

**TOWN OF FAIRFAX
STAFF REPORT**

To: Mayor, Members of the Town Council
From: Michael Vivrette, Finance Director
Date: February 6, 2013
Subject: Consideration of Extension of Consultant Services Agreement for Audit Services with Maze & Associates for Fiscal Years 2011/12, 2012/13, and 2013/14

RECOMMENDATION

Authorize the Town Manager to sign a contract extension to the Consultant Services Agreement for Audit Services with Maze & Associates for fiscal years 2011/12, 2012/13 and 2013/14.

DISCUSSION

On February 3, 2010, Council approved the selection of Maze & Associates as the Town Auditors and approved a three-year contract for fiscal years FY09, FY10 and FY11. The contract has completed and Maze & Associates has presented the Town with a quote for a three-year extension of the existing contract.

The scope of work of the contract remains unchanged and includes:

- Audit of the basic Town Financial Statements
- Provide assistance with all applicable schedules and GASB pronouncements
- Single Audit Act financial and compliance reports
- Test compliance with Prop 111, Article XIII.B – Gann limit

The proposed cost is based on the ACTUAL costs the firm incurred in doing the prior three audits which exceeded the amount charged to the Town. Accordingly, the contract renewal reflects higher fees which escalate based on CPI for the San Francisco Bay Area (3.0% per year). The proposal includes separate fees for preparation of the Single Audit which would be required if the Town SPENDS more than \$500,000 in federal funds in any fiscal year.

The original contract states that the Town shall have two (2) options to renew the term of the agreement for one year each but does not address the fee for the renewal of the option. This proposal is by the auditors for a three-year period with set fees, which the Town may consider to its advantage as either party has the option to cancel upon 60 days notice to the other.

The auditors expressed in their proposal a desire to continue working with the Town and stated they felt there was a great working relationship. Staff supports renewing the contract for an additional three years.

ATTACHMENTS

1. Personal Services Agreement with Maze & Associates (3/2/10)
2. Exhibit A: Scope of Work
3. Exhibit B: Fee Proposal (Original)
4. Audit extension Proposal and revised Fee Schedule

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**PERSONAL SERVICES AGREEMENT
TOWN OF FAIRFAX**

THIS AGREEMENT is made and entered into this 3rd day of February, 2010, by and between the Town of Fairfax, (hereinafter referred to as "Town") and Maze & Associates (hereinafter referred to as "Consultant").

RECITALS

WHEREAS, Town desires to offer an audit for the citizens of Fairfax, and the current audit contract has expired, and the Consultant was recommended as a result of the RFP review; and;

WHEREAS, Consultant represents to Town that Consultant is qualified, competent and experienced to perform the aforementioned audit,

Therefore, in consideration of the mutual covenants below, the parties agree as follows:

- I. **Term of Agreement:** This agreement shall be for a period of three (3) years ("Term") for the audit of the Town's Financial statements for the Fiscal Years 2008-09, 2009-10, and 2010-11 unless otherwise extended or terminated as set forth herein, The town shall have two (2) options to extend the term of this agreement for an additional period of one (1) year each.
- II. **Scope of work:** Consultant shall provide the Town with the services described in Exhibit A which is attached hereto and incorporated herein by this reference as though set forth in full in accordance with a schedule to be established in the reasonable discretion of the Town. The duties and services required of Consultant under this agreement and pursuant to this section II are referred to throughout the remainder of this agreement as "the Work".
 - a. **Responsible Individual:** Consultant represents and warrants that the execution of this agreement has been approved by Consultant and that person executing this agreement on behalf of Consultant has the full authority to do so.
 - b. **Work Schedule:** Consultant shall be available to complete each task in a timely manner as specified. Consultant shall not be held responsible for delays caused beyond its reasonable control.
 - c. **Compensation:** In consideration of the performance of Work described in this Section II, Consultant shall be compensated at the rates set forth in Exhibit B which is attached hereto and incorporated herein as though set forth in full. Consultant shall not charge Town for any administrative expenses or overhead without limitation, facsimile, mileage and /or any other expenses incurred by Consultant in connection with the Consultant's provision of the Work. Consultant acknowledges and agrees that the compensation to be paid under this section II c represents the full amount due and owing in connection with the performance of the Work.
 - d. **Amendments:** In the event Town desires to retain Consultant for the performance of additional services, or wishes to delete any services in connection with this agreement, specification of such changes and

adjustments to compensation due Consultant therefore shall be made only by written and signed amendment to this Agreement.

