

NATURE OF SERVICE:

Comprehensive Audit Services

AGREEMENT
FOR CONSULTATION OR OTHER SERVICES

THIS AGREEMENT made this 20TH day of April 2010, by and between the CITY OF MILPITAS, a municipal corporation of the State of California, 455 East Calaveras Boulevard, Milpitas, California (hereinafter referred to as "CITY") and Maze & Associates whose address is 3478 Buskirk Ave. Suite 215, Pleasant Hill, CA 94523 (hereinafter referred to as "AUDITOR") at Milpitas, California.

WITNESSETH:

IN CONSIDERATION of the mutual covenants and conditions herein contained, the parties do hereby agree as follows:

1. General

CITY engages AUDITOR to furnish the services hereinafter mentioned upon the covenants and conditions of this Agreement, at the compensation herein stipulated, and AUDITOR accepts said engagement upon said terms.

2. Duties of AUDITOR; Services to be Performed by AUDITOR

AUDITOR shall perform such duties and services as are listed on Exhibit A attached hereto, signed by the parties, hereby referred to and made part hereof by reference. Said services shall be completed according to the time schedule contained in Exhibit A.

3. Services or Materials to be Performed or Furnished by CITY

CITY shall perform such services or furnish such materials to AUDITOR in connection with the performance of this agreement as are set forth on Exhibit A attached hereto, signed by the parties, hereby referred to and made a part thereof by reference. If there are no entries on said Exhibit A, CITY shall not be required to provide any services or furnish any materials to AUDITOR in connection with this Agreement. Unless otherwise provided on Exhibit A, all said services and materials will be furnished by CITY to AUDITOR without cost to AUDITOR.

4. Payment by CITY: Time and Manner of Payment

CITY shall pay AUDITOR for all services to be rendered by it and all materials to be furnished under this Agreement, the amount specifically set forth and in the manner specifically set forth on Exhibit B attached hereto, signed by the parties, hereby referred to and made a part hereof by reference. AUDITOR agrees to accept said sum as full compensation for all services due under this Agreement.

5. Additional Work

The AUDITOR shall be entitled to extra compensation for services or materials not otherwise required under this Agreement, provided that CITY shall first have requested such extra services or materials in writing, but in no event shall CITY be liable for payment unless the amount of such extra compensation shall first have been agreed to in writing by CITY.

6. Professional Skill

AUDITOR represents that it is skilled in the professional calling necessary to perform the work agreed to be done by it under this Agreement. CITY relies upon the skill of AUDITOR to do and perform its work in the most skillful manner, and AUDITOR agrees to thus perform its work, and the acceptance of its work by CITY shall not operate as a release of AUDITOR from said Agreement.

7. Prohibited Interest

No member, officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

8. Equal Employment Opportunity

AUDITOR shall not discriminate against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, age, physical or mental disability, medical condition, marital status, or denial of family care leave.

9. Compliance with Laws

AUDITOR shall comply with all current federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of, any court or administrative body or tribunal in any manner affecting the performance of the Agreement.

10. Independent Contractor

AUDITOR is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY.

11. Indemnity

AUDITOR agrees to indemnify and hold harmless CITY, its officers and employees from all costs, expenses, claims, liabilities or damages to persons or property arising out of or in any way connected with the intentional or negligent act or omission of the AUDITOR, its officers, employees, agents, contractors, subcontractors or any officer, agent or employee thereof.

12. Insurance: Public/Professional Liability

AUDITOR agrees to maintain and pay for a public liability policy naming CITY, its officers, and employees as an additional insured and insuring them against liability or financial loss resulting from injuries occurring to persons or property in or about or in connection with said work to be performed under this Agreement. Each policy of insurance shall provide primary coverage on an occurrence basis in a company satisfactory to CITY in the following minimal amounts: personal injury, \$1,000,000, for each person and \$1,000,000, per occurrence; property damage, \$500,000, per occurrence. Each policy shall provide that it shall not be cancelled or reduced in coverage without 30 days prior written notice to CITY. The public liability policy shall provide (a) if CITY, its officers or employees have other insurance against loss covered by said policy, said other insurance shall be excess insurance only, and (b) that CITY, its officers and employees are not precluded from claim under said policy against other insured parties.

AUDITOR shall file Certificates of insurance with CITY in a form satisfactory to RISK MANAGER upon execution of this Agreement, evidencing said coverage and the requirements of this paragraph.

