



**CITY OF SALINAS**  
**PERMIT CENTER**  
**REQUEST FOR QUALIFICATIONS**  
**CITY SURVEYOR SERVICES**

**October 5th, 2010**

## GENERAL INFORMATION

### Introduction

The City of Salinas (City) seeks qualification submittals from firms for City Surveyor (consultant) services related to providing review and approval services of parcel and final maps and related documents. The City intends to select one firm from these submittals.

### Qualification Submittal

Qualification submittals must be received by 3:00 PM November 2, 2010 at the following address:

City Clerk  
City of Salinas  
200 Lincoln Avenue  
Salinas, CA 93901

Qualification submittals received after this deadline will be returned unopened.

The Qualification submittal and any accompanying documents shall be submitted in a sealed envelope with the words “**City Surveyor Services**” clearly marked in the lower left-hand corner of the envelope. Three bound copies, plus one reproducible/faxable unbound copy, should be submitted.

### Schedule for Selection Process

Issue RFQ	October 5, 2010
Submittal Due	November 2, 2010

The City intends on taking the Agreement to the City Council for approval in December, 2010.

### Questions Regarding This Project

All questions and/or contacts regarding this Request should be directed to:

Walter Grant  
Senior Engineer  
City of Salinas-Permit Center  
65 West Alisal Street  
Salinas, CA 93901-2639  
E-mail: [walterg@ci.salinas.ca.us](mailto:walterg@ci.salinas.ca.us)  
Phone (831) 758-7485 Fax (831) 758-7938

### Qualification Submittal

The qualification submittal should include the following information:

1. A brief company overview including the number of years providing the desired services to municipalities, location of the nearest office in which the personnel will be physically located while providing the services and how long that office has been in existence.

2. Resumes of personnel that will be assigned to perform the actual work including experience, registration and references. Charge rates for each person to provide the services shall be identified for each specific staff person and shall be provided in a separate envelope marked “**Salinas City Surveyor-Charge Rates**” and shall be contained in the envelope marked “**City Surveyor Services**”. If personnel to provide the initial plan checking are different than the person who will be signing as City Surveyor, provide resumes for each and one back up person if available. Resumes will be limited to one numbered page for each person and count towards the page limit.
3. A company charge rate schedule shall also be included in the envelope marked “**Salinas City Surveyor-Charge Rates**” which shall include charge rates for reproductions, mileage and other appurtenant services and personnel. The separate charge rate envelope and enclosures will not count against the page limit for the qualifications submittal.

The qualification submittal will be limited to 20 numbered pages including title sheet and cover letter if provided. Minimum font size is 12. Page size is limited to letter size with no fold-outs. Submittals must be printed on both sides of the paper. A clear front and back cover shall be provided and the front and back clear cover will not count towards the 20 page limit. The City has already completed an RFQ process for field surveying and topographic services and those services will not be included under this request.

### **Form of Agreement**

A copy of the City of Salinas Master Services Agreement is included herewith.

### **Evaluation And Rating Criteria**

Qualification submittal evaluation will consist of the following steps:

- *Technical Qualification Submittal Evaluation* - Qualification submittals will be evaluated based on the following criteria. These criteria are not listed in order of importance.

Perceived ability to perform work in a timely and efficient manner  
Experience with similar projects  
Reference responses to City inquiries

- *Interview* – No formal interviews are expected.
- *Negotiation* - The City will negotiate to secure an agreement with the top-ranked firm. If more than one firm is tied in the rankings as the top firm at the end of ranking process, the City will review the charge rate schedules of each top ranked firm and choose that firm which provides the best value for the services provided. If unsuccessful, negotiations will be terminated and staff shall then begin negotiating with the next ranked firm. This process shall continue until an agreement is secure.

### **Anticipated Work Scope**

Consultant will review parcel and final maps for conformance with the latest edition of the Subdivision Map Act (California Codes Government Code Section 66410-66413.5) and Professional Land Surveyors’ Act (Business and Professions Code §§ 8700 – 8805) and City of

Salinas Municipal Code Chapter 31-Subdivisions. Chapter 31-Subdivisions may be reviewed at [http://library.municode.com/HTML/16597/level2/PII\\_C31.html](http://library.municode.com/HTML/16597/level2/PII_C31.html). The chosen Consultant will approve said maps acting as the City Surveyor for the City and review and advise the City on other related documents such as lot lines adjustments at the request of the City. A Master Services Agreement will be executed between the City and the Consultant to memorialize the contractual relationship between the City and the Consultant. The Agreement will remain in effect for a two-year period unless extended through mutual consent between the City and the chosen Consultant.

