equalization (BOE) to collect the City's Utility Users' Tax (UUT) and Emergency Communication System Access Tax (9-1-1) on prepaid wireless service, and to approve and authorize the following relating to this tax collection process:

- A resolution authorizing examination of prepaid mobile telephone services surcharge and local charge records
- A resolution authorizing the City Manager to execute an agreement with the State Board of Equalization for implementation of the Local Prepaid Mobile Telephony Services Collection Act
- A resolution to approve amendment No. 4 to the MuniServices, LLC agreement to examine BOE records relating to prepaid wireless UUT and 9-1-1 tax collections
- An amended ordinance for the temporary reduction of the single access line tax on prepaid wireless services

BACKGROUND

Traditionally, a city's UUT and 9-1-1 tax is collected by wireless service providers who include the charge on their customers' monthly invoices. In contrast to this arrangement, customers who purchase prepaid wireless services usually avoid paying any UUT or 9-1-1 tax due to collection complications. With prepaid wireless, there is no contract, no monthly invoices, and the prepaid wireless services are usually sold by retailers, not service providers themselves. It is estimated that approximately 70% of all prepaid wireless services are sold by retailers.

Since these transactions bypass our local UUT and 9-1-1 tax collection channels, the City has experienced a loss of revenues as customers expand their use of prepaid wireless telephone services. Additionally, traditional phone plan users are treated disparately and the burden of the UUT is not equally shared among all telephone users.

Beginning January 1, 2016, AB 1717 will begin collection efforts and solve the collection problem by requiring California retailers and online sellers to collect the local UUT and 9-1-1 tax at the same time it collects sales tax on its other retail products, based on the point of sale (for retail stores in our City). Under this new law, all local jurisdictions have to contract with the State Board of Equalization (BOE) in order to receive UUT and 9-1-1 tax imposed on consumers of prepaid wireless phone service. It should be noted that AB 1717 has a sunset provision of January 1, 2020, to allow time to evaluate if the implementation cost of collection is reasonable and the level of collections are what has been anticipated.

The City of San Leandro enacted a local tax ordinance, with voter approval, imposing a charge on telephone lines that access local 9-1-1 services. This charge is applicable to all wireless or cellphone lines, whether paid on a postpaid (contract) or prepaid basis. The monthly charge for a single access line is \$2.32. In accordance with the Local Prepaid Mobile Telephony Services Collection Act (AB 1717) a collection process to collect the local access line charge on prepaid wireless will be effective January 1, 2016. On the advice of the City's consultant, MuniServices, LLC, the City needs to temporarily reduce the local access line charge for prepaid wireless from \$2.32 to \$1.65 for the period of January 1, 2016 to January 1, 2020, when AB 1717 is scheduled to sunset. This temporary reduction will convert to a percentage rate that is unlikely to render a fixed charge that is higher than the voter approved charge of \$2.32. The City Council may, at any time, restore the \$2.32 rate without voter approval.

In order to receive the UUT and 9-1-1 tax collected by the BOE commencing on January 1, 2016, the City Manager must execute certain documents required by the State BOE as soon as possible, so revenues may be collected for the quarter beginning January 1, 2016. This agreement between the City and the BOE allows for the collection of local charges by the State. If the City elects not to contract with the BOE, it will not receive this revenue. The documents also authorize the City and our UUT revenue consultants to examine the local charge records and surcharges on prepaid mobile telephone services. Finally, the City must amend its agreement with MuniServices, LLC to examine the local charge records and surcharges on prepaid mobile telephone services.

Fiscal Impact

On January 1, 2015, AB 1717 became effective and on January 1, 2016 BOE will allow the City to commence collecting Utility Users' Tax (UUT) and 9-1-1 tax on prepaid mobile telephone services (also referred to as prepaid wireless). While the actual impact of this new revenue source is unknown, the City's UUT revenue consultant (MuniServices, LLC) estimates it will range from 15% to 20% of current **wireless** UUT telecommunication and 9-1-1 tax revenues, which is approximately \$500,000 to \$650,000 per year. This estimate is a statewide average, and individual cities will vary depending on their demographics and the number of large retail stores (located in a city) selling prepaid wireless services. The City will be required to reimburse the State Board of Equalization (BOE) for its implementation costs, with the City's share estimated to be 5% to 6% of the total amounts collected on behalf of the

City, or approximately \$25,000 to \$39,000 annually. The BOE costs, and the City's proportionate share, are expected to decline after the first year. The estimated net impact to the fiscal year 2015-16 General Fund Adopted Budget is a net increase of revenues of approximately \$475,000 to \$611,000.

Budget Authority

The prepaid wireless UUT and 9-1-1 revenues were not included in the adopted biennial budget for 2015-16 and 2016-17, and would be an addition to general fund revenues of approximately \$475,000 to \$611,000.

ATTACHMENTS

Attachments to Resolutions

- Agreement with the State BOE for Collection and Administration of Local Charges
- Agreement Amendment No. 4 with MuniServices, LLC to examine BOE records relating to prepaid wireless UUT and 9-1-1 tax collections

PREPARED BY: Mary Ann Perini, Budget and Compliance Manager, Finance Department



City of San Leandro

Meeting Date: September 8, 2015

Resolution - Council

File Number: 15-507

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: David Baum
Finance Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Authorizing the Examination of Prepaid Mobile Telephony
Services Surcharge and Local Charge Records

The attached resolution from the State must be adopted as is.