- e. **Consultant's Responsibility:** It is understood and agreed that Consultant has the professional skills necessary to perform the Work, and that Town relies upon the professional manner in accordance with the standards of the profession. Consultant thus agrees to so perform the Work. Acceptance by the Town of the Work, or any of it, does not operate as a release of the Consultant from such professional responsibility. It is further understood and agreed that Consultant has reviewed in detail the scope of the work to be performed under this Agreement and agrees that in his professional judgment the Work can and shall be completed for a fee the amounts set forth in Section II.c of this Agreement.
- f. **Insurance:** Consultant shall provide proof of insurance coverage during the life of the Contract: (a) Comprehensive General Liability and Automobile Liability Insurance in an amount not less than \$1,000,000 combined single limit applying to bodily injury, personal injury and property damage; (b) professional liability insurance in the amount of \$1,000,000 per claim. The Town of Fairfax shall be named an additional insured by separate endorsement on the liability coverage. Carrier shall provide notice to the Town of any change in or limitation of coverage or cancellation no less than 30 days prior to the effective date. Proof of worker's compensation coverage pursuant to statutory requirement shall also be provided.
- g. **Ownership of Documents:** Consultant agrees that all documents produced in the performance of this Agreement shall be the property of the Town, and Consultant shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the Town.

III. **Project:** Consultant will audit the Basic Financial Statements of the Town of Fairfax.

IV. **Terms:** This agreement may be canceled by either party upon 60 days written notice to the other party.

V. **Indemnification:**

A. Consultant is an independent contractor and hereunder responsible for its own taxes. Any assistants or employees are not in any way, sub-agents, agents or representatives of the Town. The Town is not responsible for the performance of any service or services required herein to be performed by Consultant, or any act or omission on the part of the Consultant, assistants or employees of the Consultant.

B. Consultant shall indemnify, defend, and hold harmless Town, its officers, agents, employees, and volunteers from all costs, expenses, claims, suits, or actions of every name, kind, and description, brought forth on account of injuries to or death of any person or damage to property arising or resulting from or connected with the willful misconduct, negligent acts, errors or omissions by Consultant, or any person directly or indirectly employed by or acting as agent for Consultant, in Consultant's performance of this Agreement, Consultant's operation of the

Project or Consultant's use of the Town facilities, except to the extent arising from the gross negligence or willful misconduct of the Town, its office, agents, employees, or volunteers. It is understood that the duty of Consultant to indemnify and hold Town harmless includes the duty to defend as set forth in Section 2778 of the California Civic Code and that this indemnification by Consultant shall include all costs and expenditures including attorney's fees incurred by Town or its employees, officers or agents with respect to such claim or suit and Consultant will, if requested by Town, defend any litigation arising out of such claims at the sole cost and expense of Consultant. This indemnification and hold harmless clause shall apply whether or not Consultant's insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

V. General

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1) 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.

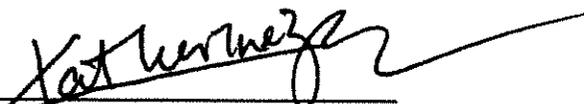
2) Time is of the essence in the performance of all terms and conditions in this Agreement.

3) This agreement shall be governed by the law of the state of California.

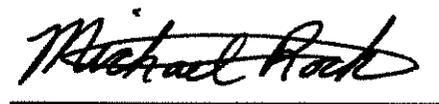
4) Notices under this agreement shall be delivered to the Town of Fairfax, in care of the Town Manager, 142 Bolinas Road, Fairfax, CA 94930, and to the Consultant in the care of Katherine Yuen, Maze & Associates, 3478 Buskirk Avenue, Suite 215, Pleasant Hill, CA 94523.

5) In the event of litigation related to this Agreement, the prevailing party shall be entitled to attorneys fees and costs.

6) This agreement may be executed in counterparts.