The consultant will be required to refrain from performing any map preparation or similar work within the City limits which would come under review by the City during the term of the agreement.

### **General Provisions**

1. Prospective entities are responsible for making all necessary investigations and examinations of documents. Failure to do so will not act to relieve any condition of the proposed agreement or the above requirements. It is mutually agreed that the submission of Qualifications shall be considered conclusive evidence that the prospective consultant has made such investigations and examinations. No request for modification of Qualifications shall be considered after its submission on the grounds that the prospective consultant was not fully informed as to any fact or condition.

2. The City will assume no responsibility for any understandings or representations concerning conditions made by any of its officers or employees prior to execution of a final agreement unless they are included in this Request for Qualifications.

3. Any reasonable inquiry to determine the responsibility of a prospective entity may be conducted. The submission of Qualifications shall constitute permission by the prospective entity for the City to verify all information contained therein. If the City deems it necessary, additional information may be requested from the prospective entity for further consideration.

4. A prospective entity may withdraw their Qualifications at any time prior to the date and time which is set forth herein as the deadline for acceptance of Qualifications.

5. Each prospective entity submitting Qualifications in response to this Request agrees the preparation of all materials for submittal to the City and all presentations are at the prospective entities sole cost and expense, and the City will not, under any circumstances, be responsible for any costs or expenses incurred by a prospective entity. In addition, each prospective entity agrees that all documentation and materials submitted with Qualifications will remain the property of the City and will become a public document.

6. The City reserves the right to request additional information from any and all prospective entities as deemed necessary by the City in order to evaluate the Qualifications. This process may not be used as an opportunity to submit missing documentation or to make substantive revisions to the original Qualifications.

7. The City reserves the right to reject any and all Qualifications and, in the event the Consultant selected, it may attempt to negotiate an agreement with the Consultant that, in the sole judgment of the City, is the best qualified to provide the services requested.

8. The City shall not enter into an agreement with any prospective entity that has previously had an agreement with the City terminated, or that has previously been found to have violated any provision of the Salinas City Code, or related resolutions or ordinances, or any provision of federal law, state, or other local law.

9. The City reserves the right to enter into an agreement with an entity at any time, deviate from this Request, reject any or all Qualifications, continue to advertise for new Qualifications, negotiate with multiple entities simultaneously, waive any defects in Qualifications, or to proceed otherwise. The Request and the selection process will in no way be deemed to create a binding contract or agreement of any kind between the City and any prospective entity. The submission of Qualifications does not in any way commit the City to enter into an agreement with any prospective entity.

10. Each prospective entity shall agree to abide by all federal, state, and local laws, rules, and regulations and to secure all necessary licenses, permits, and other forms of identification as may be required in connection with the resulting agreement, all at no additional cost to the City.

11. All Qualifications, charge rates or representations will remain in effect and be legally binding for at least one hundred twenty (120) days from the date of submission.

12. This Request for Qualifications shall be governed in accordance with the laws of the State of California and the jurisdiction of any disputes hereunder shall be had in Monterey County.

### **Grounds For Disqualification**

All prospective entities are expected to conduct themselves with the utmost integrity and responsibility throughout the Request process. Any prospective entity that violates these expectations, as determined in the sole discretion of the City, will be subject to disqualification. Generally, the grounds for disqualification include:

1. Contact regarding this procurement with any City official or employee, other than the contact person designated in this Request, from the time of issuance of this Request until the consideration and approval of a professional services agreement.

2. Evidence of collusion, directly or indirectly, among prospective entities in regard to the amount, or the terms and conditions of this Request and the prospective agreement.

3. Influencing, or attempting to influence, any City staff member or official throughout the solicitation process, including the development of specifications beyond those included here, if any.

4. Evidence of submitting incorrect or inaccurate information in response to this Request or misrepresentation or failing to disclose facts during the evaluation or negotiation process.

5. Existence of any lawsuit, claim, or dispute between the prospective entity and the City.

6. Evidence of the prospective entity's inability to successfully complete the responsibilities and obligations of the Request process.