RESOLUTION NO. _____

A Resolution Authorizing the Examination of Prepaid Mobile Telephony Services Surcharge and Local Charge Records

WHEREAS, pursuant to Ordinance No., _____ of the City of _____ and the Local Prepaid Mobile Telephony Services Collection Act, the City of _____, hereinafter called Local Jurisdiction, entered into a contract with the State Board of Equalization, hereafter referred to as the Board, to perform all functions incident to the administration and collection of the prepaid mobile telephony services surcharge and local charges (Rev. & Tax. Code, § 42101.5); and

WHEREAS, the Local Jurisdiction deems it desirable and necessary for authorized representatives of the Local Jurisdiction to examine confidential prepaid mobile telephony services surcharge and local charge records pertaining to the prepaid mobile telephony services surcharge and local charges collected by the Board for the Local Jurisdiction pursuant to that contract;

WHEREAS, the Board will make available to the Local Jurisdiction any information that is reasonably available to the Board regarding the proper collection and remittance of a local charge of the Local Jurisdiction by a seller, including a direct seller, subject to the confidentiality requirements of Sections 7284.6, 7284.7 and 19542 of the Revenue and Taxation Code; and

WHEREAS, Sections 42110 and 42103 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board of Equalization records and establishes criminal penalties for the unlawful disclosure of information contained in or derived from the prepaid mobile telephony services surcharge and local charge records of the Board;

NOW, THEREFORE IT IS RESOLVED AND ORDERED AS FOLLOWS:

Section 1. That the _____
(Title(s) of authorized position(s)) or other officer or employee of the Local Jurisdiction designated in writing by the _____
(Title(s) of position(s) authorized to Designate) to the Board is hereby appointed to represent the Local Jurisdiction with authority to examine prepaid mobile telephony services surcharge and local charge records of the Board pertaining to prepaid mobile telephony services surcharge and local charges collected for the Local Jurisdiction by the Board pursuant to the contract between the Local Jurisdiction and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of the Local Jurisdiction's prepaid mobile telephony services surcharge and local charges by the Board pursuant to the contract.

Section 2. That the _____
(Title(s) of authorized position(s)) or other officer or employee of the Local Jurisdiction designated in writing by the _____
(Title(s) of position(s) authorized to Designate) to the Board is hereby appointed to represent the Local Jurisdiction with authority to examine those prepaid mobile telephony services surcharge and local charge records of the Board for purposes related to the following governmental functions of the Local Jurisdiction:

- a) _____
- b) _____
- c) _____

The information obtained by examination of Board records shall be used only for those governmental functions of the Local Jurisdiction listed above.

Section 3. That _____ is hereby designated to examine the prepaid mobile telephony services surcharge and local charges records of the Board of Equalization pertaining to prepaid mobile telephony services surcharge and local charges collected for the Local Jurisdiction by the Board. The person or entity designated by this section meets all of the following conditions (Rev. & Tax. Code, § 42110, subd. (b)(2)):

- a) has an existing contract with the Local Jurisdiction that authorizes the person to examine the prepaid mobile telephony services surcharge and local charge records;
- b) is required by that contract with the Local Jurisdiction to disclose information contained in or derived from, those records only to an officer or employee of the Local Jurisdiction authorized by the resolution to examine the information;
- c) is prohibited by that contract from performing consulting services for a seller during the term of that contract;
- d) is prohibited by that contract from retaining information contained in, or derived from, those prepaid mobile telephony services surcharge and local charge records, after that contract has expired.

The contract between the Local Jurisdiction and _____ designated by the Local Jurisdiction to request information from the Board shall be subject to the following limitations (Rev. & Tax. Code, § 42103, subd. (g)):

- a) _____ shall, to the same extent as the Board, be subject to Section 55381, relating to unlawful disclosures.
- b) the contract between the Local Jurisdiction and _____ shall not provide, in whole or in part, in any manner a contingent fee arrangement as payment for services rendered.

BE IT FURTHER RESOLVED THAT the information obtained by examination of the Board records shall only be used for purposes related to the collection of the Local Jurisdiction’s prepaid mobile telephony services surcharge and local charges by the Board pursuant to the contract between the Local Jurisdiction and Board, or for purposes related to other governmental functions of the Local Jurisdiction, as identified above in section 2.

Introduced, approved and adopted this _____ day of _____, 20__.

(Signature)

(Date)

(Printed name & title)

(Attest)



City of San Leandro

Meeting Date: September 8, 2015

Resolution - Council

File Number: 15-517

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: David Baum
Finance Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Authorizing the City Manager to Execute an Agreement with the State Board of Equalization for Implementation of the Local Prepaid Mobile Telephony Services Collection Act

The attached resolution from the State must be adopted as is.

RESOLUTION NO. _____

A RESOLUTION OF THE _____

Local Jurisdiction

AUTHORIZING _____ TO EXECUTE

Title of Authorized Position

**AGREEMENT WITH THE STATE BOARD OF EQUALIZATION FOR IMPLEMENTATION
OF THE LOCAL PREPAID MOBILE TELEPHONY SERVICES COLLECTION ACT**

WHEREAS, on _____, the _____ certified that Ordinance No. _____ applies its
Date Local Jurisdiction
local charge(s) (access to 911 or communication services and/or utility user tax) to prepaid mobile
telephony services; and

WHEREAS, the Local Prepaid Mobile Telephony Services Collection Act, mandates the Board of
Equalization (Board) to administer and collect the local charges for all applicable local jurisdictions
(Rev. & Tax Code section 42103); and

WHEREAS, the Board will perform all functions incident to administration and collection of the local
charges for the _____ ; and
Local Jurisdiction

WHEREAS, the Board requires that the _____ enter into an "Agreement for State
Local Jurisdiction
Collection and Administration of Local Charges" prior to implementation of the Local Prepaid Mobile
Telephony Services Collection Act, and

Whereas, the Board requires that the _____ authorize the agreement;
Local Jurisdiction

NOW, THEREFORE BE IT RESOLVED by the _____ that the attached "Agreement
Local Jurisdiction
for State Collection and Administration of Local Charges" is hereby approved and the

_____ is hereby authorized to execute the agreement.
Title of Authorized Position

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the _____
held on _____, by the following vote: Local Jurisdiction

AYES: _____

NOES: _____

ABSENT: _____

DATED: _____

ATTEST: (s) _____
(Printed Name & Title)

(s) _____
(Printed Name & Title)

**AGREEMENT FOR STATE COLLECTION AND ADMINISTRATION OF
LOCAL CHARGES**

This Agreement is for the purpose of implementing the Local Prepaid Mobile Telephony Services Collection Act (Part 21.1, commencing with Section 42100) of Division 2 of the Revenue and Taxation Code), hereinafter referred to as the Local Charge Act. The City of San Leandro and the State Board of Equalization, hereinafter called the Board, do agree as follows:

Insert name of local jurisdiction

**ARTICLE I
DEFINITIONS**

Unless the context requires otherwise, wherever the following terms appear in this Agreement they shall be interpreted to mean the following:

A. “Administrative Expenses” means all expenses incurred by the Board in the administration and collection of the local charges, including preparation and wind down costs which are reimbursable to the Board from the revenues collected by the Board on behalf of the local jurisdiction.

