

MEMORANDUM

TO: City Council

FROM: David J. Deutsch
City Manager

SUBJECT: Resolution R-26-10
Auditor Selection for the 2010 Fiscal Year

Date: May 13, 2010

In July 2007, the City awarded a three-year auditing contract to the Certified Public Accounting firm of Reznick Group, P.C., for Fiscal Years 2007, 2008 and 2009. The Contract provides that the City has an option to renew the Contract for two successive one-year terms, if it so desires.

Reznick Group, P.C., has satisfactorily completed the audits for all three fiscal years. Staff recommends the City exercise its option to have Reznick Group, P.C., conduct the FY 2010 audit at a agreed cost not to exceed \$55,000, the price established in 2007 Contract.

I concur with staff's recommendation and your approval of the Reznick Group, P.C., contract for the 2010 fiscal year is requested.

DJD/RSP

Attachments

RESOLUTION**OF THE COUNCIL OF THE CITY OF BOWIE, MARYLAND**
EXERCISING AN OPTION TO EXTEND AN AGREEMENT
WITH THE REZNICK GROUP, P.C., TO CONDUCT
THE 2009-2010 ANNUAL AUDIT

WHEREAS, Section 56 of the Charter of the City of Bowie, Maryland requires that the financial books and accounts of the City be audited annually by an independent Certified Public Accountant selected by the City Council; and

WHEREAS, on April 19, 2007, the City of Bowie issued a request for proposals for the 2007 fiscal year audit which also contained a request for a cost quote for fiscal years 2008 and 2009, plus two (2) successive years, as well as hourly rates for special purposes; and

WHEREAS, via Resolution R-48-07 the City accepted the proposal from Reznick Group, P.C., to conduct the annual audits for FY 2007, 2008 and 2009, at a cost of \$40,500, \$45,000 and \$49,500 respectively; and

WHEREAS, Reznick Group, P.C., successfully conducted the audits for FY 2007, FY 2008, and FY 2009 and the City was satisfied with their performance; and

WHEREAS, FY 2009 was the final year for which the proposal accepted by the City in 2007 applied, unless the City exercises its option to extend the Agreement for an additional one year term; and

WHEREAS, the City desires to exercise its option to extend the Agreement for an additional one year term; and

WHEREAS, Reznick Group, P.C., has agreed to conduct the audit for the 2010 fiscal year at an hourly rate set forth in the May 10, 2007, Cost Proposal, with the cost not to exceed \$55,000; and

WHEREAS, it is in the best interest of the City to enter into a contract with Reznick Group, P.C., for the provision of auditing services for FY 2010.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Bowie Maryland:

Section 1. That the Agreement between the City of Bowie, Maryland and Reznick Group, P.C., attached hereto as Exhibit A be, and hereby is accepted.

Section 2. The City Manager is hereby authorized and directed to execute an Agreement in substantially the same form as that attached as Exhibit A.

Section 3. That the City Manager is authorized to consult with Reznick Group, P.C., throughout the next fiscal year on the hourly rate basis included in the attached Agreement.

Section 4. That funds shall be appropriated in the FY 2010-2011 Fiscal Year budget for all service fees connected with the attached Agreement.

INTRODUCED AND PASSED by the Council of the City of Bowie, Maryland at a Regular Meeting on May 17, 2010.

Attest:

Pamela A. Fleming
City Clerk

G. Frederick Robinson
Mayor

Approved as to Form and
Legal Sufficiency:

Robert H. Levan
City Attorney

AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2010, by the City of Bowie, Maryland (“City”), a municipal corporation of the State of Maryland, and Reznick Group, P.C. (“Auditor”), with principal offices located at 500 East Pratt Street, Suite 200, Baltimore, Maryland 21202.

In consideration of the mutual covenants and obligations contained herein, the sufficiency of which is hereby acknowledged, the City and the Auditor hereby agree as follows:

1. Services Provided: The Auditor shall provide the following services for the City (“the Services”):

A. Conduct the 2009-2010 annual audit in accordance with generally accepted auditing standards, as set forth by the American Institute of Certified Public Accountants, the standards set forth for financial audits in the U.S. General Accounting Office’s (GAO) Government Auditing Standards (1994), the provisions of the Single Audit Act of 1984 (as amended in 1996) and the provisions of U.S. Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, Audits of State and Local Governments. The audit will include such tests of the accounting records and any other procedures that are considered necessary in the circumstances.

B. The audit shall include an examination of the records and statements of the General Fund, Equipment Acquisition and Replacement Fund, Capital Projects Fund, and the Water and Sewer Fund.

C. Auditor shall examine the Basic Financial Statements and supplementary information at June 30, 2010, as required by the Governmental Accounting Standards Board.

D. Auditor shall express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, the nature of the qualification must be stated.

E. Auditor shall render a report (management letter) to the City Council which will include any recommendations for improving the accounting operations of the City. This report will include any reportable conditions on the system of internal accounting control.

