

**FIRST AMENDMENT TO AGREEMENT
FOR CONSULTATION OR OTHER SERVICES BETWEEN THE CITY OF
MILPITAS AND MAZE & ASSOCIATES**

THIS FIRST AMENDMENT to the Agreement for Consultation or Other Services Between the City of Milpitas (“CITY”) and Maze & Associates (“AUDITOR”) is entered into this ____ day of _____ 2009.

RECITALS

WHEREAS, CITY desires to exercise to exercise the final one-year option to extend the current agreement (“Agreement”), dated April 19, 2005, for auditor services and to define in greater detail the services to be provided by AUDITOR for Fiscal Year 2008/2009.

NOW, THEREFORE, the CITY and AUDITOR agree to amend the Agreement as follows:

AGREEMENT

1. The CITY hereby exercises its right to exercise its option for a one-year extension of the Agreement, thereby extending services for the 2008/09 fiscal year, as set forth in Exhibit A (Auditor Services) of the Agreement.
2. Exhibit A (Auditor Services) of the Agreement is hereby amended with the addition of Exhibit A-1 (attached to this First Amendment) which sets forth in greater detail the services desired by CITY and to be provided by AUDITOR for fiscal year 2008/09.
3. All other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

Auditor:

By: _____
Its: _____

Date: _____

City of Milpitas:

By: _____
Thomas C. Williams, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Michael J. Ogaz, City Attorney

MAZE & ASSOCIATES

January 28, 2009

Exhibit A-1

ACCOUNTANCY CORPORATION
3478 Buskirk Ave. - Suite 215
Pleasant Hill, California 94523
(925) 930-0902 • FAX (925) 930-0135
maze@mazeassociates.com
www.mazeassociates.com

Ms. Emma Karlen
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Dear Emma:

We are pleased to confirm our understanding of the services we are to provide for the City of Milpitas for the year ended June 30, 2009. The services we have been engaged to provide are outlined below, but we are also available to provide additional services at your request:

- 1) Audit of the basic financial statements, preparation of memorandum on internal controls, review of appropriations limit report and assistance with the preparation of the Comprehensive Annual Financial Report.
- 2) Audit of the component unit financial statements for the Redevelopment Agency and tests of compliance as required by the *Guidelines for Compliance Audits of California Redevelopment Agencies* and issuance of our report thereon.
- 3) Testing for compliance with the Single Audit Act and applicable laws and regulations and issuance of our report thereon, two programs.
- 4) Testing of compliance of the City's Transportation Development Act program for one project and issuance of our report thereon.
- 5) Inclusion of Terrace Gardens Inc. as a discretely presented component unit in the City's Comprehensive Annual Financial Report.
- 6) Scope increase related to the Statement of Auditing Standards Nos. 104 – 111, 113, and 114.

Audit Objective

The objective of our audit is to express opinions on whether your financial statements are fairly presented in all material respects in conformity with generally accepted accounting principles in the United States of America and to report on the fairness of accompanying supplemental information when considered in relation to the basic financial statements taken as a whole. The objective also includes reporting on:

- Internal controls related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal controls related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

The reports on internal control and compliance will each include a statement that the report is intended for the information and use of the Council or their appointed committee, management, specific legislative or regulatory bodies, federal awarding agencies, and if applicable, pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Our audit will be conducted in accordance with generally accepted auditing standards in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provision of OMB Circular A-133, and will include tests of accounting records, a determination of major programs in accordance with Circular A-133 and other procedures we consider necessary to enable us to express such an opinion and to render the required reports. If our opinion on the financial statements or the Single Audit compliance opinion is other than unqualified, we will fully discuss the reasons with City management in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or to issue a report as a result of this engagement.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. As part of the audit, we will prepare a draft of your financial statements, schedule of expenditures of federal awards, and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements, the schedule of expenditures of federal awards, and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter that you have reviewed and approved the financial statements, the schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee any nonaudit services we provide and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; for the fair presentation of financial position of the City's various activities, major funds, and the aggregate remaining fund information and changes in financial position and, where applicable, cash flows in conformity with U.S. generally accepted accounting principles; and for federal award program compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is responsible for making all financial records and related information available to us, including any significant vendor relationships in which the vendor has the responsibility for program compliance and for the accuracy and completeness of that information. We understand that the City will provide us with the Closing Checklist information required for our audit and that the City is responsible for the accuracy and completeness of that information. Management is responsible for adjusting the financial statements to correct material misstatements and for confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (a) management, (b) employees who have significant roles in internal control, and (c) others where the fraud or illegal acts could have a material effect on the financial statements. The City is also responsible for informing us of its knowledge of any allegations of fraud or suspected fraud or illegal acts affecting it received in communications from employees, former employees, grantors, regulators, or others. In addition, the City is responsible for identifying and ensuring that it complies with applicable laws and regulations and for taking timely and appropriate steps to remedy any fraud, illegal acts, violations of contracts or grant agreements, or abuse that we may report. Additionally, as required by OMB Circular A-133, it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. The summary schedule of prior audit findings must be made available for our review.