7. The prospective entity's default under any City agreement or termination of a previous agreement.

### **Records and Financial Data**

All correspondence with the City, including responses to this Request, will become the exclusive property of the City and will become public records under the California Public Records Act. All documents submitted in response to this Request will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

Personal financial information that a prospective entity considers confidential, the disclosure of which would be an unwarranted invasion of personal privacy, should be submitted in a sealed envelope marked "CONFIDENTIAL: PERSONAL FINANCIAL RECORDS; NOT PUBLIC RECORDS." A prospective entity should not mark their entire Qualifications as "Confidential." During the selection process, the City will keep such information confidential and will not disclose it, except as otherwise required under applicable law. This means that, depending on the nature of timing of the request, or future court decisions, that personal financial information may not remain private and may be publicly disclosed. Once the selection process is completed, the City will return this information to any prospective agency that is not selected.

If an entity is selected, the City may retain any submitted information and disclose it to the City Council, and any subcommittees thereof, and the public in connection with consideration of an agreement with the City as evidence of the entities ability to carry out the development. Given the nature of the applicable law under the California Public Records Act, the City cannot guarantee or warrant that it will be able to keep submitted information, including personal financial records, confidential. The successful entity agrees to indemnify, defend, and hold the City harmless from and against any suit brought under the California Public Records Act to obtain the records; otherwise, the City shall not be obligated to defend such suit and may release the records.

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN  
THE CITY OF SALINAS AND \_\_\_\_\_**

This Agreement for Professional Services (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **CITY OF SALINAS**, a California charter city and municipal corporation (hereinafter "City"), and \_\_\_\_\_, a California corporation, (hereinafter "Consultant").

**RECITALS**

**WHEREAS**, Consultant represents that it is specially trained, experienced, and competent to perform the special services which will be required by this Agreement; and

**WHEREAS**, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions.

**NOW, THEREFORE**, City and Consultant agree as follows:

**TERMS**

**1. Description of Projects and Scope of Service.** The project contemplated and the scope of Consultant's services are described in **Exhibit A**, attached hereto and incorporated herein by reference. Consultant shall not proceed to perform any such service until City and Consultant have established a project cost, a completion schedule, and a time period for performance, and the City has given its written authorization to perform. Written approval for performance and compensation may be granted by the City Manager.

**2. Term; Completion Schedule.** This Agreement shall commence on \_\_\_\_\_, 2009, and shall terminate on \_\_\_\_\_, 20\_\_\_\_, unless extended in writing by either party upon thirty (30) days written notice. This Agreement may be extended only upon mutual written consent of the parties, and may be terminated only pursuant to the terms of Section 17 of this Agreement. Consultant shall fully comply with all time-lines for performance of its consulting services set forth in **Exhibit A**.

**3. Compensation.** City hereby agrees to pay Consultant for services rendered the City pursuant to this Agreement in an amount not to exceed \_\_\_\_\_, in accord with Consultant's Schedule of Fees shown on **Exhibit A**.

**4. Billing.** Consultant shall submit to City an itemized invoice, prepared in a form satisfactory to City, describing its services and costs for the period covered by the invoice. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant's bills shall include the following information to which such services cost or pertain:

- a. A brief description of services performed;
- b. The date the services were performed;
- c. The number of hours spent and by whom;
  
- d. A brief description of any costs incurred; and
- e. The Consultant's signature.

Any such invoices shall be in full accord with any and all applicable provisions of this Agreement.

City shall make payment on each such invoice within thirty (30) days of receipt; provided, however, that if Consultant submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement, City shall not be obligated to process any payment to Consultant until thirty (30) days after a correct and complying invoice has been submitted by Consultant. The City shall process undisputed portion immediately.

**5. Additional Copies.** If City requires additional copies of reports, or any other material which Consultant is required to furnish as part of the services under this Agreement, Consultant shall provide such additional copies as are requested, and City shall compensate Consultant for the actual costs related to the production of such copies by Consultant.

**6. Responsibility of Consultant.**

**(A)** By executing this Agreement, Consultant agrees that the services to be provided and work to be performed under this Agreement shall be performed in a fully competent manner. By executing this Agreement, Consultant further agrees and represents to City that the Consultant possesses, or shall arrange to secure from others, all of the necessary professional capabilities, experience, resources, and facilities necessary to provide the City the services contemplated under this Agreement and that City relies upon the professional skills of Consultant to do and perform Consultant's work. Consultant further agrees and represents that Consultant shall follow the current, generally accepted practices in this area to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the projects for which the services are rendered under this Agreement.

**(B)** Consultant shall assign a single Project Director to have overall responsibility for the execution of this Agreement for Consultant. \_\_\_\_\_, is hereby designated as the Project Director for Consultant. Any changes in the Project Director designee shall be subject to the prior written acceptance and approval of the City Manager.

