

**Council Meeting: March 19, 2013****SUBJECT: Award of Contract for Annual Financial Auditing Services (F13-35)****BACKGROUND**

Approval is requested for the award of a five-year contract for annual financial auditing services to Macias Gini & O'Connell LLP of Walnut Creek in an amount not to exceed \$509,960, and to authorize the City Manager to extend the contract for up to two additional years if pricing and service remain acceptable to the City.

**DISCUSSION**

The City Charter and certain government grants require an annual audit of the City's financial transactions and records by an independent Certified Public Accountant. In total, the City conducts up to twelve financial audits in any given fiscal year. In addition to meeting the City's lawful requirements, the financial audits provide relevant financial information to citizens, creditors, investors, City Council, City staff, and other concerned readers.

For the last five years, the City has contracted with Maze & Associates for audit services. The current engagement concluded with the completion of the annual financial audit for the fiscal year ending June 30, 2012. Consistent with Government Finance Officers Association (GFOA) best practice, a competitive process is undertaken at the end of each contract term to select a subsequent independent auditor.

Staff initiated a competitive Request for Proposals (RFP) process and on December 28, 2012 RFP No. F13-35 was released and posted on the Onvia Demandstar public procurement network. Twelve (12) firms requested proposal documents. Six (6) sealed proposals were publicly received on January 23, 2013 as follows:

<b><u>Audit Firm</u></b>	<b><u>5-year Cost*</u></b>
1. Badawi & Associates, Oakland, CA	\$441,914
2. Brown Armstrong, Stockton, CA	\$457,808
3. Burr Pilger Mayer, Inc., San Jose, CA	\$455,597
4. Maze & Associates, Pleasant Hill, CA	\$525,823
5. Macias Gini & O'Connell LLP, Walnut Creek, CA	\$509,748
6. Vavrinek, Trine, Day & Co LLP, Palo Alto, CA	\$508,350
*Costs included up to 2 single audits for Federal grant programs but did not include as-needed single audits that may be required throughout the year.	

Proposals were evaluated for past experience and performance, quality of professional personnel and management support, audit approach, staffing plan, sampling techniques, analytical procedures, independence, freedom from conflicts of interest, and pricing structure. Following the review of the written proposals, two firms were selected to interview with the evaluation team: Macias Gini & O'Connell and Maze & Associates. The key factors that separated these two firms from the other proposers included experience in government accounting, especially with cities of similar size in the Bay Area; and greater depth of staff, including information technology resources. Macias Gini & O'Connell (MGO) was selected as the top-rated proposer at the conclusion of the interview process.

The initial MGO proposal included base pricing for up to two single audits per fiscal year. Pricing was requested for two additional single audits, as grant activity may warrant more than two single audits. Subsequent negotiations resulted in a five-year contract with up to four single audits for \$509,960.

**FISCAL IMPACT**

Total cost to the City for the five-year contract will not exceed \$509,960, which is in line with historical expenses for this service. Costs are budgeted and will be distributed among various benefitting City funds.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

**RECOMMENDATION**

It is recommended that Council:

1. Award a contract, in substantially the same form as the attached draft Audit Services Agreement, not to exceed \$509,960, to Macias Gini & O'Connell LLP and;
2. Delegate authority to the City Manager to extend the contract for two (2) additional one-year periods, provided pricing and service remain acceptable to the City.

Reviewed by:

Grace K. Leung, Director of Finance  
Prepared by: Pete Gonda, Purchasing Officer

Approved by:

Gary M. Luebbers  
City Manager

**Attachments**

- A. Draft Audit Services Agreement

**ATTACHMENT A  
DRAFT**

**AUDIT SERVICES AGREEMENT BETWEEN  
THE CITY OF SUNNYVALE  
AND MACIAS GINI & O'CONNELL LLP  
TO PROVIDE ANNUAL FINANCIAL AUDIT SERVICES FOR THE CITY OF  
SUNNYVALE**

THIS AGREEMENT dated \_\_\_\_\_ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and Macias Gini & O'Connell LLP, ("AUDITOR").