Katherine Yuen, Maze & Associates



Michael Rock
Town Manager
Town of Fairfax

Date: 3/2/10

Date: 3/18/10

Exhibit A

SCOPE OF WORK

The Consultant will perform the following tasks:

1. Audit of the Basic Financial Statements of the Town of Fairfax in conformity with generally accepted accounting principles and issue an opinion thereon.
2. Provide assistance in the implementation of all applicable GASB pronouncements including GASB #34 as it relates to the preparation of the Town's financial statements.
3. Test compliance with Proposition 111, Article XIII.B – Review of Appropriation Limit Calculations.
4. Test compliance with the Single Audit Act as amended in 1996, and the provisions of OMB Circular A-133 and other applicable laws and regulations (one major program).
5. Provide other services including special reports that may be requested by the Town.
6. Report preparation, editing, printing, and binding shall be the responsibility of the auditor. The auditor shall provide completed drafts for the Town to review prior to issuance.

Reports to be issued:

- An audit opinion on the fair presentation of the Town's basic financial statements in conformity with generally accepted accounting principles and applicable laws and regulations. This opinion should comply with all provisions of GASB 34 including Required Supplemental Information (RSI) as required by GASB 34.
- A management recommendation letter addressed to the Town Council of the Town of Fairfax communicating any reportable conditions found during the audit. Observations of opportunities for improvements in economies in operations, internal controls and effective use of the Town's resources may be included in this letter. The management letter shall also include the status of prior year's reportable conditions. During the first year, the auditors shall follow-up on reportable conditions made in connection with the June 30, 2008 audit.

- A report of Agreed Upon Procedures on the Town's compliance with Proposition 111, Article XIII.B of the California State Constitution and Government Code 7900 (et seq.) in its calculation of the "Gann Limit".

7. All work papers and reports must be retained, at the auditor's expense, for the minimum of three (3) years, unless the firm is notified in writing by the Town of Fairfax of the need to extend the retention period. The auditor may be required to make working papers available, upon request, to parties specifically designated by the Town as reasonable.

In addition, the firm shall respond to the reasonable inquiries of successor n auditors and allow successor auditors to review work papers.

EXHIBIT B

FEE SCHEDULE

1. Any and all payments made pursuant to this Agreement shall be subject to the Agreement Payment Limit. The payments made pursuant to this Agreement shall not exceed the Agreement Payment Limit as follows:

	Audit	Single Audit and Related Programs (One major program)
Fiscal Year 2009	\$29,530	\$5,305
Fiscal Year 2010	29,530	\$5,305
Fiscal Year 2011	30,416	\$5,464

2. All invoices that are submitted by Consultant shall be subject to the approval of the Town's Finance Director before payments shall be authorized.

January 28, 2013

Michael Vivrette
Finance Director
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Dear Michael:

As you and I discussed, our firm is interested in extending our current audit contract with the Town of Fairfax for the fiscal years 2011-12 through 2013-14.

Each year in preparation for the next season, we review our experiences with our individual clients. We want to ensure both parties will benefit from a continuing relationship. That means there must be mutual respect and good personal relations between our staff and our client's Finance staff, our client's Finance staff must have or be developing a sense of ownership with respect to their books and records, risk levels must not be abnormally high and we must be able to complete the work without undue delay and at some amount of profit.

Based on our review of our experience with the Town of Fairfax, we are pleased to report that the working relationship is great. However, we noted our actual costs for the past two year's audit ran to approximately \$46,000, almost 30% higher than our fee. We expect our costs to exceed our fees in the first year, often by more than twenty percent, but we also expect those costs to decline to somewhere near the fee in subsequent years. Therefore, based on our cost history we feel the pricing of the work needs to be addressed in order to generate some amount of profit.

With that said, we are pleased to offer to extend our audit contract to include the fiscal years ended June 30, 2012, 2013 and 2014 at the following prices:

Service	2011/2012	2012/2013	2013/2014
City Audit and Related Reports (Includes Report to Council on Result of the Audit)	\$40,000	\$41,200	\$42,436
Single Audit and Related Reports (One Major Program)	\$6,000	\$6,180	\$6,365
Out of Pocket Expenses	Included Above		
Total for Fiscal Year (not-to-exceed)	\$46,000	\$47,380	\$48,801

Our fees subsequent to 2012 have been adjusted based solely on the estimated change in the consumer price index for the Services Sector of the U.S. Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland Area. We have used the current index of 3.0%.

We look forward to continuing to improve our service to you.

Yours very truly,



Maze & Associates

RESPONSE:

If you agree with the terms of this contract modification, please sign below and return a copy in the enclosed envelope.

By: _____

Title: _____

Date: _____