



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
November 17, 2010**

**TO:** Mayor and City Council  
**FROM:** Cathy Spinella, Finance Manager  
**SUBJECT:** Selection of Maze & Associates for Audit Services  
**DATE:** November 8, 2010

**RECOMMENDATION:**

Approve a resolution authorizing the City Manager to execute a contract with Maze & Associates for audit services for fiscal years ending June 30, 2011, June 30, 2012, and June 30, 2013. The Budget Subcommittee met on November 4, 2010 and concurs with staff's recommendation.

**BACKGROUND:**

In 2008, the City conducted a Request for Proposals (RFP) process for financial auditing services for a three year contract with an additional two year renewal. The contract was awarded to Maze & Associates who offered the best staffing plan, the best audit procedure and schedule. The attached contract is proposing to extend the contract for three years instead of two. By extending for three years, Maze and Associates is proposing no increase for 2011 and a 2% cap COLA increase for 2012 and 2013. The firm's understanding of the City's finances avoids the learning curve associated with bringing in an entirely new firm and enables them to conduct a more in-depth audit.

**FISCAL IMPACT:**

Maze & Associates' proposal is \$65,444 for the audit of FY 2010-11, \$66,753 for FY 2011-12 and \$68,088 for FY 2012-13. The first year's expenses are already included in the budget for 2010-11. Fiscal years 2012 and 2013 will be budgeted in the next biennale budget.

**ACTION:**

Adopt a resolution authorizing the City Manager to execute a contract with Maze & Associates for audit services.

Attachments: Resolution  
Agreement for Consultant Services  
Maze & Associates-Exhibit A

A handwritten signature in cursive script, appearing to read "Phil Vico".

**APPROVED BY:** City Manager

RESOLUTION NO. -10

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ  
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MAZE  
& ASSOCIATES FOR AUDITING SERVICES FOR FISCAL YEARS ENDING  
JUNE 30, 2011, JUNE 30, 2012 AND JUNE 30, 2013.

**WHEREAS**, the City of Martinez is required by law to conduct an independent annual financial audit; and

**WHEREAS**, the City of Martinez conducted a Request for Proposal process in 2008 to solicit proposals for audit services; and

**WHEREAS**, Maze & Associates' proposal offered the highest quality staffing plan, best audit procedure, lowest fees; and

**WHEREAS**, Maze & Associates has proposed to provide the necessary auditing services to the City for fiscal years ending June 30, 2011, June 30, 2012 and June 30, 2013; and

**WHEREAS**, funds are available for the audit in the 2010-11 Budget and 2011-12 and 2012-13 will be budgeted during the budget process of the Biennial Budget for fiscal years 2011-13.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Martinez that Maze & Associates be the auditor of record for fiscal years ending June 30, 2011, June 30, 2012 and June 30, 2013; and

**BE IT FURTHER RESOLVED** that the City Manager is authorized to execute a contract with Maze & Associates for auditing services for said period for the City of Martinez.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on November 17, 2010, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD C. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

## AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into this \_\_\_\_day of November, 2010 by and between the CITY OF MARTINEZ, hereinafter referred to as CITY, and MAZE AND ASSOCIATES, hereinafter referred to as CONSULTANT, whose address is 3478 Buskirk Avenue, Suite 215, Pleasant Hill, CA 94523. The CITY and CONSULTANT hereby agree as follows:

### SPECIFIC PROVISIONS

1. DESCRIPTION OF PROJECT

Audit the financial statements of the governmental activities, business-type activities, each major fund and aggregate remaining fund information for the fiscal year June 30, 2011, June 30, 2012 and June 30, 2013.