WHEREAS, CITY is in need of specialized services to conduct the annual independent audit of the City's financial transactions and to express an opinion on the fairness of the presentation of the City's financial statements; and

WHEREAS, AUDITOR possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by AUDITOR

AUDITOR shall provide services in accordance with proposal dated January 23, 2013 and the Schedule of Professional Fees and Expenses (Exhibit B), which is incorporated herein by reference.

2. Time for Performance

The term of this Agreement shall be from April 5, 2013 to December 31, 2017 unless otherwise terminated. AUDITOR shall deliver the agreed upon services to CITY as specified. Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall supply any documents or information available to City required by AUDITOR for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay AUDITOR a total not to exceed amount of five hundred nine thousand nine hundred sixty dollars (\$509,960.00), including applicable taxes.

AUDITOR shall submit invoices to CITY to be paid within thirty (30) days upon receipt of an accurate, itemized invoice by CITY'S Accounts Payable Unit.

5. Ownership of Documents

CITY shall have full and complete access to AUDITOR's working papers, drawings and other documents during progress of the work. All documents of any description prepared by AUDITOR shall become the property of the CITY at the completion of the project and upon payment in full to the AUDITOR. AUDITOR may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement AUDITOR shall not accept employment or an obligation which is inconsistent or incompatible with AUDITOR's obligations under this Agreement.

7. Confidential Information

AUDITOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which AUDITOR may become aware in the performance of its services.

8. Compliance with Laws

- (a) AUDITOR shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of AUDITOR or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of AUDITOR's employment practices and to all of AUDITOR's activities as a provider of services to the City.
- (b) AUDITOR shall comply with all federal, state and city 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 the Agreement.

9. 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. Nothing in this Agreement shall be interpreted or construed as

creating or establishing the relationship of employer and employee between CITY and AUDITOR. AUDITOR is responsible for paying all required state and federal taxes.

10. Indemnity

AUDITOR shall indemnify and hold harmless CITY and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of AUDITOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of CITY.

11. Insurance

AUDITOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "A" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "A."

12. CITY Representative

Drew Corbett, as the City Manager's authorized representative, 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 the CITY representative.

13. AUDITOR Representative

David Bullock, CPA, 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.

14. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY: Drew Corbett, Assistant Director of Finance  
Department of Finance  
CITY OF SUNNYVALE  
650 West Olive Avenue  
PO Box 3707  
Sunnyvale, CA 94088-3707

To AUDITOR: David Bullock, CPA, Partner  
Macias Gini & O'Connell LLP  
2121 North California Boulevard, Suite 750  
Walnut Creek, CA 94596

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

If AUDITOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to AUDITOR. If CITY fails to pay AUDITOR, AUDITOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) after written notification of failure to pay.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to AUDITOR. In the 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. AUDITOR shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

18. Miscellaneous

Time shall be of the essence in this Agreement. 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. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
("AUDITOR")

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

By \_\_\_\_\_

\_\_\_\_\_  
Title and Date

By \_\_\_\_\_

\_\_\_\_\_  
Title and Date

## EXHIBIT A

### INSURANCE REQUIREMENTS

SUPPLIER shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

SUPPLIER shall take out and maintain during the life of the contract **Workers' Compensation** insurance coverage to statutory limits as may be required by law.

SUPPLIER shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect SUPPLIER, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by SUPPLIER, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from SUPPLIER's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- "CITY, its officers, officials, employees and volunteers" must be named as an additional named insured with respect to the services being performed under the contract. *Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.*
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.