Management is responsible for establishment and maintenance of a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous audits or other engagements or studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits or other engagements or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, and the timing and format related thereto.

Audit Procedures - General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. Our audit is designed to provide reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations that are attributable to the City or to acts by management or employees acting on behalf of the City. Because the determination of abuse is subjective, *Governmental Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the concept of reasonable assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance, fraud or other illegal acts, may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements, immaterial illegal acts, or illegal acts that do not have a direct effect on the financial statements or major programs. We will advise the City of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform the City of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to matters that might arise during any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, creditors and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill the City for responding to this inquiry. At the conclusion of our audit we will also require certain written representations from management about the financial statements and related matters.

Audit Procedures - Internal Controls

Our audit will include obtaining an understanding of the City and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by OMB Circular A-133, we will perform tests of controls to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major program. However, our tests will be less in scope than would be necessary to render an opinion on those controls, and accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, we will communicate to management and the Council internal control related matters that are required to be communicated under professional standards, *Government Auditing Standards*, and OMB Circular A-133.

Audit Procedures - Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with certain provisions of laws, regulations, contracts, and grants. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

OMB Circular A-133 requires that we also plan and perform the audit to obtain reasonable assurance about whether the City has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and the applicable procedures described in the *OMB Circular A-133 Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each major program. The purpose of those procedures will be to express an opinion on the City's compliance with requirements applicable to major programs in our report on compliance issued pursuant to OMB Circular A-133.

Agreed-Upon Procedures

Our services to apply agreed-upon procedures related to the review of the City's Appropriations Limit Calculation will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described in the report either for the purpose for which the report had been requested or for any other purpose. If, for any reason, we are unable to complete the procedures, we will describe any restrictions on the performance of the procedures in our report, or will not issue a report as a result of this engagement. Because agreed-upon procedures do not constitute an examination, we will not express an opinion. In addition, we have no obligation to perform any procedures beyond those listed in the report.

Audit Administration, Fees, and Other

At the conclusion of the engagement, we will complete the appropriate sections and sign the Data Collection Form that summarizes our audit findings. It is management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditor's reports, and a corrective action plan) along with the Data Collection Form to the designated federal clearinghouse and, if appropriate, to pass-through entities. The Data Collection Form and the reporting package must be submitted within 30 days after receipt of the auditors' reports or nine months after the end of the audit period, unless a longer period is agreed in advance by the cognizant or oversight agency for audits. At the conclusion of the engagement, we will provide information to management as to where the reporting packages should be submitted.

The audit documentation for this engagement is our property and constitutes confidential information. However, pursuant to Authority given by law or regulation, we may be requested to make certain audit documentation available to a federal agency providing oversight of direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Maze & Associates personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies. We will retain audit documentation for seven years pursuant to state regulations.

We expect to begin our audit in April 2009 and to issue our reports no later than November 30, 2009. The name of the engagement partner is Amy Meyer and she is responsible for supervising the engagement and signing the report.

Our fees for these services are billed based on our contract with the City. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if the City's account becomes thirty days or more overdue and may not be resumed until the City's account is paid in full.

These fees are based on anticipated cooperation from City personnel, the completion of schedules and data requested on our Checklists, and the assumption that there will be no unexpected increases in work scope, such as new Single Audit Act programs, new debt issues, etc., or delays which are beyond our control, as discussed on the Fees Attachment to this letter. If significant additional time is necessary, we will discuss it with City management and arrive at a new fee before we incur any additional costs.