2. SCOPE OF SERVICES TO BE PROVIDED BY CONSULTANT

The services provided by Consultant shall include:

- A. Audit of the basic financial statements, preparation of Memorandum on Internal Structure, assistance with the preparation of the CAFR, and review of Management's Discussion and Analysis.
- B. Testing one program for compliance with the Single Audit Act amendments of 1996, if required.
- C. Testing of compliance with Proposition 111 Appropriation Limit Increment and Issuance of report.
- D. Audit of the Water System and Marina System.
- E. Testing of compliance with Measure C requirements and preparation of report, if required.
- F. Testing of compliance for the Transportation Development Act Programs and preparation of required reports.
- G. Preparation of the Public Improvement Corporation's Information Returns
- H. Version of the CAFR suitable for posting on the City website
- I. Services as further elaborated in the proposal dated October 12, 2010 incorporated herein by reference as Exhibit "A."

4. PAYMENT

a. Compensation:

The total cost for services provided by Consultant shall not exceed \$65,444 for FY 2010-11, \$66,753 for FY 2011-12 and \$68,088 for 2012-13.

b. Time of Payment

Provided CONSULTANT is not otherwise in default under this Agreement, CONSULTANT shall be compensated monthly in arrears based on the time spent during the previous month for which an itemized invoice shall have been submitted. City agrees to pay Consultant within thirty (30) days of receipt of monthly invoices.

5. TIME OF COMPLETION

- a. The CONSULTANT shall perform the work described in paragraph 2 in accordance with the following schedule:

<u>Service</u>	<u>Completion Date</u>
Interim Audit	June 2011
Final Audit	September 2011
Interim Audit	June 2012
Final Audit	September 2012
Interim Audit	June 2013
Final Audit	September 2013

6. CONSULTANT and the CITY agree the schedule in Paragraph 5 above represents their best estimates with respect to completion dates and both CONSULTANT and CITY acknowledge that departures from the schedule may occur. Therefore, both CONSULTANT and CITY will use reasonable efforts to notify one another of changes to the schedule. Any proposed change in the schedule, including a change based on the events described in Section 7, immediately below, shall be delivered to the other party in writing. Any such proposed change by one party shall be subject to the approval of the other party; provided, however, that any such approval may not be withheld unreasonably. The person executing this Agreement on behalf of the CITY shall have the authority to agree to extensions proposed by the CONSULTANT.
7. CONSULTANT shall not be responsible for performance delays caused by others, or delays beyond CONSULTANT'S control, and such delays shall extend the times for performance of the work by CONSULTANT.

#### GENERAL PROVISIONS

1. The status of CONSULTANT is that of an independent contractor operating having control of his/her work and the manner in which it is performed. CONSULTANT is not considered to be an officer, an employee, or an agent of CITY, nor shall he/she hold him/herself out as or represent that he/she is an officer, employee, or agent of the CITY. CONSULTANT is required to obtain a business license with the City.
2. The CONSULTANT agrees that he/she/it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that he/she/it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul and cancel this Agreement without liability of any sort and/or, in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

All reports, drawings, calculations, plans, specifications, and other documents prepared or obtained pursuant to the terms of this Agreement shall be endorsed by Consultant and delivered to and become the property of the City with the exception of proprietary/copyrighted information (as in agreements or software services). In addition, data prepared or obtained under this Agreement shall be made available, upon request, to the City. The foregoing notwithstanding, said documents, plans, etc. which are site specific for the subject project shall not be used for any other work without the consent of Consultant.

Consultant and his/her/its subconsultants shall keep and maintain full and complete documentation and accounting records, including all records, employees' time sheets and correspondence pertaining to this Agreement. The Consultant shall make such documents and records available for review and/or audit evaluation by representatives of the City at all reasonable times during the contract period and for at least four (4) years from the date of final payment. Upon written request by the City, the Consultant shall provide the City with copies of all pertinent reports and correspondence.

3. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services under this contract. The CONSULTANT shall not engage the services of any person or persons now employed by the CITY, except with the written permission of the CITY. Except as otherwise herein provided, the CONSULTANT shall not assign or sublet any portion of the services to be performed under this Agreement without the prior written consent of the CITY. Said consent may be withheld with or

without reasons. In the event that the CITY, in writing, approves any assignment or subletting of this Agreement or the retention of sub-consultants by CONSULTANT, the CONSULTANT shall provide to the CITY copies of each and every sub-consultant contract prior to the execution thereof by the CONSULTANT and sub-consultant.

