

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2010 APR -1 PM 6:23

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Finance and Management Agency
DATE: April 13, 2010

- RE: 1) **A City Resolution Authorizing the City Administrator to Waive the Competitive Request For Proposals Process and Execute a Five-Year Contract Extension With Macias Gini, & O'Connell, LLP to Provide Audit Services for Fiscal Year Ending June 30, 2010 through Fiscal Year Ending June 30, 2014 in an Amount Not to Exceed \$ 3,162,486.**
- 2) **An Agency Resolution Authorizing the City Administrator To Waive the Competitive Request For Proposals Process and Execute a Five-Year Contract Extension With Macias Gini, & O'Connell, LLP to Provide Audit Services for Fiscal Year Ending June 30, 2010 through Fiscal Year Ending June 30, 2014 in an Amount Not to Exceed \$ 464,467.**
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SUMMARY

Section 809 of the City of Oakland (the "City") Charter states that the City Council shall engage an independent certified public accountant to examine and report on the annual financial statements of the City.

On February 26, 2008, the City Council approved a two-year contract with Macias Gini & O'Connell, LLP ("MGO") to provide audit services for the fiscal years ending June 30, 2008 and June 30, 2009 with an option to extend the contract for two additional years (June 30, 2010 and 2011). The two-year contract with MGO expired on June 30, 2009. Staff is requesting a five-year contract extension for the period from fiscal year 2009-10 to fiscal year 2013-14; the five-year period includes the two-optional years already approved by the City Council. The proposed contract extension includes a negotiated 10% contract reduction with MGO resulting in a cost savings to the City in the amount of \$402,996.

Staff requests City Council adopt the proposed City and Oakland Redevelopment Agency (Agency) resolutions authorizing the City Administrator to enter into a five-year contract extension with MGO in a combined amount not to exceed \$3,626,953 to provide audit services for fiscal year ending June 30, 2010 through fiscal year ending June 30, 2014.

Item: _____
Finance and Management Committee
April 13, 2010

FISCAL IMPACT

Approval of this resolution will authorize the extension of current contract for five years with MGO for financial audit services for a not-to-exceed amount of \$3,626,953, which includes a 10% discount. The total cost savings to the City will be approximately \$475,895, representing \$402,996 over the next five years and an additional \$72,899 for fiscal year 2008-09.

The table below outlines the total savings to the City (the contract fee less the 10% discount) for fiscal year 2009-10 through fiscal year 2013-14:

| MGO Fees | Option Years | | FY 2012 | FY 2013 | FY 2014 | Total Extension (5 Years) |
|-------------------|------------------|------------------|------------------|------------------|------------------|------------------------------|
| | FY 2010 | FY 2011 | | | | |
| Annual Fees* | \$759,057 | \$781,831 | \$805,286 | \$829,446 | \$854,329 | \$4,029,949 |
| Less 10% Discount | (75,906) | (78,183) | (80,529) | (82,945) | (85,433) | (402,996) |
| Total Fees | \$683,151 | \$703,648 | \$724,757 | \$746,501 | \$768,896 | \$3,626,953 |

* Annual fees reflect a 3% inflation factor, pursuant to the current contract terms.

The table below shows the details of the audit fees and the funding sources:

| Description | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|
| Comprehensive Annual Financial Report (CAFR) <i>Fund 1010: General Purpose Fund</i> | \$417,604 | \$ 425,682 | \$ 438,453 | \$ 451,606 | \$ 465,155 |
| Single Audit Report <i>Fund 1010: General Purpose Fund</i> | 87,203 | 89,819 | 92,514 | 95,289 | 98,147 |
| Oakland Redevelopment Agency (ORA) <i>Fund: Oakland Redevelopment Agency Funds</i> | 87,484 | 90,109 | 92,812 | 95,597 | 98,465 |
| Police and Fire Retirement System (PFRS) <i>Fund 7100: Police and Fire Retirement System Fund</i> | 25,229 | 25,986 | 26,765 | 27,568 | 28,395 |
| Oakland Municipal Employees Retirement System (OMERS) <i>Fund 7120: Oakland Municipal Employees Retirement System</i> | 20,265 | 20,874 | 21,500 | 22,145 | 22,810 |
| Measure Y - Violence Prevention and Public Safety Act of 2004 <i>Fund 2251: Measure Y Fund</i> | 20,265 | 20,874 | 21,500 | 22,145 | 22,810 |
| Oakland Wildfire Prevention Assessment District <i>Fund 2321: Wildfire Prevention Assessment District Fund</i> | 20,265 | 20,874 | 21,500 | 22,145 | 22,810 |
| Measure C - Transient Occupancy Tax (TOT) Surcharge <i>Fund 2419: Transient Occupancy Tax Fund</i> | 0 | 4,449 | 4,583 | 4,721 | 4,862 |
| Gann Appropriations Limitation <i>Fund 1010: General Purpose Fund</i> | 1,776 | 1,829 | 1,884 | 1,941 | 1,999 |
| The Oakland Army Base <i>Fund 9575: The Oakland Army Base</i> | 3,060 | 3,152 | 3,246 | 3,344 | 3,443 |
| Contract Total | \$ 683,151 | \$ 703,648 | \$ 724,757 | \$ 746,501 | \$ 768,896 |