B. “Contingent Fee” includes, but is not limited to, a fee that is based on a percentage of the tax liability reported on a return, a fee that is based on a percentage of the taxes owed, or a fee that depends on the specific tax result attained.

C. “Direct Seller” means a prepaid Mobile Telephony Service (MTS) provider or service supplier, as defined in section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited to, a telephone corporation, a person that provides an interconnected Voice over Internet Protocol (VoIP) service, and a retailer as described in section 42004(b)(1).

D. “Local Charges” means a utility user tax imposed on the consumption of prepaid mobile telephony services, as described in section 42102, and charges for access to communication services or to local “911” emergency telephone systems imposed by a local jurisdiction, as described in section 42102.5.

E. “Local Jurisdiction” or “local agency” means a city, county, or city and county, which includes a charter city, county, or city and county of this State, which has adopted an ordinance imposing a local charge of the kind described in Part 21.1 of Division 2 of the Revenue and Taxation Code and has entered into a contract with the Board to perform all functions incident to the collection of the local charges.

F. “Ordinance” means an ordinance of a local jurisdiction imposing a local charge, including any local enactment relating to the filing of a refund or a claim arising under the ordinance, attached hereto, as amended from time to time.

G. “Quarterly local charges” means the total amount of local charges transmitted by the Board to a local jurisdiction for a calendar quarter, as set forth in section 42106(a)(1).

H. “Refund” means the amount of local charges deducted by the Board from a local jurisdiction’s quarterly local charges in order to pay that jurisdiction’s share of a local charge refund due to one taxpayer.

I. “Section” – all section references are to the Revenue and Taxation Code.

J. “Seller” means a person that sells prepaid mobile telephony service to a person in a retail transaction.

ARTICLE II BOARD ADMINISTRATION AND COLLECTION OF LOCAL CHARGES

A. Administration. The Board and the local jurisdiction agree that the Board shall perform functions incident to the collection of the local charges from sellers that are not direct sellers.

B. Collection. The Board shall collect the local charges in the same manner as it collects the prepaid MTS Surcharge in the Prepaid Mobile Telephony Services Surcharge Collection Act, subject to specified limitations in the Local Charge Act for which the local jurisdiction is responsible, as set forth in Article III of this Agreement.

C. Audits. The Board’s audit duties shall be limited to verification that the seller that is not a direct seller complied with the Local Charge Act.

D. Other applicable laws. The Board and the local jurisdiction agree that all provisions of law applicable to the administration and operation of the Local Charge Act, Prepaid Mobile Telephony Services Surcharge Collection Act, and the Fee Collection Procedures Law (FCPL) shall be applicable to the collection of local charges. References in the FCPL to feepayer include a person required to pay the local charge, including the seller. All future amendments to applicable laws are automatically incorporated into this Agreement.

E. Deposit of Local Charges. All local charges collected by the Board shall be deposited in the Local Charges for Prepaid Mobile Telephony Services Fund in the State Treasury to be held in trust for the local taxing jurisdiction. Local charges shall consist of all taxes, charges, interest, penalties, and other amounts collected and paid to the Board, less payments for refunds and reimbursement to the Board for expenses incurred in the administration and collection of the local charges, including preparation and wind-down costs.

F. Allocation of Expenses. The Board shall allocate the total combined annual expenses incurred for administration and collection pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act and the Local Charge Act on a pro rata basis according to revenues collected for: (1) the emergency telephone users surcharge portion of the prepaid MTS surcharge, (2) the Public Utilities Commission surcharges

portion of the prepaid MTS surcharge, and (3) local charges. The Board shall charge a local jurisdiction its pro rata share of the Board's cost of collection and administration.

G. Transmittal of money. All local charges collected by the Board shall be transmitted to the local jurisdiction once in each calendar quarter. Transmittals may be made by mail or by deposit to the account of the local jurisdiction in a bank designated by that jurisdiction. The Board shall furnish a statement quarterly indicating the amounts paid and withheld for expenses of the Board.

H. Rules. The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

I. Security. The Board agrees that any security which it hereafter requires to be furnished under the FCPL section 55022 will be upon such terms that it also will be available for the payment of the claims of the local jurisdiction for local taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it, and the local jurisdiction shall not participate in any security now held by the Board.

J. Records of the Board.

1. Information obtained by the local jurisdiction from the examination of the Board's records shall be used by the local jurisdiction only for purposes related to the collection of the prepaid mobile telephony services surcharge and local charges by the Board pursuant to this Agreement.

2. When requested by resolution of the legislative body of a local jurisdiction, the Board shall permit any duly authorized officer or employee or other person designated by that resolution to examine any information for its own jurisdiction that is reasonably available to the Board regarding the proper collection and remittance of a local charge of the local jurisdiction by a seller, including a direct seller, subject to the confidentiality requirements of sections 7284.6, 7284.7 and 19542. (sections 42110(b), 42103(e).).

3. The resolution of the local jurisdiction shall certify that any person designated by the resolution, other than an officer and an employee, meets all of the following conditions:

- a. Has an existing contract with the local jurisdiction that authorizes the person to examine the prepaid MTS surcharge and local charge records.
- b. Is required by that contract with the local jurisdiction to disclose information contained in or derived from, those records only to an officer or employee of the local jurisdiction authorized by the resolution to examine the information.
- c. Is prohibited by that contract from performing consulting services for a seller during the term of that contract.
- d. Is prohibited by that contract from retaining information contained in, or derived from, those prepaid MTS surcharge and local charge records, after that contract has expired.