**7. Responsibility of City.** To the extent appropriate to the projects to be completed by Consultant pursuant to this Agreement, City shall:

**(A)** Assist Consultant by placing at his disposal all available information pertinent to the projects, including but not limited to, previous reports and any other data relative to the projects. Nothing contained herein shall obligate City to incur any expense in connection with completion of studies or acquisition of information not otherwise in the possession of City.

**(B)** Make provisions for Consultant to enter upon public and private property as required by Consultant to perform his services.

**(C)** Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Consultant, and render verbally or in writing as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the services of Consultant.

**(D)** \_\_\_\_\_, shall act as City's representative with respect to the work to be performed under this Agreement. Such person shall have the complete

authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to Consultant's services. City may unilaterally change its representative upon notice to the Consultant.

(E) Give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any defect in a project.

(F) Furnish approvals and permits from all governmental authorities having jurisdiction over the projects and such approvals and consents from others as may be necessary for completion of the projects.

8. **Acceptance of Work Not a Release.** Acceptance by the City of the work to be performed under this Agreement does not operate as a release of Consultant from professional responsibility for the work performed.

9. **Indemnification and Hold Harmless.** Consultant shall indemnify, defend, and hold City and its officers, employees, and agents harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to any property, or violation of any relevant federal, state or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omission of Consultant, its employees, subcontractors or agents, or on account of the performance or character of the work, except for any such claim arising from the negligence or willful misconduct of the City, its officers, employees or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code, and that Consultant shall at its own expense, upon written request by the City, defend any such suit or action brought against the City, its officers, agents or employees. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

Consultant shall reimburse the City for all costs and expenses (including but not limited to reasonable fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by the City in enforcing the provisions of this section.

10. **Insurance.**

(A) Consultant shall, throughout the duration of this Agreement, maintain comprehensive general liability and property insurance covering all operations of the Consultant, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

(B) Consultant shall maintain the following limits:

**General Liability**

*Combined Single Limit Per Occurrence.....\$1 million*

*General Aggregate.....\$2 million*

***(The policy shall cover on an occurrence or an accident basis, and not on a claims made basis.)***

*Automobile Liability*

*Combined Single Limit Per Occurrence.....\$1 million*

***(The policy shall cover on an occurrence or an accident basis, and not on a claims made basis.)***

**Worker's Compensation.....Full Liability Coverage**

*Professional Errors and Omissions.....\$1 million (no more than \$100,000 deductible)*

***(Consultant shall not disclaim responsibility or avoid liability for the acts or omissions of its subcontractors or other professional consultants. The retroactive date of the policy must be shown and must be before the date of the Agreement.)***

**(C)** All insurance companies with the exception of "Worker's Compensation" and "professional errors and omissions" affording coverage to the Consultant shall be required to add the City of Salinas, its officers, and, agents as additional "insured" by endorsement under the insurance policy and shall stipulate that this insurance policy will operate as primary insured for the work performed under this Agreement and that no other insurance affected by the City or other named insured will be called upon to contribute to a loss covered thereunder. The policy shall contain no special limitations on the scope of protection afforded to City, its officers, employees or agents.

**(D)** All insurance companies affording coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner to transact the business of insurance in the State of California.

**(E)** All insurance companies affording coverage shall provide thirty (30) days written notice by certified or registered mail to the City of Salinas should the policy be canceled or reduced in coverage before the expiration date. For the purpose of this notice requirement, any material change prior to expiration shall be considered cancellation.

**(F)** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City's Risk and Benefits Analyst, concurrently with the submittal of this Agreement. A statement on the insurance certificate which states that the insurance company "will endeavor" to notify the certificate holder, "but failure to mail such notice shall impose no obligation or liability of any kind upon the Consultant, its agents or representatives" does not satisfy the requirements of this subsection. The Consultant shall ensure that the authorized representative of the insurance company strikes the above quoted language from the certificate.

**(G)** Consultant shall provide a substitute certificate of insurance no later than ten (10) days prior to the policy expiration date. Failure by the Consultant to provide such a substitution and extend the policy expiration date shall be considered default by Consultant. In the event Consultant is unable to provide a substitute certificate of insurance within the time prescribed in this subsection, Consultant shall provide written confirmation of renewal, in a form satisfactory to the City, to act as proof of insurance only until such time as a certificate of insurance has been received by the City.

**(H)** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatever and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.

**11. Access to Records.** Consultant shall maintain all preparatory books, records, documents, accounting ledgers, and similar materials including but not limited to calculation and survey notes relating to work performed for the City under this Agreement on file for at least three (3) years following the date of final payment to Consultant by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit, and copying at reasonable times during Consultant's usual and customary business hours. Consultant shall provide proper facilities to City's representative(s) for such access and inspection.