BACKGROUND

A joint Request for Proposals ("RFP") with the Port of Oakland ("Port") for financial audit services for fiscal year ending 2008 and 2009 (with an extension option of two additional years) was mailed to thirty-seven (37) accounting firms in October 2007. The RFP mailing list included all firms offering Governmental Accounting Services (Forensic accounting) included on the San Francisco Business Times "50 Largest Accounting Firms in the East Bay", as well any firm that had requested to be included on the proposal listing through the Contract Compliance and Purchasing Division. Of those thirty-seven (37) firms, two (2) responses were received, two (2) firms were included in other proposals as sub-contractors; six (6) firms sent notification either to the Port or the City declining to respond. City and Port staff reviewed the two responses to the RFP and held interviews with the two responsive firms (Macias Gini & O'Connell, LLP and Williams Adley & Company LLP) in January 2008. City and Port staff agreed on the selection of Macias Gini & O'Connell, LLP. MGO's proposal demonstrated superior knowledge of both City and Port activities; provided an experienced audit team; and included training and technical support for City and Port staff for the implementation of new auditing and reporting regulations and standards.

City Council approved a two-year contract with Macias Gini & Company, LLP to provide audit services for the fiscal years ending June 2008 and 2009, with an extension option of two additional years (June 2010 and 2011).

In 2009, the City Council directed staff to seek a 10% reduction in payments from all of its vendors and contractors, for the next two fiscal years. Staff approached MGO and they proposed a five-year contract extension and a six-year 10% contract reduction. The proposed contract extension provides to the City a savings of \$475,895.

KEY ISSUES AND IMPACTS

Staff has determined that it is in the City's best interest to waive the competitive RFP process for the contract to provide audit services because the proposed contract represents significant savings to the City, an option to renew for two years was already planned, and conducting a new joint RFP process with the Port would be costly to the City by delaying the annual audit and requiring significant amounts of staff time to orient a new firm to the City's organization and processes.

The audit will review the financial statements of the City of Oakland, the Comprehensive Annual Financial Report (CAFR), the Oakland Redevelopment Agency, the Police and Fire Retirement System and the Oakland Municipal Employees Retirement System. The audit will also encompass the Measure Y – Violence Prevention and Public Safety Act of 2004 Compliance Audit, the Oakland Wildfire Prevention Assessment District Compliance Audit, the Measure C – Transient Occupancy Tax (TOT) Surcharge Compliance Audit, the Oakland Army Base Audit, the Gann Appropriation Limit, and the Single Audit Report for

Item: _____

Finance and Management Committee

April 13, 2010

Federal Awards. As shown in the table earlier, the extension of the contract with MGO will allow the City to save approximately \$475,895 for audit services.

a) Independence of the Audit Firm

In reviewing the MGO proposed contract extension, staff took into consideration concerns about the independence of the audit and the rigors of appropriate controls. MGO will address those concerns with the use of subcontractors and by sustaining independent status:

i. Use of Subcontractors

In accordance with the last RFP, the City required the participation of a Local and Small Business Enterprise Program (the Program). The Program requires 10% local business participation and 10% small local business participation. During the past two years, MGO utilized the services of three CPA firms to meet the Program requirements – Patel & Associates, Williams Adley & Company LLP, and Yano Accountancy Corporation. Under the new proposed contract extension, they will continue to abide by the Program requirements, ensuring that local and small firms are utilized on the City's audit.

ii. Independence

The American Institute of Certified Public Accountants (AICPA) Code of Professional Ethics states that a CPA must be independent in the performance of professional services. In a study published by the Government Accounting Office (GOA) entitled, "*Required Study on the Potential Effects of Mandatory Audit Firm Rotation*" published in November 2003, it stated:

In surveys conducted as part of our study, GAO found that almost all of the largest public accounting firms and Fortune 1000 publicly traded companies believe that the costs of mandatory audit firm rotation are likely to exceed the benefits...