4. CONSULTANT shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation laws requiring licensing and non-discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases.
5. All changes and/or extra work shall be performed and paid for in accordance with the following:
  - a. Only the CITY Manager may authorize extra and/or changed work. CONSULTANT expressly recognizes that other CITY personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of CONSULTANT to secure the CITY Manager's prior, written authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and CONSULTANT thereafter shall be entitled to no compensation whatsoever for performance of such work.
  - b. If the CONSULTANT is of the opinion that any work he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, he shall promptly notify the CITY Manager of the fact. The CITY Manager shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that the CITY Manager determines that such work does constitute extra work, the CITY shall provide compensation to the CONSULTANT on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the CITY and the CONSULTANT. Such Supplemental Agreement shall be executed by the CONSULTANT and be approved by the necessary CITY officials.
  - c. In the event the CITY Manager determines that such work does not constitute extra work, CONSULTANT shall not be paid extra compensation above that provided herein. The determination of the CITY Manager may be appealed to the CITY Council as long as a written appeal is submitted to the CITY Manager within five (5) days after the date of the CITY Manager's determination. Said written appeal shall include a description of each and every ground upon which CONSULTANT challenges the CITY Manager's determination.
6. CITY has relied upon the professional ability and training of CONSULTANT as a material inducement to enter into this Agreement. Consultant shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that payment for or acceptance of CONSULTANT'S work by CITY shall not operate as a waiver or release. CONSULTANT shall indemnify and hold harmless the CITY from and against any and all claims or expenses caused or occasioned directly or indirectly by CONSULTANT'S failure to so perform.
7. CONSULTANT assumes all responsibility for damages to property or injury or death to persons caused by the negligent performance errors or omissions of CONSULTANT and/or his/her agents or employees. To the extent permitted by law, CONSULTANT shall indemnify, hold harmless, release and defend CITY, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses including attorneys' fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including CONSULTANT from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of CONSULTANT, his employees and agents hereunder and regardless of CITY'S passive negligence. CITY agrees to provide CONSULTANT with reasonable

notification of legal claims and/or lawsuits which CITY may receive and for which CITY will request indemnification under this paragraph.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for CONSULTANT under Workers' Compensation, disability or other employee benefits acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by CONSULTANT.

8. Without limiting CONSULTANT'S indemnification provided hereunder, CONSULTANT shall take out and maintain at all times during the life of this contract, up to the date of acceptance of the work by the CITY, the following policies of insurance with a Best rating of no less than A-VII.

a. Workers' Compensation insurance to cover its employees, and the CONSULTANT shall require all sub-consultants similarly to provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the sub-consultant's employees. All Workers' Compensation policies shall be endorsed with the provision that it will not be canceled without first giving thirty (30) days prior notice to the CITY.

In the event any class of employees engaged in hazardous work under the Contract is not protected under Workers' Compensation Statutes, the CONSULTANT shall provide, and shall cause all sub-consultants to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy must be acceptable to CITY and shall provide that it will not be canceled without first giving thirty (30) days notice to the CITY.

CONSULTANT'S Worker's Compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the CITY, its officers and employees when acting within the scope of their appointment or employment."

b. Commercial general liability insurance including personal injury and property damage insurance for all activities of the CONSULTANT and its sub-consultants arising out of or in connection with this contract, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, completed operations, cross liability, x, c, u hazards, subcontractors named as additional insureds (inapplicable if no subcontractors or subconsultants), vehicle coverage, products liability and employers non-ownership liability coverage in an amount no less than \$2 million dollars combined, single limit personal injury and property damage for each occurrence. The completed operations and product liability insurance shall continue for not less than 365 days following acceptance of the work by CITY. The commercial general liability policy shall be endorsed with the following language:

(1) The CITY OF MARTINEZ is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.