F. Auditor shall render an opinion and submit the necessary reports as required for compliance with the federal Single Audit Act and OMB Circular A-133 for federal funds. The opinion will be based upon both a financial and compliance audit.

G. Auditor shall review the City Staff's preparation of the Uniform Financial Report prior to its submission to the State of Maryland's Department of Legislative Services, and express an opinion as to whether the city is in compliance with the Uniform System of Financial Reporting as required by the State of Maryland. It shall also review the financial report for compliance with the Certificate of Achievement Guidelines.

H. Auditor hereby agrees that upon request access to working papers will be forwarded to governmental auditors and auditors who follow at later dates.

2. Contract Documents: The Services are additionally subject to the contract documents listed below which are attached hereto as Appendix "A" and incorporated herein by reference:

- | | |
|--------------------------------|-------------------|
| (1) Request for Proposal | <u> X </u> |
| (2) General Conditions | <u> X </u> |
| (3) Instructions to Bidders | <u> X </u> |
| (4) Vendor Responsibility Form | <u> </u> |
| (5) Bid Proposal | <u> X </u> |
| (6) Specifications | <u> </u> |

- (7) Insurance certificate _____
- (8) Notice of Award X
- (9) Notice to Proceed _____
- (10) Equal Opportunity Employer Form _____
- (11) Statement Under Oath to Accompany Bid _____

It is understood by the parties hereto that time is of the essence in the completion of this contract. The 2009-2010 annual audit shall be completed by September 30, 2010. Auditor hereby agrees to furnish any and all equipment needed to perform the Services.

3. Additional Services: Auditor will be available for consultations throughout the 2010 and 2011 fiscal years at its normal rate on an as-needed basis to assist the City. The hourly rate schedule for such Services follows and shall not be increased during the term of this Agreement. Such consultations may only be initiated by the City Manager in writing and the City Manager shall request an approximation of the expected cost of each such consultation in advance.

Principal	\$300
Managers	\$200
Supervisory Staff	\$150
Staff	\$120

4. Fees: The City hereby agrees to pay the Auditor as a total fee for all Services called for under this Agreement, an amount not to exceed Fifty Five Thousand Dollars (\$55,000.00) for the fiscal year 2010 audit. Services rendered shall be invoiced and payment made every four weeks. Invoices rendered shall segregate those fees applicable to the Water and Sewer Fund and the General Fund.

5. Binding Effect of Agreement: This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

6. Other Payments, Taxes, Expenses: Except as may be specifically agreed upon by the parties in writing, the Auditor shall be entitled to no fee, bonuses, contingent payments, or any other amount in connection with the Services to be rendered

hereunder. The parties hereto further agree that the City shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of the Auditor in connection with the performance of its obligations under this Agreement, including, but not limited to, the cost of any insurance or license fees. The Auditor covenants to maintain all applicable professional liability and workers compensation insurance in such amounts and form as are determined from time to time to be appropriate. The Auditor further agrees to provide evidence of such insurance upon request by the City. It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that the Auditor is an independent contractor of the City and is therefore responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, or any other fees, taxes or expenses whatsoever. In the event that the Auditor is deemed not to be an independent contractor by any local, state or federal agency, the Auditor agrees to indemnify and hold harmless the City for any and all fees, costs and expenses, including but not limited to, attorneys' fees, incurred hereby.

7. Insurance:

A. Workers' Compensation. Auditor shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation Insurance and shall submit an insurance certificate as proof of coverage. All Corporations are required to provide Workers' Compensation Certificates of Insurance.

The Certificates of Insurance shall provide that the City shall be given at least thirty (30) days prior written notice of the cancellation of, intention not to renew, or material change in the coverage. Auditor must provide Certificates of Insurance to the City before commencing any work pursuant to this Agreement.

B. Liability. Within ten (10) days after execution of the Agreement and during the entire period of Auditor's responsibility under this Agreement, Auditor shall obtain and maintain professional liability insurance coverage. Auditor shall file with City the Certificate from an insurance company authorized to do business in the State and satisfactory to the City showing issuance of professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000.00 coverage. The Certificate shall bear an endorsement in words exactly as follows:

The insurance company certifies that the insurance covered by this certificate has been endorsed as follows: "The insurance company agrees that the coverage shall not be canceled, changed, allowed to lapse, or allowed to expire until ten days after notice to:
David J. Deutsch, City Manager.

PROVISION OF ANY INSURANCE REQUIRED HEREIN DOES NOT RELIEVE THE AUDITOR OF ANY OF THE RESPONSIBILITIES OR OBLIGATIONS ASSUMED BY THE AUDITOR IN THE CONTRACT, OR FOR WHICH THE AUDITOR MAY BE LIABLE BY LAW OR OTHERWISE.