4. Any third party contract between the local jurisdiction and an entity or person authorized by the local jurisdiction to request information from the Board shall be subject to the following limitations:

a. Any third party shall, to the same extent as the Board, be subject to Section 55381, relating to unlawful disclosures.

b. A third party contract shall not provide, in whole or in part, in any manner a contingent fee arrangement as payment for services rendered.

5. Information obtained by examination of Board records shall be used only for purposes related to the collection of the prepaid MTS surcharge and local charges by the board pursuant to the contract, or for purposes related to other governmental functions of the local jurisdiction set forth in the resolution.

6. If the Board believes that any information obtained from the Board's records related to the collection of the prepaid MTS surcharge and local charges has been disclosed to any person not authorized or designated by the resolution of the local jurisdiction, or has been used for purposes not permitted by section 42110(b), the board may impose conditions on access to its local charge records that the board considers reasonable, in order to protect the confidentiality of those records. (section 42110 (c).)

7. The costs incurred by the Board in complying with a request for information shall be deducted by the Board from those revenues collected by the Board on behalf of the local jurisdiction making the request, as authorized by section 42110(b)(1).

ARTICLE III LOCAL JURISDICTION ADMINISTRATION AND RESPONSIBILITIES

A. The local jurisdictions shall be solely responsible for all of the following:

1. Defending any claim regarding the validity of the ordinance in its application to prepaid mobile telephony service. The claim shall be processed in accordance with the provisions of the local ordinance that allows the claim to be filed.

2. Interpreting any provision of the ordinance, except to the extent specifically superseded by section 42105 of the Local Charge Act. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.

3. Responding to specified consumer claims for refund involving: (1) rebutting the presumed location of the retail transaction; (2) a consumer claim of exemption from the local charge under the ordinance; or (3) any action or claim challenging the validity of a local tax ordinance, in whole or part. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.

4. Refunding the taxes in the event a local jurisdiction or local government is ordered to refund the tax under the local ordinance.

5. Reallocating local charges as a result of correcting errors relating to the location of the point of sale of a seller or the known address of a consumer, for up to two past quarters from the date of knowledge.

6. Collecting local charges on prepaid mobile telephony service and access to communication services or access to local 911 emergency telephone systems imposed on direct sellers.

7. Enforcement, including audits, of the collection and remittance of local charges by direct sellers pursuant to the ordinance.

8. The local jurisdiction shall be the sole necessary party defendant on whose behalf the local charge is collected in any action seeking to enjoin collection of a local charge by a seller, in any action seeking declaratory relief concerning a local charge, in any action seeking a refund of a local charge, or in any action seeking to otherwise invalidate a local charge. There shall be no recovery from the State for the imposition of any unconstitutional or otherwise invalid local charge that is collected under the Local Act.

9. Entering into an agreement with the Board to perform the functions incident to the collection of the local charges imposed on sellers that are not direct sellers.

10. Submitting an executed Certification to the Board, certifying that:

(a) the local jurisdiction's ordinance applies the local charge to prepaid mobile telephony services;

(b) the amount of the rate charged for access to local 911 emergency telephone systems or access to communications services complies with the requirements of section 42102.5; and/or applies the tiered rate for the utility user tax, as identified in section 42102.

(c) The local jurisdiction shall further certify that it agrees to indemnify and to hold harmless the Board, its officers, agents, and employees for any and all liability for damages that may result from the Board's collection pursuant to this Agreement.

11. Submitting signed documents to the Board to include agreement(s), certification, copy of ordinance(s), and resolution(s).

12. Providing payment to the Board of the local jurisdiction's pro rata share of the Board's cost of collection and administration as established pursuant to subdivision (e) of section 42020.

**ARTICLE IV
LOCAL CHARGES**

A. Local Charges – Timeliness – This part shall remain in effect until proposed California Code of Regulations, title 18, section 2460 is adopted by the Board and approved by the Office of Administrative Law.

1. Ordinances in effect as of September 1, 2015.

On or after January 1, 2016, a local charge imposed by a local jurisdiction on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with section 42001) provided that, on or before September 1, 2015, the local jurisdiction enters into a contract with the Board pursuant to section 42101.5. Thereafter, all subsequently enacted local charges, increases to local charges, or other changes thereto, shall become operative pursuant to paragraphs (2), (3), and (4).

2. New charges. When a local jurisdiction adopts a new local charge after September 1, 2015, the local jurisdiction shall enter into a contract with the Board, pursuant to section 42101.5, on or before December 1st, with collection of the local charge to commence April 1st of the next calendar year.

3. **Increases in local charges.** When a local jurisdiction increases an existing local charge after September 1, 2015, the local jurisdiction shall provide the Board written notice of the increase, on or before December 1st, with collection of the local charge to commence April 1st of the next calendar year.

4. **Inaccurate rate posted on the Board’s website.** When a local jurisdiction notifies the Board in writing that the rate posted on the Board’s Internet Web site (posted rate) for a local charge imposed by that local jurisdiction is inaccurate, including scenarios where the local charge was reduced or eliminated, the recalculated rate applicable to the local jurisdiction shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the Board receives the local jurisdiction’s written notification that the posted rate is inaccurate.

A. Local Charges – Timeliness – This part shall take effect and supersede the above “Local Charges – Timeliness section when California Code of Regulations, title 18, section 2460 is adopted by the Board and approved by the Office of Administrative Law.

1. Ordinances in effect as of September 1, 2015. On or after January 1, 2016, a local charge imposed by a local jurisdiction on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with section 42001) provided that, on or before September 1, 2015, the local jurisdiction enters into a contract with the Board pursuant to section 42101.5.

In the event a local jurisdiction does not enter into a contract with the Board by September 1, 2015, the local jurisdiction may enter into a contract with the Board, pursuant to section 42101.5, on or before December 1st, with collection of the local charge to commence April 1st of the next calendar year. Thereafter, all subsequently

enacted local charges, increases to local charges, or other changes thereto, shall become operative pursuant to paragraphs (2), (3), (4) and (5) of this subdivision.