(2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(3) The insurance provided herein is primary and no insurance held or owned by the CITY OF MARTINEZ shall be called upon to contribute to a loss.

(4) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the CITY of MARTINEZ.

c. Professional liability, errors and omissions insurance in an amount not less than \$1 million dollars.

The professional liability insurance policy shall be endorsed with a provision stating that it may not be canceled without first giving thirty (30) days prior written notice to the CITY. The professional liability policy shall be written on an occurrence policy basis to cover any professional liability, errors or omissions made during the term of policy. In the event CONSULTANT'S policy is a "claims made" policy only covering those claims made during the policy period, then CONSULTANT agrees to maintain the professional liability insurance required hereunder and with respect to this project in effect for at least three (3) years after acceptance of the work.

- (1) SUB-CONSULTANTS providing professional services under this agreement shall be added to CONSULTANT'S policy as additional insured, or shall provide evidence of their own professional liability insurance which is acceptable to the CITY Attorney.
  - d. CONSULTANT shall submit to CITY documentation evidencing its required insurances signed by the insurance agent and companies, copies of which are attached as Exhibit "B". Any deductible or self-insured retentions must be declared to and approved by CITY. At the option of CITY, insurer shall reduce or eliminate such deductible or self-insured retention as respects CITY, its officers and employees or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claims, administration and defense expenses.
9. The CITY shall furnish the CONSULTANT, to the extent that they are available, CITY standards, details, specifications, and regulations applying to the Project and other such information which may be helpful to the CONSULTANT in performance of its service. Any and all additional data necessary for design shall be the responsibility of the CONSULTANT.
10. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the CITY within its sole discretion upon written notice to CONSULTANT. CONSULTANT may terminate this Agreement upon thirty (30) days' written notice to the CITY only for good cause, including without limitation, CONSULTANT'S serious illness or material breach of this Agreement by the CITY. CONSULTANT'S written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. Upon termination, all finished and unfinished documents, project data and reports shall, at the option of the CITY, become its sole property and shall, at CONSULTANTS' expense, be delivered to the CITY or to any party the CITY may so designate. In the event of termination by CONSULTANT, CONSULTANT shall only be compensated for all work CONSULTANT satisfactorily performs prior to the time CONSULTANT delivers to the CITY the termination notice, unless other arrangements are agreed to by the CITY. In the event of termination by the CITY, CONSULTANT shall be compensated for all work satisfactorily performed prior to the time CONSULTANT receives the termination notice, and shall be compensated for all materials ordered by CONSULTANT, and services of others ordered by CONSULTANT prior to receipt of the CITY'S termination notice, whether or not such materials or instruments of services of others have actually been delivered to CONSULTANT or to the CITY, provided that CONSULTANT is not able to cancel such orders for materials or services of others. In the event this Agreement is terminated pursuant to this section, CONSULTANT shall not be entitled to any additional compensation over that provided herein; nor shall CONSULTANT be entitled to payment for alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the CITY pursuant to this section.
11. Should the CONSULTANT fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the CITY may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. CONSULTANT shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage, if any, sustained by CITY by virtue of the CONSULTANT'S breach of this Agreement.

12. This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.
13. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to included terms and a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure, section 1856. No modification hereof shall be effective unless and until such modification is evidenced by a writing signed by parties to this Agreement.
14. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed **return** has not been received. After receipt of a demand for assurance, either party's failure to provide within a reasonable time but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances is a breach of this Agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.
15. All notices permitted or required hereunder shall be addressed as follows:
- |                       |  |
|-----------------------|--|
| If to the CITY:       | Philip Vince<br>City Manager<br>City of Martinez<br>525 Henrietta Street<br>Martinez, CA 94553 |
| If to the CONSULTANT: | Tim Krisch<br>Maze & Associates<br>3478 Buskirk Ave, Suite 215<br>Pleasant Hill, CA 94523      |
16. This Agreement shall be construed in accordance with the law of the State of California. Venue shall be in the County of Contra Costa.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written in the CITY OF MARTINEZ, California.