8. Relief: In the event of a breach or a threatened breach by the Auditor of any provision of the Agreement, the Auditor recognizes the substantial and immediate harm that a breach or threatened breach will impose upon the City, and further recognizes that in such event monetary damages will be insufficient to protect the City. Accordingly, in the event of a breach or threatened breach of this Agreement, the Auditor consents to the City's entitlement to such ex parte, preliminary, interlocutory, temporary or permanent injunctive relief for such breach as may be necessary to prevent the Auditor from further breaching any of his obligations set forth herein. Nothing herein shall be construed as prohibiting the City from pursuing any other remedies available to the City at law or in equity for such breach or threatened breach, including the recovery of damages from the Auditor.
9. Compliance with Laws: The Auditor shall, without any additional expense to the City, be responsible for complying with any and all applicable laws, codes and regulations in connection with the Services provided by the Auditor, including but not limited to

obtaining any licenses required by the Auditor to perform the Services herein contracted for.

10. Indemnification: The Auditor hereby acknowledges and agrees that the Auditor shall be responsible for and indemnify, defend and hold the City harmless against any claim for loss, personal injury and/or damage that may be suffered as a result of the Auditor's negligence or willful misconduct in the Auditor's performance of the Services herein contracted for or for any failure by the Auditor to perform the obligations of this Agreement, including, but not limited to, any cost incurred by the City in defending any such claim. The Auditor shall be responsible for and shall indemnify, defend and hold the City harmless against any claim for loss, howsoever arising or incurred, for damage that may occur to Auditor's property that is stored at the City and/or maintained/used by the Auditor in the delivery of the Services the Auditor is providing. The City and the Auditors also expressly agree that this indemnification provision is NULL and VOID if any claim results in whole or in part from the negligence, misrepresentations (whether intentional or unintentional), willful acts or omissions by the City and its officers, officials, agents and employees, in which event, the parties shall have whatever remedies would otherwise have been available to them at law absent the inclusion of the indemnification provision in this agreement.

11. Ownership of Records: In the event of termination of this Agreement for any reason, Auditor agrees to immediately return to the City all records and information or other written materials and the like which the City may have furnished to it in connection with those activities hereunder or which the Auditor may have obtained or prepared in the performance of this Agreement so that none of the foregoing items or copies thereof shall remain in the Auditor's possession. In addition, any other property of the City shall similarly be returned to the City at the time of said termination, it being understood by the parties to this Agreement that all records and materials supplied to

the Auditor by the City or obtained by the Auditor in the performance of this Agreement are to remain at all times the sole property of the City.

12. Confidentiality: The Auditor will not at any time during or after its relationship with the City directly or indirectly disclose to others any confidential information of the City. While engaged as the independent contractor of the City, the Auditor may only use any confidential information for a purpose which is necessary to the carrying out of the Auditor's duties as an independent contractor of the City and the Auditor may not make use of any such information after he is no longer an independent contractor of the City.
13. Not Assignable: The Auditor shall not assign or transfer any interest or claim under this Agreement except as may be agreed upon and authorized in writing by the City and no contract shall be made by the Auditor with any other party for furnishing any of the Services herein contracted for without the prior written approval of the City.
14. Auditor's Records: Daily records of Auditor's Direct Personnel, Consultant and Expenses pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representative upon request for six years from the date of final payment to the Auditor.
15. City's Right to Terminate: The Services or the additional services herein contracted for may be terminated immediately by the City upon written notice in whole or in part, when the City, in its sole and absolute discretion, determines such actions to be in its best interest. Upon such termination, the City shall be liable to the Contractor only for payment for Services actually provided prior to the effective date of the termination. Furthermore, the parties understand and agree that this agreement is contingent upon the appropriation of funds by the City in the annual budget.
16. Entire Understanding: This Agreement contains the entire understanding between the parties, and any additions or modifications hereto may only be made in writing, executed by both parties.

17. Applicable Law: This Agreement shall be interpreted in accordance with the laws of the State of Maryland. Any suit to enforce the terms hereof or for remedy for breach hereof shall be brought exclusively in the courts of the State of Maryland for Prince George's County and the parties expressly consent to the jurisdiction thereof and waive any right that they may otherwise have to bring, transfer or remove such suit in or to the courts of any other jurisdiction.
18. Conflict of Interest: The person executing this Agreement on behalf of the Auditor certifies that he understands the provisions of the Bowie City Charter and Code, dealing with conflicts of interest and the prohibition of the solicitation or acceptance of gifts.
19. Set-Off: In the event that the Auditor shall owe an obligation of any type whatsoever to the City at any time during the term hereof, or after the termination of the relationship created hereunder, the City shall have the right to offset any amount so owed the Auditor against any compensation due to Auditor for the provision of the Services.
20. Severability. If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, on the date hereinabove set forth, the parties hereto have executed this Agreement in two duplicate originals, any one of which shall be adequate proof of this Agreement without locating or accounting for the other.

Witness:

City of Bowie, Maryland

Pamela A. Fleming
City Clerk

David J. Deutsch
City Manager

Witness:

Reznick Group

Name: _____

Title: _____

Address: _____

Federal ID or Social
Security Number _____

Approved as to Form:

Robert H. Levan
City Attorney