**12. Assignment.** It is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Consultant. This Agreement is personal to Consultant and shall not be assigned by it without express written approval of the City.

**13. Changes to Scope of Work.** City may at any time, and upon a minimum of ten (10) days written notice, seek to modify the scope of services to be provided for any project to be completed under this Agreement. Consultant shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify City in writing. Rate of compensation shall be based upon the Consultant's Schedule of Fees shown in **Exhibit A** of this Agreement. Upon agreement between City and Consultant as to the extent of said impacts to time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by City and Consultant shall constitute the Consultant's notice to proceed with the changed scope.

**14. Notice to Proceed; Progress; Completion.** Upon execution of this Agreement by both parties, City shall give Consultant written notice to proceed with this work. Such notice may authorize Consultant to render all of the services contemplated herein, or such portions or phases as may be mutually agreed upon. In the latter event, City shall, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the work. Upon receipt of such notices, Consultant shall diligently proceed with the work authorized and complete it within the agreed time period specified in said notice.

**15. Ownership of Documents.** Title to all final documents, including drawings, specifications, data, reports, summaries, correspondence, photographs, computer software (if purchased on the City's behalf), video and audio tapes, software output, and any other materials with respect to work performed under this Agreement shall vest with City at such time as City has compensated Consultant, as provided herein, for the services rendered by Consultant in connection with which they were prepared. City agrees to hold harmless and indemnify the Consultant against all damages, claims, lawsuits, and losses of any kind including defense costs arising out of any use of said documents, drawings, and/or specifications on any other project without written authorization of the Consultant.

**16. Subcontractors.** Consultant shall be entitled, to the extent determined appropriate by Consultant, to subcontract any portion of the work to be performed under this Agreement. Consultant shall be responsible to the City for the actions of persons and firms performing subcontract work. The subcontracting of work by Consultant shall not relieve Consultant, in any manner, of the obligations and requirements imposed upon Consultants by this Agreement.

**17. Termination.**

**(A)** City shall have the authority to terminate this Agreement, upon written notice to Consultant, as follows:

(1) If in the City's opinion the conduct of the Consultant is such that the interest of the City may be impaired or prejudiced, or

(2) For any reason whatsoever.

**(B)** Upon termination, Consultant shall be entitled to payment of such amount as fairly compensates Consultant for all work satisfactorily performed up to the date of termination including demobilization of field operations based upon Standard Terms and Rates shown in **Exhibit A**, except that:

(1) In the event of termination by the City for Consultant's default, City shall deduct from the amount due Consultant the total amount of additional expenses incurred by City as a result of such default. Such deduction from amounts due Consultant are made to compensate City for its actual additional costs incurred in securing satisfactory performance of the terms of this Agreement, including but not limited to, costs of engaging another consultant(s) for such purposes. In the event that such additional expenses shall exceed amounts otherwise due and payable to Consultant hereunder, Consultant shall pay City the full amount of such expense.

**(C)** In the event that this Agreement is terminated by City for any reason, Consultant shall:

(1) Upon receipt of written notice of such termination promptly cease all services on this project, unless otherwise directed by City; and

(2) Deliver to City all documents, data, reports, summaries, correspondence, photographs, computer software output, video and audio tapes, and any other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. Such material is to be delivered to City in completed form; however, notwithstanding the provisions of Section 15 herein, City may condition payment for services rendered to the date of termination upon Consultant's delivery to the City of such material.

**(D)** In the event that this Agreement is terminated by City for any reason, City is hereby expressly permitted to assume the projects and complete them by any means, including but not limited to, an agreement with another party.

**(E)** The rights and remedy of the City and Consultant provided under this Section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other section of this Agreement.

## **18. Audit and Examination of Accounts.**

**(A)** Consultant shall keep and will cause any assignee or subcontractor under this Agreement to keep accurate books of record in account, in accordance with sound accounting principles, which records pertain to services to be performed under this Agreement.

**(B)** Any audit conducted of books and records and accounts shall be in accordance with generally accepted professional standards and guidelines for auditing.

**(C)** Consultant hereby agrees to disclose and make available any and all information,

reports or books of records or accounts pertaining to this Agreement to City and any City of the County of Monterey or state or federal government which provides support funding for this project.

**(D)** Consultant hereby agrees to include the requirements of subsection (B), above, in any and all contracts with assignees or consultants under this Agreement.