CITY OF MARTINEZ  
A Municipal Corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Philip Vince, City Manager

CONSULTANT is a corporation duly organized and validly existing and in good standing under the laws of the State of California, and is authorized to perform the services under this agreement. The corporate officer executing this agreement has been authorized and directed to do so by corporate resolution.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Consultant

APPROVED AS TO FORM

By: \_\_\_\_\_  
City Attorney

Attachments:

- Exhibit A: Maze & Associates' proposal letter dated October 12, 2010
- Exhibit B: Proof of Required Insurance
  - Worker's Compensation Insurance
  - Commercial General Liability Insurance
  - Commercial General Liability - Auto Insurance
  - Professional Liability

October 12, 2010

**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. Cathy Spinella  
Finance Manager  
City of Martinez  
525 Henrietta Street  
Martinez, CA 94553

Dear Cathy:

Pursuant to our recent discussion, coupled with the terms of the City's most recent Engagement Letter dated February 16, 2010, we are pleased to offer to extend our audit contract to include the fiscal years ending June 30, 2011 through 2013 at the fees outlined on the attached page.

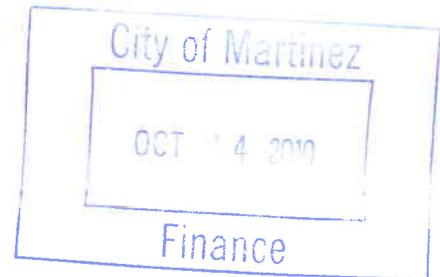
For the year ending June 30, 2011 there is no change in the fees from the prior year. We adjusted our fees for June 30, 2012 and 2013 based on the estimated change in the consumer price index for the Services Sector of the U.S. Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland area. Please call me if you have any questions.

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

Yours very truly,

  
Timothy J. Krisch, CPA

TJK:lt



RESPONSE:

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

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY OF MARTINEZ  
SCHEDULE OF PROFESSIONAL FEES AND EXPENSES  
FOR THE AUDIT OF FINANCIAL STATEMENTS AND OTHER SERVICES**

	Totals For The Year Ending June 30, (1)			
	2010	2011	2012	2013
Basic Financial Statements & Management Letter	\$46,817	\$46,817	\$47,753	\$48,708
Single Audit (1 Major Program) (2)	5,462	5,462	5,571	5,682
Appropriations Limit Review	963	963	982	1,002
Water System Audit	2,993	2,993	3,053	3,114
Marina System Audit	3,361	3,361	3,428	3,497
Measure C (if needed)	1,693	1,693	1,727	1,762
Transportation Development Program (if needed)	2,180	2,180	2,224	2,268
Public Improvement Corp Tax Return	1,185	1,185	1,209	1,233
CAFR pdf for website	790	790	806	822
Total all-inclusive maximum price	<u>\$65,444</u>	<u>\$65,444</u>	<u>\$66,753</u>	<u>\$68,088</u>

**ASSUMPTIONS:**

- (A) For the fiscal year ending June 30, 2011 we are proposing no COLA increase from the June 30, 2010 fees.
- (B) For the fiscal year ending June 30, 2012 we are proposing a COLA increase not to exceed 2%.

**NOTES:**

- (1) Our policy is to attempt to keep our clients fees constant after inflation. Therefore, the fees for years subsequent to 2011 have been adjusted for the estimated 2010 CPI increase of 2.0% for the Service Sector of the U.S. Department of Labor, Bureau of Labor Statistics for the San Francisco Bay.
- (2) Additional major programs will cost \$5,462 each in fiscal 2011.
- (3) Out of pocket expenses are included in our standard hourly rate.