EXHIBIT B

Appendix A Schedule of Professional Fees and Expenses						
General Purpose	Hours	Total Cost				
Financial Statement Audit		2013	2014	2015	2016	2017
Partners	50.0	\$ 12,700	\$ 12,954	\$ 13,213	\$ 13,477	\$ 13,747
Director	52.0	\$ 10,296	\$ 10,502	\$ 10,712	\$ 10,926	\$ 11,145
IT Consultant	24.0	\$ 4,128	\$ 4,211	\$ 4,295	\$ 4,381	\$ 4,469
Supervisory Staff	124.0	\$ 14,136	\$ 14,419	\$ 14,707	\$ 15,001	\$ 15,301
Assurance Associates	240.0	\$ 20,400	\$ 20,808	\$ 21,224	\$ 21,648	\$ 22,081
Administrative Assistants	5.0	\$ 295	\$ 301	\$ 307	\$ 313	\$ 319
Transportation	n/a	\$ 1,020	\$ 1,039	\$ 1,060	\$ 1,082	\$ 1,102
<b>Subtotal</b>	<b>495.0</b>	<b>\$ 62,975</b>	<b>\$ 64,234</b>	<b>\$ 65,518</b>	<b>\$ 66,828</b>	<b>\$ 68,164</b>
<b>Quarterly Investment AUP</b>						
Partners	2.0	\$ 508	\$ 518	\$ 528	\$ 539	\$ 550
Director	8.0	\$ 1,584	\$ 1,616	\$ 1,648	\$ 1,681	\$ 1,715
Supervisory Staff	17.0	\$ 1,938	\$ 1,977	\$ 2,017	\$ 2,057	\$ 2,098
Assurance Associates	50.0	\$ 4,250	\$ 4,335	\$ 4,422	\$ 4,510	\$ 4,600
Administrative Assistants	3.0	\$ 177	\$ 181	\$ 185	\$ 189	\$ 193
Transportation	n/a	\$ 200	\$ 202	\$ 206	\$ 208	\$ 210
<b>Subtotal</b>	<b>80.0</b>	<b>\$ 8,657</b>	<b>\$ 8,829</b>	<b>\$ 9,006</b>	<b>\$ 9,184</b>	<b>\$ 9,366</b>
<b>SMaRT Station Audit Report</b>						
Partners	3.0	\$ 762	\$ 777	\$ 793	\$ 809	\$ 825
Director	5.0	\$ 990	\$ 1,010	\$ 1,030	\$ 1,051	\$ 1,072
Supervisory Staff	11.0	\$ 1,254	\$ 1,279	\$ 1,305	\$ 1,331	\$ 1,358
Assurance Associates	20.0	\$ 1,700	\$ 1,734	\$ 1,769	\$ 1,804	\$ 1,840
Administrative Assistants	1.0	\$ 59	\$ 60	\$ 61	\$ 62	\$ 63
Transportation	n/a	\$ 90	\$ 89	\$ 91	\$ 91	\$ 94
<b>Subtotal</b>	<b>40.0</b>	<b>\$ 4,855</b>	<b>\$ 4,949</b>	<b>\$ 5,049</b>	<b>\$ 5,148</b>	<b>\$ 5,252</b>
<b>Sunnyvale Finance Authority Audit</b>						
Partners	3.0	\$ 762	\$ 777	\$ 793	\$ 809	\$ 825
Director	6.0	\$ 1,188	\$ 1,212	\$ 1,236	\$ 1,261	\$ 1,286
Supervisory Staff	9.0	\$ 1,026	\$ 1,047	\$ 1,068	\$ 1,089	\$ 1,111
Assurance Associates	16.0	\$ 1,360	\$ 1,387	\$ 1,415	\$ 1,443	\$ 1,472
Administrative Assistants	1.0	\$ 59	\$ 60	\$ 61	\$ 62	\$ 63
Transportation	n/a	\$ 74	\$ 77	\$ 81	\$ 85	\$ 89
<b>Subtotal</b>	<b>35.0</b>	<b>\$ 4,469</b>	<b>\$ 4,560</b>	<b>\$ 4,654</b>	<b>\$ 4,749</b>	<b>\$ 4,846</b>
<b>GANN Appropriation Limit AUP</b>						
Partners	1.0	\$ 254	\$ 259	\$ 264	\$ 269	\$ 274
Director	1.0	\$ 198	\$ 202	\$ 206	\$ 210	\$ 214
Supervisory Staff	3.0	\$ 342	\$ 349	\$ 356	\$ 363	\$ 370
Assurance Associates	4.0	\$ 340	\$ 347	\$ 354	\$ 361	\$ 368
Administrative Assistants	1.0	\$ 59	\$ 60	\$ 61	\$ 62	\$ 63
Transportation	n/a	\$ 17	\$ 15	\$ 13	\$ 13	\$ 13
<b>Subtotal</b>	<b>10.0</b>	<b>\$ 1,210</b>	<b>\$ 1,232</b>	<b>\$ 1,254</b>	<b>\$ 1,278</b>	<b>\$ 1,302</b>
<b>Transportation Development Act</b>						
Partners	3.0	\$ 762	\$ 777	\$ 793	\$ 809	\$ 825
Director	3.0	\$ 594	\$ 606	\$ 618	\$ 630	\$ 643
Supervisory Staff	5.0	\$ 570	\$ 581	\$ 593	\$ 605	\$ 617
Assurance Associates	8.0	\$ 680	\$ 694	\$ 708	\$ 722	\$ 736
Administrative Assistants	1.0	\$ 59	\$ 60	\$ 61	\$ 62	\$ 63
Transportation	n/a	\$ 40	\$ 43	\$ 44	\$ 43	\$ 45
<b>Subtotal</b>	<b>20.0</b>	<b>\$ 2,705</b>	<b>\$ 2,761</b>	<b>\$ 2,817</b>	<b>\$ 2,871</b>	<b>\$ 2,929</b>
<b>Single Audit (up to 2 major programs)</b>						
Partners	5.0	\$ 1,270	\$ 1,295	\$ 1,321	\$ 1,347	\$ 1,374
Director	6.0	\$ 1,188	\$ 1,212	\$ 1,236	\$ 1,261	\$ 1,286
Supervisory Staff	9.0	\$ 1,026	\$ 1,047	\$ 1,068	\$ 1,089	\$ 1,111
Assurance Associates	58.0	\$ 4,930	\$ 5,029	\$ 5,130	\$ 5,233	\$ 5,338
Administrative Assistants	2.0	\$ 118	\$ 120	\$ 122	\$ 124	\$ 126
Transportation	n/a	\$ 193	\$ 197	\$ 200	\$ 207	\$ 211
<b>Subtotal</b>	<b>80.0</b>	<b>\$ 8,725</b>	<b>\$ 8,900</b>	<b>\$ 9,077</b>	<b>\$ 9,261</b>	<b>\$ 9,446</b>
<b>Total base audit not to exceed price</b>	<b>760.0</b>	<b>\$ 93,596</b>	<b>\$ 95,465</b>	<b>\$ 97,375</b>	<b>\$ 99,319</b>	<b>\$ 101,305</b>