**(E)** All records provided for in this section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than three (3) years after full completion of services hereunder, except that any and all such records which pertain to actual disputes, litigation, appeals or claims shall be maintained and made available for a period of not less than three (3) years after final resolution of such disputes, litigation, appeals or claims.

**19. Compliance with Laws, Rules, and Regulations.** Services performed by Consultant pursuant to this Agreement shall be performed in accordance and full compliance with all applicable federal, state, and City laws and any rules or regulations promulgated thereunder.

**20. Exhibits Incorporated.** All exhibits referred to in this Agreement and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Agreement and any of the terms of any exhibit to the Agreement, the terms of the Agreement shall control the respective duties and liabilities of the parties.

**21. Independent Contractor.** It is expressly understood and agreed by both parties that Consultant, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of the City. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee or servant of the City.

**22. Integration and Agreement.** This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained herein. No prior oral or written understanding shall be of any force and effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing signed by both parties.

**23. Jurisdiction.** This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in the State of California, in the County of Monterey.

**24. Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

**25. Notices.**

**(A)** Written notices to the City hereunder shall, until further notice by City, be addressed to:

City Manager  
City of Salinas  
200 Lincoln Avenue  
Salinas, California 93901

With a Copy to:

Police Chief  
Salinas Police Department  
222 Lincoln Avenue  
Salinas, California 93901

City Attorney  
City of Salinas  
200 Lincoln Avenue  
Salinas, California 93901

**(B)** Written notices to the Consultant shall, until further notice by the Consultant, be addressed to:

**(C)** The execution of any such notices by the City Manager of the City shall be effective as to Consultant as if it were by resolution or order of the City Council, and Consultant shall not question the authority of the City Manager to execute any such notice.

**(D)** All such notices shall either be delivered personally to the other party's designee named above, or shall be deposited in the United States Mail, properly addressed as aforesaid, postage fully prepaid, and shall be effective the day following such deposit in the mail.

**26. Nondiscrimination.** During the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability.

**27. Conflict of Interest.** Consultant warrants and declares that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, in any manner or degree which will render the services required under the provisions of this Agreement a violation of any applicable local, state or federal law. Consultant further declares that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. In the event that any conflict of interest should nevertheless hereinafter arise, Consultant shall promptly notify City of the existence of such conflict of interest so that City may determine whether to terminate this Agreement. Consultant further warrants its compliance with the Political Reform Act (Government Code section 81000 et seq.) and Salinas City Code Chapter 2A that apply to Consultant as the result of Consultant's performance of the work or services pursuant to the terms of this Agreement.

**28. Headings.** The section headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

**29. Multiple Copies of Agreement.** Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that shall take precedence should any difference exist among counterparts of the document.

**30. Attorney's Fees.** In case suit shall be brought to interpret or to enforce this Agreement, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover their reasonable attorneys' fees in addition to such costs as may be allowed by the Court. City's attorneys' fees, if awarded, shall be calculated at the market rate.

**31. Non-Exclusive Agreement.** This Agreement is non-exclusive and both City and Consultant expressly reserves the right to contract with other entities for the same or similar services.

**32. Rights and Obligations Under Agreement.** By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

**33. Licenses.** If a license of any kind, which term is intended to include evidence of registration, is required of Consultant, its representatives, agents or subcontractors by federal, state or local law, Consultant warrants that such license has been obtained, is valid and in good standing, and that any applicable bond posted in accordance with applicable laws and regulations.

**34. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

**35. Legal Representation.** Each party affirms that it has been represented by legal counsel of its own choosing regarding the preparation and the negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect. Neither party is relying on any statement of the other party outside the terms set forth in this Agreement as an inducement to enter into this Agreement.

**36. Joint Representation.** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

**37. Warranty of Authority.** Each party represents and warrants that it has the right, power, and authority to enter into this Agreement. Each party further represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities, necessary to permit it, and the persons entering into this Agreement for it, to enter into this Agreement.

**38. No Waiver of Rights.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. The failure to provide notice of any breach of this Agreement or failure to comply with any of the terms of this Agreement shall not constitute a waiver thereof. 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. A waiver by the City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

**IN WITNESS WHEREOF,** the parties hereto have made and executed this Agreement on the date first written above.

CITY OF SALINAS

\_\_\_\_\_  
Artie Fields, City Manager

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Vanessa W. Vallarta, City Attorney

\_\_\_\_\_  
Date

By  
Christopher A. Callihan, Sr. Deputy City Attorney

Consultant

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
Date