2. New charges. When a local jurisdiction adopts a new local charge after September 1, 2015, the local jurisdiction shall enter into a contract with the Board, pursuant to section 42101.5, on or before December 1st, with collection of the local charge to commence April 1st of the next calendar year.

3. Increases in local charges. When a local jurisdiction increases an existing local charge after September 1, 2015, the local jurisdiction shall provide the Board written notice of the increase, on or before December 1st, with collection of the local charge to commence April 1st of the next calendar year.

4. Advance written notification. When a local charge is about to expire or decrease in rate, the local jurisdiction imposing the local charge shall notify the Board in writing of the upcoming change, not less than 110 days prior to the date the local charge is scheduled to expire or decrease. The change shall become operative on the first day of the calendar quarter commencing after the specified date of expiration or decrease in rate.

If advance written notice is provided less than 110 days prior to the specified date of expiration or decrease in rate, the change shall become operative on the first day of the calendar quarter commencing more than 60 days after the specified date of expiration or decrease.

5. Inaccurate Rate Posted on the Board's Web site. When a local jurisdiction notifies the Board in writing that the rate posted on the Board's Internet Web site (posted rate) for a local charge imposed by that local jurisdiction is inaccurate, including scenarios where the local charge was reduced or eliminated and the local jurisdiction failed to provide advance written notice pursuant to paragraph 4 of this subdivision, the recalculated rate applicable to the local jurisdiction shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the Board receives the local jurisdiction's written notification that the posted rate is inaccurate. The local jurisdiction shall promptly notify the Board in writing of any such discrepancies with the posted rate that are known or discovered by the local jurisdiction.

ARTICLE V COMPENSATION

The local jurisdiction agrees to pay the Board its pro rata share of the Board's cost of collection and administration of the local charges, as established pursuant to section 42020, subdivision (e). Such amounts shall be deducted from the local charges collected by the Board for the local jurisdiction.

ARTICLE VI MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first-class United States Mail. A notification is complete when deposited in the mail. Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization
P.O. Box 942879 MIC: 27
Sacramento, California 94279-0001

Attention: Supervisor,
Local Revenue Allocation Unit

Communications and notices to be sent to the local jurisdiction shall be addressed to:

City of San Leandro
Mr. David Baum, Director of Finance
835 E. 14th Street
San Leandro, CA 94577

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on the first day of the calendar quarter next succeeding the date of such approval, but in no case before the operative date of the local jurisdiction's ordinance, nor on a day other than the first day of a calendar quarter. This Agreement shall be renewed automatically from year to year until January 1, 2020, when the Local Charge Act is repealed, unless a statute enacted prior to that date extends that date. In such event, this Agreement will continue to renew automatically from year to year to the date authorized by statute.

STATE BOARD OF EQUALIZATION

By _____
Administrator,
Return Analysis and Allocation Section

LOCAL
JURISDICTION CITY OF SAN LEANDRO

By _____
(Signature on this line)

Chris Zapata

(Type name here)

City Manager

(Type title here)



City of San Leandro

Meeting Date: September 8, 2015

Resolution - Council

File Number: 15-518 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: David Baum
Finance Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Authorizing the City Manager to Enter into a Consulting Services Agreement Amendment No. 4 with MuniServices, LLC to Authorize Examination of the State Board of Equalization (BOE) Records Relating to Prepaid Wireless Utility Users' Tax (UUT) and Emergency Communication Access (9-1-1) Tax Collections

WHEREAS, the City in accordance with its purchasing provisions has identified MuniServices, LLC to provide consulting services associated with examination of BOE records relating to prepaid wireless UUT and 9-1-1 tax collections; and

WHEREAS, the City wishes to enter into an agreement amendment No. 4 with MuniServices, LLC for said work; and

WHEREAS, the City Council is familiar with the terms of the agreement amendment No. 4; and

WHEREAS, the City Manager recommends approval of said agreement amendment No. 4.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. That the terms of the agreement amendment No. 4 will be memorialized in writing by the City Manager, subject to the approval of the City Attorney; and
2. That the City Manager is authorized to execute said agreement amendment No. 4; and
4. That an original executed agreement amendment No. 4 shall be provided to the City Clerk, attached to, and made a part of this resolution.

**AMENDMENT NO. 4 TO CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
MUNISERVICES, LLC**

This **Amendment No. 4** ("Amendment") is made by and between the City of San Leandro ("City") and MuniServices ("Consultant") (together sometimes referred to as the "Parties") as of September 8, 2015, and amends that certain Consulting Services Agreement ("Agreement") dated September 8, 1992, between the Parties.

WHEREAS, City and Consultant have executed the Agreement, pursuant to which Consultant has provided certain consulting services to City with regard to sales, transaction, and utility users' tax records; and

WHEREAS, AB 1717 (Ch. 885, Stat. 2014) the Prepaid Mobile Services Telephony Service Surcharge Collection Act ("AB 1717") was enacted with an effective date of January 1, 2015 and a collection date commencing January 1, 2016, and establishes a statewide method of collecting the City's Utility Users' Tax (hereinafter "UUT") and Emergency Communication System Access Tax (hereinafter "911") on prepaid wireless services;

WHEREAS, AB 1717 imposes certain restrictions on third party consultants of the City who are designated and authorized by the City to examine certain State Board of Equalization (hereinafter "BOE") documents relating to the collection of the City's UUT and 911 on prepaid wireless services as covered by AB 1717;

WHEREAS, the Parties desire to amend the Agreement to authorize Consultant to examine and disclose the BOE's records relating to prepaid local charges collected.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:

1. Exhibit A of the Agreement entitled "Scope of Services" is hereby amended to read:
 - a. MuniServices is authorized to examine the BOE's records pertaining to the prepaid local charge, specifically prepaid wireless UUT and 911 (collectively, the "Records") and to use such information only for purposes related to such collection;
 - b. MuniServices shall disclose information contained in or derived from, the Records only to an officer or employee of the City authorized by resolution to examine the information;
 - c. MuniServices shall not perform any consulting services for a "seller", as defined in AB 1717 during the term of the Agreement;
 - d. MuniServices shall not retain information contained in, or derived from, the Records after the Agreement has ended;
 - e. MuniServices shall, to the same extent as the BOE, be subject to Revenue and Tax Code Section 55381, relating to unlawful disclosures;

2. All other terms shall remain in full force and effect.

This Amendment may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Amendment as of the date first written above. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

MUNISERVICES, LLC

Chris Zapata, City Manager

[NAME, TITLE]

Attest:

Tamika Greenwood, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

010-12-051-5120
Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

(2015)

COPY

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 92 - 258

RESOLUTION APPROVING CONTRACTUAL SERVICES
AGREEMENT WITH MUNICIPAL RESOURCE CONSULTANTS
RELATED TO SALES TAX ANALYSIS AND RECOVERY SERVICES

Recitals

An agreement between the City of San Leandro and Municipal Resource Consultants, a copy of which is attached, has been presented to this Council.

The City Council is familiar with the contents thereof.

The City Manager has recommended the approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said agreement is hereby approved and execution thereof by the City manager is hereby authorized.

Introduced by Council Member Polvorosa and passed and adopted this 8th day of September 1992, by the following called vote:

Members of the Council:

AYES:	Council Members Corbett, Faria, Kerr, Myers, Perry, Polvorosa; Mayor Karp	(7)
NOES:	None	(0)
ABSENT:	None	(0)

Attest: *Alice Calvert*
Alice Calvert, City Clerk

Handwritten notes at the bottom of the page, including "MAY 1992" and other illegible text.

STANDARD
CONTRACTUAL SERVICES AGREEMENT

THIS AGREEMENT is made at San Leandro, California, as of September 8, 1992, by and between the CITY OF SAN LEANDRO, a municipal corporation ("City"), and Municipal Resource Consultants ("Contractor"), who agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Exhibit A. Contractor shall provide said services at the time, place and in the manner specified in Exhibit A.

2. PAYMENT. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all billings for said services to City in the manner specified in Exhibit B; or, if no manner be specified in Exhibit B, then according to the usual and customary procedures and practices which Contractor uses for billing clients similar to City.

3. FACILITIES AND EQUIPMENT. Except as set forth in Exhibit C, Contractor shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement. City shall furnish to Contractor only the facilities and equipment listed in Exhibit C according to the terms and conditions set forth in Exhibit C.

4. GENERAL PROVISIONS. The general provisions set forth in Exhibit D are part of this Agreement. In the event of any

Agreement
9/26/88 Rev., 12/22/88 Rev.
2/27/89 Rev., 1/10/90 Rev.
2/6/90 Rev.

inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control insofar as it is inconsistent with the general provisions.

5. EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

6. CONTRACT ADMINISTRATION. This Agreement shall be administered by John Jermanis, Finance Director ("Administrator"). All correspondence shall be directed to or through the Administrator or his or her designee.

1. NOTICES. Any written notice to Contractor shall be sent to:

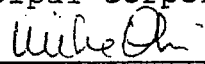
John T. Austin
Municipal Resource Consultants
32107 Lindero Canyon Road
Westlake Village, CA 91361

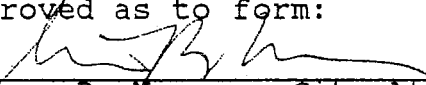
Any written notice to City shall be sent to:

John Jermanis
Finance Director
835 East 14th Street
San Leandro, CA 94577

Executed as of the day first above stated:

Attest: 
Alice Calvert, City Clerk

CITY OF SAN LEANDRO, a
municipal corporation

MIKE OLIVER, City Manager

Approved as to form:

Steven R. Meyers, City Attorney


MUNICIPAL RESOURCE CONSULTANTS

By: _____
Title: President

EXHIBIT A

SCOPE OF SERVICES

Municipal Resource Consultants (MRC) shall provide revenue enhancement, maintenance and management services to the City of San Leandro (City).

I. REVENUE RECOVERY AUDITS

*

A. OBJECTIVES

The objective of MRC's revenue recovery audit is to assist the City in recovering all of the revenue to which it is entitled from sales/use tax.

MRC's revenue recovery audits result in the detection and correction of errors and omissions causing deficiencies and thereby produce new revenue that would not otherwise have been captured by the City.

Upon written approval of the City Manager, MRC shall provide revenue recovery audit services for one or more additional sources:

- Business license tax
- Franchise fees
- Property tax (including RDA tax increment)
- Property transfer taxes
- Transient occupancy tax
- Utility users tax

B. PROCEDURES

MRC's procedures for the revenue recovery are summarized as follows:

- Meet with designated City staff to review service objectives and scope, MRC workplan schedule, public relations and logistical matters. MRC will also establish an appropriate liaison with the

City's coordinator and define logical checkpoints for reviewing the project's progress.

- Represent the City for the purpose of examining records pertaining to sales/use tax, in order to identify and confirm errors/omissions that are resulting in deficient payment to the City.
- For each error/omission identified and confirmed, prepare documentation to substantiate and facilitate recovery of revenue due from prior periods (plus applicable interest and penalties) and prevent recurring deficiencies in current and future years.
- Prepare and forward to the appropriate parties "date of knowledge" requests for corrective action and revenue recovery.
- Meet with designated City official(s) as necessary to review and discuss our findings and recommendations.
- Provide additional assistance as necessary to support the City in recovering and preventing tax deficiencies.

C. TIMING CONSIDERATIONS

As previously indicated, there are time limitations on the City's ability to recover revenue it has been deprived of.

The shortest time limitation is imposed by the SBE, which will allow the City to recover misallocated sales/use tax for up to three quarters prior to the SBE being notified of the reporting error for a given account. Consequently, if a misallocating account has had its point-of-sale located in the City for more than

three quarters, the City forfeits the right to recover a portion of its misallocated sales tax with every elapsed quarter that a reporting error remains undetected.