We understand you will provide us with basic workspace sufficient to accommodate the audit team assigned to your audit. We understand the basic workspace will be equipped with a telephone and direct Internet access, preferably a temporary network outside of your network, a public IP address and a wired connection. We understand you will also provide us with access to a fax machine and read only access to your general ledger system.

Government Auditing Standards require that we provide the City with a copy of our most recent quality control review report and letters of comment. Our most recent peer review report and letters of comment accompanies this letter.

We appreciate the opportunity to be of service to the City and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.


Maze & Associates

RESPONSE:

This letter correctly sets forth the understanding of the City.

By: _____

Title: _____

Date: _____

**City of Milpitas Engagement Letter
Fees Attachment**

Our fees for the work described in the attached engagement letter will be as follows, unless they are adjusted for one or more of the items below:

<u>Service</u>	<u>Fee</u>
CAFR/Prop 111/Management Letter	\$63,855
Redevelopment Agency	7,345
Single Audit, 2 programs	9,985
Transportation Development Act (one project)	2,675
Terrace Gardens, Inc. Discrete presentation	1,110
Implementation of Suite of SASS	<u>4,800</u>
 Total Fees	 <u>\$89,770</u>

2009 Fees – Our recurring fees have been adjusted only for the change in the services component of the Bay Area Cost of Living Index for the San Francisco Bay Area of 3.0%.

Additional Services - The above fees are for audit and assurance services described in the accompanying engagement letter. They do not include fees for assisting with closing the books nor providing other accounting services. Should the City require assistance beyond audit services we will provide a cost estimate before proceeding.

Report Finalization - Our fee is based on our understanding that all information and materials necessary to finalize all our reports will be provided to us before we complete our year-end fieldwork in your offices. In the case of CAFRs, this includes all the materials and information required to print the CAFR. As in the past, we will provide final drafts of all our reports before we leave your offices. We will schedule a Final Changes Meeting with you for a date no more than two weeks after we complete our fieldwork. At that meeting, we will finalize all reports for printing. After that date, report changes you make and changes required because information was not received timely will be billed at our normal hourly rates.

Post-Closing Client Adjusting Entries - The first step in our year-end audit is the preparation of financial statement drafts from your final closing trial balance. That means any entries you make after handing us your closing trial balance must be handled as audit adjustments, or in extreme cases, by re-inputting the entire trial balance, even if the amounts are immaterial. If you make such entries and the amounts are in fact immaterial, we will bill you for the costs of the adjustments or re-input at our normal hourly rates.

Recurring Audit Adjustments - Each year we include the prior year's adjusting entries as new steps in our Closing Checklist, so that you can incorporate these entries in your closing. If we are required to continue to make these same adjustments as part of this year's audit, we will bill for this service at our normal hourly rates.

CAFR Printing - As a convenience, we can send your CAFR to a printer we use locally. We do not charge for delivering camera-ready print masters to any printer of your choice and delivering the CAFRs or BFS to you. However, we will bill you for any additional time spent on the CAFR printing at our normal hourly rates. This includes changes after the report goes to the printer, obtaining, reviewing and / or delivering printer's proofs, etc.

We can also help with CAFR design, including covers, tabs, dividers, color choices, bindings, organization, charts, maps, etc. We will estimate these costs for you before proceeding.

Single Audit Act - Additional programs will each cost \$4,990 in 2009, unless there are other factors which add to that program's cost; in that case, we will provide a cost estimate before proceeding.

Grant Programs Requiring Separate Audit - Grant programs requiring separate audits represent a significant increase in work scope, and fees for these audits vary based on the grant requirements. If you wish us to determine and identify which programs are subject to audit, we will bill you for that time at our normal hourly rates.

Changes in City Personnel - Our experience is that changes and /or reductions in Finance Department staff can have a pronounced impact on costs of performing the audit. If such changes occur, we will meet with you to assess their impact and arrive at a new fee before we begin the next phase of our work. However, we reserve the right to revisit this subject at the conclusion of the audit, based on your actual performance and our actual costs.