AUDITOR agrees to obtain and keep in force during the term of this Agreement professional liability insurance covering any loss out of or related in any manner to the negligent acts, errors or omissions of AUDITOR in a minimum amount of \$2,000,000 per occurrence, \$2,000,000 aggregate. Said professional liability insurance is to be kept in force for the term of this Agreement and covering claims for a period of three (3) years after this Agreement. Each policy shall provide that it shall not be canceled or reduced in coverage without 30 days prior written notice to CITY.

13. Insurance: Worker's Compensation

AUDITOR agrees to comply with all State requirements relating to Worker's Compensation Insurance and to provide the same for its employees.

14. CITY Representative

The City Manager, or his or her designee, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement; all requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through said CITY representative.

15. AUDITOR Representative

Amy Meyer shall represent AUDITOR in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of AUDITOR pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the AUDITOR representative.

16. AUDITOR Professional Team

AUDITOR shall provide and maintain the professional team to Perform the services and furnish the materials in connection with this Agreement whose names and capacities are got forth on Exhibit A in the event that any member of said team shall leave the employ of AUDITOR or be transferred to another Office Of AUDITOR, AUDITOR shall so advise CITY and replace him or her with a new member who In competent to perform the required work and who shall be satisfactory to CITY. Such other agents or employee contractors or subcontractors not listed on Exhibit A as may be required to perform any portion of this Agreement shall be competent and Shall be suitably experienced in the functions which they perform,

17. NOTICES

Unless otherwise provided herein, all notices required hereunder shall be given by certified mail, Postage Prepaid and addressed to the party at the address indicated in the opening paragraph Of INS Agreement provided, however, that in lieu thereof, notice may be given by personal delivery to the party at said address.

18. Title to Documents

All original calculations, photographs, maps, drawings, plans, design notes and other material or documents developed or used In connection with the performance of this Agreement shall be the property of CITY provided, however, that AUDITOR may provide CITY with legible photostatic copies thereof in lieu of the originals upon approval by CITY representative. Any plans and specifications shall bear the name of the AUDITOR together With his Certificate number, d any.. If Auditor's working papers or product Includes computer generated statistical material, AUDITOR shall provide the material including the date base upon which it Is based to CITY In a mutually agreed upon computer machine -readable format and media.

19. Assignment

Neither party shall assign nor sublet any portion of this Agreement without the written consent of the other party.

20. Faithful Performance Bond

Unless the provisions of this clause are expressly waived In writing by the signature of the parties hereunder, AUDITOR shall tile a bond with CITY, as Obligee, in a sum of equivalent to the Maximum sum to be paid AUDITOR hereunder, executed by AUDITOR as principal and by a corporate surety authorized to transact a surety business in the State of California, as surety, approved by CITY as to form and sufficiency, conditioned upon the full and faithful performance of each of the covenants and conditions of this Agreement and upon the full and faithful performance of all services or materials required hereunder.

By signing their names hereunder, however, the parties waive the provisions of this paragraph requiring a Faithful Performance Bond:

AUDITOR

CITY OF MILPITAS

BY: _____

BY: _____

BY: _____

CITY MANAGER

21. Termination

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall also have the right to terminate this Agreement for any reason upon written notice to AUDITOR. In event of such termination, AUDITOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate, unless otherwise stated on Exhibit A.

22. Entire Agreement

This Agreement contains the entire understanding between the parties with respect to the subject matter herein and superseded all prior negotiations and agreements. There are no representations,, agreement, or understandings, whether oral or written, between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be altered or amended except by an instrument in writing executed by all of the parties hereto.

23. Miscellaneous

All covenants herein shall be conditions. Time shall be of the essence. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision, The singular number shall include the plural, and the masculine gender shall include the feminine gender and neuter gender whenever the context of this Agreement permits.

24. Applicable Law

The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.

25. Additional Provisions, Exhibits

Additional provisions of this Agreement may be set forth on Exhibit A. All Exhibits shall be attached to. signed by the parties. and are hereby referred to and made a part hereof by reference.

IN WITNESS WHERE-OF, the parties have hereunto set their hands the day and year first above written.

APPROVED AS TO FORM

CITY OF MILPITAS

BY: _____
CITY ATTORNEY

BY: _____
CITY MANAGER

AUDITOR

APPROVED AS TO CONTENT

BY: _____
DIRECTOR OF FINANCE

BY: _____

BY: _____

Note: All Exhibit must be signed by the parties in order(to be an effective portion of this agreement.

Exhibit A: Request for Proposal for Professional Auditing Services

EXHIBIT A

(Attach City of Milpitas Request for Proposal for Professional Auditing Services Project No. 1177)

EXHIBIT B

(Attach Sealed dollar cost Bid Proposal 1177 for City of Milpitas for Professional Auditing Services by Maze & Associates)