MRC shall commence the enhancement audits within 10 working days following authorization with the objective of delivering the audit reports documenting the errors/omissions detected within 90 to 120 working days thereafter.

II. INFORMATION & CONSULTING SERVICES

MRC's audit, information and consulting services are designed to assist San Leandro in developing and implementing strategies and solutions for revenue enhancement, maintenance and management. The ultimate goal is to enable the City to achieve fiscal stability through self-reliance.

A. STARS (SALES TAX ANALYSIS & REPORTING SYSTEM) REPORTS

Quarterly, MRC will provide the City with an updated set of bound STARS reports (sample enclosed). The scope of MRC's STARS reports includes, but is not limited to, the following:

- Cleaning up, standardizing and automating data from the City's sales/use tax distribution reports provided by SBE for eight (8) previous quarters, current quarter and each further quarter service. This is done to provide two benchmark years in the initial report to the City. Amounts for the most recent quarter are included in each STARS report, but are not used for benchmark purposes as many accounts are incomplete due to late-paying businesses.

MRC clients use STARS reports to gain a better understanding of where their sales tax comes from, what trends, good or bad, are occurring to their sales tax base, and to identify those businesses on which the jurisdiction is most dependent for its sales tax revenue.

- Receiving and processing sales tax distribution reports quarterly.
- Reorganizing and refining the computerized sales tax data for the City utilizing MRC's STARS.
- Analyzing the City's major sales tax producers.

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

- Management Summary, Sales Tax Digest, Charts.

MRC's STARS reports include a confidential Management Summary, a non-confidential Sales Tax Digest, and twelve color charts that portray graphically the City's sales tax performance and composition.

- Analysis Section. The Analysis Section of MRC's STARS reports compares the sales tax performance for the latest complete quarter/report benchmark year to previous quarters and years. This section, which is an exclusive MRC report, was instituted to replace cumbersome manual comparisons between quarters and years.

The Analysis Section includes the following:

- (1) historical performance of the top 100

accounts for up to four years, (2) a computerized analysis of the changes that occurred by economic category and by business sector with the specific businesses that made the major contribution to the change delineated; and (3) an analysis by magnitude of change indicating which key businesses grew or declined, measured in absolute dollars and percentages.

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

- Major (and Top 100) Sales Tax Producers.

Sales tax performance of the top 100 sales tax accounts is shown in order of sales tax produced with the results for the last five quarters prominently displayed. The proportion of City sales tax produces is also shown by each account.

- Sales Tax Accounts by Business Code. This

report shown the various business codes assigned by the SBE and the accounts assigned those codes in order of sales tax produces. Five quarters of sales tax data are shown for each account. The City may select the cut-off level of this report (i.e., all accounts or just accounts that produce over a certain amount per year). Misclassified sales tax accounts are corrected to make the report a true reflection of the sources of the City's

sales tax income.

- Sales Tax Trend Report. Data is summarized by economic category and by business sector making up each category. Sales tax trends are shown by quarter and by successive benchmark years. Percent of sales tax is also shown to indicate trends in sales tax composition as well as performance. Growth and decline comparisons are indicated by various categories for forecasting and analysis.
- Sales Tax by Account/Sub-Number. The SBE does not provide the specific sales tax amounts generated by each individual location of a firm with multiple locations in the same city. Such a breakdown is needed if the City is to track sales tax by specific geo-areas, such as shopping centers, redevelopment areas, business districts, industrial parks, etc. STARS allocates sales tax by location and even customized difficult allocations such as auto dealers with showrooms, leasing, used cars, and body repair shops. This report shown the amounts allocated to each individual location for a firm with multiple locations in the City.
- Geo-Coding. Tracks sales tax performance within designated areas of the City (e.g., key shopping centers, redevelopment project areas, downtown business districts, etc.) Charts and printed reports are included for

each geo-area.

- Cross Reference Reports. These reports allow the user to look up any account shown in the STARS reports by name, address, or account number.

- Special Business Tax Report. MRC's STARS service includes a report that is specifically designed to facilitate the City's business license tax administration by replacing the manual yellow registration control cards.

These cards come in no particular order and are cumbersome to use. MRC produces a printed report each quarter that lists all changes to the City's sales tax records by the type of change (i.e., new firms, closed firms, new addresses, new owners, etc.). Under each type of change are the accounts in clean address order.

By correcting, cleaning up and standardizing addresses, business names and business classifications on all of the City's sales tax generators, MRC is able to provide the City's business licenses staff with another valuable audit tool. MRC will also provide the City with a copy of the cleaned up sales tax files on floppy disk or nine-track tape if the City wishes to add the data to its database.

III. CERTIFICATION OF CONFIDENTIALITY

Section 7056 of the State of California Revenue and Taxation Code specifically limits the disclosure of confidential taxpayer information contained in the records of the State Board of Equalization. This section specifies the conditions under which a City may authorize persons other than City officers and employees to examine State Sales and Use Tax records.

- A. MRC is authorized by this Agreement to examine sales and use tax records of the State Board of Equalization provided to City pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.
- B. MRC is required to disclose information contained in, or derived from, those sales and use tax records only to an officer or employee of the City who is authorized by resolution to examine the information.
- C. MRC is prohibited from performing consulting services for a retailer during the term of this Agreement.
- D. MRC is prohibited from retaining the information contained in, or derived from, those sales and use tax records, after this Agreement has expired.

Information obtained by examination of State Board of Equalization records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the City as set forth by resolution adopted pursuant to Section 7056(b) of the Revenue and Taxation Code.

The resolution shall designate MRC as a person authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056(b)(1) of the Revenue and Taxation Code (see

Exhibit C).

MRC hereby certifies that any and all information utilized in the conduct of work performed is to be utilized only for those purposes authorized by the City and by the Bradley-Burns Uniform Local Sales and Use Tax Law.