Clerical Personnel	Total Cost 2013	Total Cost 2014	Total Cost 2015	Total Cost 2016	Total Cost 2017
General Purpose Financial Statement	\$ 62,975	\$ 64,234	\$ 65,518	\$ 66,828	\$ 68,164
Quarterly Investment AUP	\$ 8,657	\$ 8,829	\$ 9,006	\$ 9,184	\$ 9,366
SMaRT Station Audit Report	\$ 4,855	\$ 4,949	\$ 5,049	\$ 5,148	\$ 5,252
Sunnyvale Financing Authority Audit	\$ 4,469	\$ 4,560	\$ 4,654	\$ 4,749	\$ 4,846
GANN Appropriation Limit AUP	\$ 1,210	\$ 1,232	\$ 1,254	\$ 1,278	\$ 1,302
Transportation Development Act	\$ 2,705	\$ 2,761	\$ 2,817	\$ 2,871	\$ 2,929
Single Audit	\$ 8,725	\$ 8,900	\$ 9,077	\$ 9,261	\$ 9,446
<b>Total base audit not to exceed price</b>	<b>\$ 93,596</b>	<b>\$ 95,465</b>	<b>\$ 97,375</b>	<b>\$ 99,319</b>	<b>\$ 101,305</b>

Cost of each Major Program beyond two included within scope of Single Audit above:					
Cost per each additional Major Program	\$ 2,200	\$ 2,244	\$ 2,289	\$ 2,335	\$ 2,382