GAO believes that mandatory audit firm rotation may not be the most efficient way to strengthen auditor independence and improve audit quality considering the additional financial costs and the loss of institutional knowledge of the public company's previous auditor of record, as well as the current reforms being implemented. The potential benefits of mandatory audit firm rotation are harder to predict and quantify, though GAO is fairly certain that there will be additional costs.

In addition, there is currently no law or regulation for any government to rotate accounting firms after a given period of time in order for the accounting firm to maintain independence. Staff has requested and MGO has agreed to rotate partners since it is in the best interest of the City, given the length of the contract.

b) Coordination with the Port

On March 24, 2010, the Port submitted a supplemental report to the Audit, Budget & Finance Committee for a two-year contract with MGO that would be amendable to extend their contract to match the City's proposed contract extension of five-years. It is the City's preference to have both the City and Port utilize the same audit firm.

SUSTAINABLE OPPORTUNITIES

No direct economic, environmental, or social equity sustainable opportunities have been identified.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no ADA or senior citizen access issues contained in this report.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that City Council approve the City and Agency resolutions authorizing the City Administrator to enter into a contract with Macias Gini & O'Connell, LLP in a combined amount not to exceed \$ 3,626,953 to provide audit services for the fiscal year ending June 30, 2010 through fiscal year ending June 30, 2014. This will result in cost savings to the City in the amount of \$475,895.

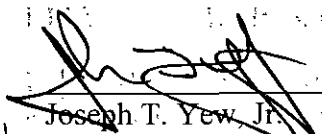
ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council approve the respective City and Agency resolutions authorizing the following actions:

- Authorizing the City Administrator to execute a five-year contract extension with Macias Gini & O'Connell, LLP to provide audit services for the City in the amount not-to-exceed \$3,162,486.

- Authorizing the Agency Administrator to execute a five-year contract extension with Macias Gini & O'Connell, LLP to provide audit services for the Agency in the amount not-to-exceed \$464,467.

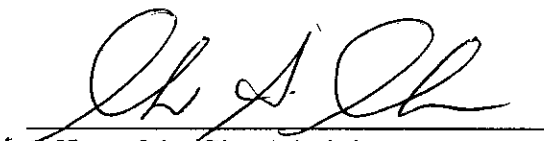
Respectfully submitted,



Joseph T. Yew, Jr.
Finance Director/City Treasurer

Prepared by:
Osborn K. Solitei, Acting Controller
Finance and Management Agency

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE:



Office of the City Administrator

Katherine Salambey
Oakland City Attorney's Office

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2010 APR -1 PM 6:23

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF OAKLAND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A FIVE-YEAR CONTRACT EXTENSION WITH MACIAS GINI & O'CONNELL, LLP TO PROVIDE AUDIT SERVICES FOR FISCAL YEAR ENDING JUNE 30, 2010 THROUGH FISCAL YEAR ENDING JUNE 30, 2014 IN AN AMOUNT NOT TO EXCEED \$ 3,162,486, AND WAIVING THE COMPETITIVE REQUEST FOR PROPOSALS PROCESS.