EXHIBIT B
PAYMENT SCHEDULE

The City shall pay contractor an amount based on a percentage of the new revenue produced for the City. MRC's fee for providing the enhancement audit service is 25% of the new sales/use tax revenue realized by the City as a result of MRC detecting and correcting the related point-of-sale/use distribution error. Said 25% applies to each correction for fund transfers (i.e., retroactive adjustments for eligible amounts improperly distributed in prior quarters) and the first six consecutive reporting quarters following completion of the audit by MRC and confirmation of corrections by the State Board of Equalization.

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

MRC shall provide the Sales Tax Inquiry System and STARS reports for \$1,250 per quarter, payable only after the City has received the Sales Tax Inquiry System, STARS report(s) and sufficient funds to cover the charges from the City's share of new tax revenue produced from MRC's audit service.

The total sum stated above shall be the total which City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement.

City shall make no payment for any extra, further or additional service pursuant to this Agreement unless such extra service and the price therefor is agreed to in writing executed by the City Manager or other designated official of City authorized to obligate City thereto prior to the time such extra service is rendered.

The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Contractor for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Contractor shall maintain adequate logs and timesheets in order to verify costs incurred to date.

The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a fully executed Purchase Order from the Finance Department of the City of San Leandro.

EXHIBIT C

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Contractor's use while consulting with City employees and reviewing records and the information in possession of City. The location, quantity, and time of furnishing said physical facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility which may involve incurring any direct expense, including, but not limiting the generality of this exclusion, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

EXHIBIT D

GENERAL PROVISIONS

1. INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement.

2. LICENSES; PERMITS; ETC. Contractor represents and warrants to City that he has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Contractor to practice his profession. Contractor represents and warrants to City that Contractor shall, at his sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Contractor to practice his profession.

3. TIME. Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Contractor's obligations pursuant to this Agreement.

4. INSURANCE REQUIREMENTS. Contractor shall procure and maintain for the duration of the contract "occurrence coverage" insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001.)
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability Insurance.

- (b) Minimum Limits of Insurance. Contractor shall maintain limits no less than:
1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
 3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
- (c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- (d) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:
1. General Liability and Automobile Liability Coverages.
 - a. The City, its officers, officials, employees, volunteers and agents are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of the protection afforded to the City, its officers, officials, employees or volunteers.
 - b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be

excess of the Contractor's insurance and shall not contribute with it.

- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the City.

~~3. Professional Liability.~~

~~Contractor shall carry professional liability insurance in an amount deemed by the City to adequately protect the Contractor against liability caused by negligent acts, errors or omissions on the part of the Contractor in the course of performance of the services specified in this Agreement.~~

4. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- (e) Acceptability of Insurers. Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
- (f) Verification of Coverage. Contractor shall furnish City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- (g) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- (h) The Risk Manager of the City may approve a variation in those insurance requirements upon a determination that the coverages, scope, limits and forms of such insurance are either not commercially available or that the City's interests are otherwise fully protected.

5. CONTRACTOR NOT AGENT. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

6. ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

7. PERSONNEL. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

8. STANDARD OF PERFORMANCE. Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices his profession. All instruments of service of whatsoever nature which Contractor delivers to City pursuant to this Agreement shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of quality normally observed by a person practicing in Contractor's profession.

9. HOLD HARMLESS AND RESPONSIBILITY OF CONTRACTORS. Contractor shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to him, to any subcontractor, to the City, to City officers and employees, or to parties designated by the City, on account of the negligent performance or character of the work, of the Contractor or of any subcontractor. Contractor shall indemnify, defend and hold harmless the City, its officers, officials, directors, employees, volunteers and agents from and against any or all loss, liability, expense, claim, costs (including costs of defense), suits, and damages of every kind, nature and description directly or indirectly arising from the negligent performance or character of the work. This paragraph shall not be construed to exempt the City, its employees and officers from its own fraud, willful injury or violation of law whether willful or negligent. For purposes of Section 2782 of the Civil Code the parties hereto recognize and agree that this agreement is not a construction contract. By execution of this agreement Contractor acknowledges

and agrees that he has read and understands the provisions hereof and that this paragraph is a material element of consideration.

Approval of the insurance contracts does not relieve the Contractor or subcontractors from liability under this paragraph.

10. GOVERNMENTAL REGULATIONS. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

11. DOCUMENTS. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda or other written documents or materials prepared by Contractor pursuant to this Agreement shall become the property of City upon completion of the work to be performed hereunder or upon termination of the Agreement.

10/18/88 Rev.; 4/20/89 Rev.

1/10/90 Rev.; 4/16/90

1/21/92 Rev.

Exhibit D
Page 5 of 5



City of San Leandro

Meeting Date: September 8, 2015

Ordinance

File Number: 15-519 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: David Baum
Finance Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: ORDINANCE Amending Section 2-18-210 of the San Leandro Municipal Code Relating to the Temporary Reduction of the Emergency Communication System Access Tax (911 Tax) for Single Access Lines on Prepaid Wireless Services

The City Council of the City of San Leandro does **ORDAIN** as follows:

SECTION 1. AMENDMENT OF CODE. Title 2, Chapter 18, Section 2-18-210 of the San Leandro Municipal Code is amended to reflect a single access line temporary reduction effective January 1, 2016 through January 1, 2020 to comply with the Local Prepaid Mobile Telephony Services Collection Act (AB1717) and to read as follows:

“2-18-210 IMPOSITION OF EMERGENCY COMMUNICATION SYSTEM ACCESS TAX

(c) Only one payment of the tax herein imposed shall be required for any access line, trunk line, or super trunk line, notwithstanding that access lines of more than one service supplier are used in furnishing local telephone service to a telephone subscriber. The Local Prepaid Mobile Telephony Services Collection Act mandates that the Single Access Line Rate for Emergency Communication System Access Tax for 911 Services be temporarily reduced from \$2.32 to \$1.65.”

SECTION 2. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or

unenforceable.

SECTION 3. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect January 1, 2016, shall be in effect for four years and shall end on January 1, 2020, unless this sunset date is extended. In that case, the Ordinance shall remain in effect without further or additional action. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.