WHEREAS, Section 809 of the Charter of the City of Oakland provides for an annual audit by an independent certified public accountant who shall examine and report to the City Council on the annual financial statements of the City; and

WHEREAS, it is the desire of the City Council to engage the services of the firm Macias, Gini & O'Connell, LLP; and

WHEREAS, the City Council finds that the service is professional and temporary in nature and, based on the representations of the City Administrator in the report accompanying this resolution, shall not result in the loss of salary or employment by any person having permanent status in the competitive service; and

WHEREAS, it is in the City's best interest to waive the competitive RFP process for the contract to provide audit services because the proposed contract represents significant savings to the City, an option to renew for two years was already planned, and conducting a new joint RFP process with the Port would be costly to the City by delaying the annual audit and requiring significant amounts of staff time to orient a new firm to the City's organization and processes; and

WHEREAS, the City Council finds that the service is exempt from competitive bidding pursuant to Section 2.04.050 I of the Oakland Municipal Code; now therefore be it

RESOLVED, that the City Council finds and determines the forgoing recitals to be true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED, that the competitive RFP process is hereby waived in the best interests of the City based on the foregoing findings, and be it

FURTHER RESOLVED, that the City Administrator is hereby authorized, and execute a five-year contract extension with the firm of Macias Gini & O'Connell, LLP in an amount not to exceed \$3,162,486 for the fiscal year end June 30, 2010 through June 30, 2014 audit services; and be it

FURTHER RESOLVED, the audit will review the financial statements of the Oakland Redevelopment Agency, the Police and Fire Retirement System, and the Oakland Municipal Employees Retirement System and the audit will encompass the Measure Y – Violence Prevention and Public Safety Act of 2004 Compliance Audit, the Oakland Wildfire Prevention Assessment District Compliance Audit, the Measure C – Transient Occupancy Tax (TOT) Surcharge Compliance Audit, the Oakland Army Base Audit, the Gann Appropriation Limit and the Single Audit Report for Federal Awards; and be it

FURTHER RESOLVED, that the Office of the City Attorney will approve the contract as to form and legality and a copy will be on file in the Office of the City Clerk; and be it

FURTHER RESOLVED, that this Resolution shall take effect immediately upon its passage.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, DE LA FUENTE and PRESIDENT BRUNNER,

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

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Kathleen Salen
ORA Agency Counsel

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2010 APR -1 PM 6:24

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. _____ C.M.S.

RESOLUTION BY THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND AUTHORIZING THE AGENCY ADMINISTRATOR TO EXECUTE A FIVE-YEAR CONTRACT EXTENSION WITH MACIAS GINI & O'CONNELL, LLP TO PROVIDE AUDIT SERVICES FOR FISCAL YEAR ENDING JUNE 30, 2010 THROUGH FISCAL YEAR ENDING JUNE 30, 2014 IN AN AMOUNT NOT TO EXCEED \$ 464,467, AND WAIVING THE COMPETITIVE REQUEST FOR PROPOSALS PROCESS.

WHEREAS, the Redevelopment Agency of the City of Oakland requires an annual audit by an independent certified public accountant who shall examine and report to the Redevelopment Agency on the annual financial statements of the Agency; and

WHEREAS, it is the desire of the Agency to engage the services of the firm Macias, Gini & O'Connell, LLP to conduct an audit of the Agency's financial records; and

WHEREAS, the Agency finds that the service is professional and temporary in nature and, based on the representations of the City Administrator in the report accompanying this resolution, shall not result in the loss of salary or employment by any person having permanent status in the competitive service; and

WHEREAS, it is in the Agency's best interest to waive the competitive RFP process for the contract to provide audit services because the proposed contract represents significant savings to the Agency, an option to renew for two years was already planned, and conducting a new joint RFP process with the Port would be costly by delaying the annual audit and requiring significant amounts of staff time to orient a new firm to the Agency's organization and processes; and

WHEREAS, the Agency finds that the service is exempt from competitive bidding pursuant to Section 2.04.050 I of the Oakland Municipal Code; now therefore be it

RESOLVED, that the Agency finds and determines the forgoing recitals to be true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED, that the competitive RFP process is hereby waived in the best interests of the Agency based on the foregoing findings, and be it

FURTHER RESOLVED, that the Agency Administrator is authorized to execute a five-year extension contract with the firm of Macias Gini & O'Connell, LLP in an amount not to exceed \$464,467 for the fiscal year end June 30, 2010 through fiscal year end June 30, 2014 audit services; and be it

FURTHER RESOLVED, that the Agency Counsel will approve the contract as to form and legality and a copy will be on file in the Office of the Secretary of the Agency; and be it

FURTHER RESOLVED, that this Resolution shall take effect immediately upon its passage.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, DE LA FUENTE and CHAIRPERSON
BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
Secretary of the Redevelopment Agency
of the City of Oakland, California