



NOTICE
REQUEST FOR PROPOSAL
City of Salinas

Salinas Broadband Project

January 25, 2015

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I. INTRODUCTION

The City of Salinas (“City”) is requesting proposals from qualified organizations to assist the City in the *Salinas Broadband Project* (the Project).

The City of Salinas is a charter city located in Monterey County, California.

A study¹ was completed earlier this year which evaluated the options available to the City to improve industrial and commercial grade Internet access and other broadband services in the project areas. This report is available for downloading at <http://www.ci.salinas.ca.us/>, and supplements the information in this document.

The City has determined that new industrial and commercial grade broadband infrastructure in the Downtown area, the Agricultural Technology Corridor, the Alisal Marketplace area and other commercial and industrial areas (see maps included in the above referenced study) will promote economic development in those specific areas and the City as a whole, leading to job creation, greater commercial activity, including retail, and generate additional revenue through increases in property values and the number and scale of business transactions.

Accordingly, the City is interested in receiving proposals for the development of broadband infrastructure that can support dedicated gigabit-class bandwidth for large numbers of individual users and terabit-class bandwidth in the aggregate, with reliability, availability, quality and other metrics equal to or better than that achieved by the current generation of fiber optic-based networks. This infrastructure should be directly available on a commercial basis to end users and to competitive telecommunications service providers.

The purpose of this Request for Proposal (RFP) is to solicit proposals from qualified companies with appropriate experience that will allow the City to pursue the Project.

The City is not soliciting proposals based on any particular design, technology, business model or solution. Any proposal presented to the City as a result of this RFP and the documents referenced herein will be the sole responsibility of the respondent.

II. SCOPE OF PROJECT

This RFP encompasses three distinct elements:

- Technology.
- Partnership model (including financial details).
- Ongoing business model.

These elements are more fully described below. Respondents may present proposals that meet the requirements of one element, all elements or any combination of elements. Respondents

¹ Link to study: http://www.ci.salinas.ca.us/services/engineering/pdf/salinas_final_10_hi_res.pdf

submitting partial proposals must account for any gaps and describe how those gaps can be bridged.

This RFP assumes that proposed solutions will be completely or largely based on fiber optic technology. Although the City will entertain proposals based on any suitable means, at the discretion and on the responsibility of the respondent, the City is not aware of any other technology that can deliver dedicated gigabit-class bandwidth to large numbers of individual users and terabit-class bandwidth in the aggregate, and meet the performance standards typical for fiber optic networks.

A. City Assets

The City of Salinas owns a total of 16,000 feet of telecommunications conduit that is available for use (see above referenced study) by respondents. Approximately 5,400 feet is in the core downtown business district, 1,600 feet in or near the planned Agricultural Technology Corridor and another 9,000 feet in an unincorporated area southwest of the city. Over the next ten years, the City plans to build an additional 108,000 feet of conduit, with construction in key areas – downtown, the Agricultural Technology Corridor, Alisal Marketplace and new developments in north Salinas – planned to be completed in two to five years. In addition, the City has an ongoing policy of installing telecommunications conduit in excavations in the public right of way and in other public works projects.

This existing and planned conduit intersects with inter-city and metro fiber routes at several points, and is accessible to existing and planned access points and hubs.

The City also owns and/or controls real estate in or near the Project area, has jurisdiction over most of the roadways and owns or has access to towers and other potential wireless assets. It is a major purchaser of broadband-related services and from time to time pursues capital improvement initiatives, including utility undergrounding, that might or might not be complementary to the Project.

The City does not anticipate contributing funds directly to the Project but is willing to consider its role as a customer for services from the Project, as a co-applicant for grant funds and cooperation with other means of financing, to the extent that such participation does not incur long term debt, obligations or budgetary encumbrances.

Respondents may include assumptions about the use of City assets in proposals, so long as all assumptions are fully explained. However, the City makes no representation regarding the availability or suitability of these assets, and nothing in this RFP or other material provided by the City should be interpreted to indicate otherwise.

B. Project Objectives

The City's goal for the Project is to make available a complete range of broadband facilities and services, both bundled and unbundled, at competitive prices. The immediate objective is to provide these services within the Project areas, but the City will look favorably upon proposals

that also consider the potential for improving telecommunications services within both the City and the Salinas Valley region. At a minimum, proposals must address:

1. Availability of managed services (e.g. commercial grade DSL, T-1 or OC-3 class circuits with or without Internet connectivity).
2. Availability of unbundled broadband network elements (e.g. dark fiber, wholesale Internet bandwidth, long haul interconnects).
3. Quality of Service (QoS) standards, including reliability, and a sustainable means of guaranteeing those standards over time.
4. Suitability of the proposed solution for supporting 5G and other advanced wireless technologies.
5. Development of a competitive market for broadband services and facilities within the project areas, or other means of guaranteeing competitive access and pricing for the long term.
6. Economic sustainability of business and partnership models proposed for the Project area.

The City's participation in the Project is not conditional on achieving a specific financial return on investment, however the public benefits generated by the Project, including economic development benefits and future revenue accruing to the City, should be consistent with the public assets contributed.

There are no specified quantitative technical or financial performance requirements. Instead, respondents must show how their solutions will meet or exceed the technical, financial and economic development results achieved in cities that have already pursued such projects.

Examples of where these benchmark systems have been deployed include Palo Alto, Santa Clara, San Leandro, Santa Monica and the Bay Area Rapid Transit District. Respondents may use other benchmark systems for purposes of comparison, but should be prepared to respond to questions that refer to these examples.

C. Technology Element

Proposals should provide information regarding the technology that will be deployed to meet project goals and objectives, including, where applicable, architecture, performance metrics, reliability and the economic basis for choosing it. This information must be sufficient to assess the suitability of the proposed solution and will be one of the factors used in judging the capabilities and qualifications of respondents. However, detailed designs are not expected or desired.

Network components discussed in the technology element(s) of proposals should include, but are not necessarily limited to:

1. Capacity of facilities, including size and specifications of fiber optic cables.
2. Construction methods.
3. Tier 1 Internet facility access.
4. Long haul fiber interconnection facilities.
5. Metropolitan and local interconnection facilities.

6. Means of connecting to these interconnection facilities.
7. Mains and laterals within the Project areas, including interconnection and access points.²
8. Connections from laterals to individual parcels and buildings.
9. Customer premise equipment requirements and specifications.
10. Where appropriate, ancillary facilities such as backup generators or equipment enclosures.
11. Network operations, including monitoring, repairs and ongoing maintenance.
12. Provisions for network expansion as the Project areas and surrounding similarly zoned areas develop over time.
13. Provisions for network expansion to other areas of the City.
14. Provisions for network expansion to support advanced wireless technology with the City and the region.

Technical details should be sufficient to assess the flexibility, reliability, capacity, future-proofing and completeness of the proposed solution. Capacity should be expressed both in terms of bandwidth and physical media, for example the number of fiber strands or power and spectrum specifications proposed for each component.

D. Partnership Model

The City is prepared to consider the full range of options for construction, ownership and operation of the Project, from full City ownership to full private sector ownership. However, its preference is for a model that minimizes the City's ongoing role in the project while ensuring that sufficient public benefits are generated by its investment, including achievement of its economic development goals.

Respondents should provide a conceptual proposal for structuring the relationship with the City, including partner responsibilities and revenue sharing as appropriate. The City is willing to consider any options that meet its goals, including but not limited to market rate conduit leases, exchange of in kind services or property such as broadband services or dark fiber strands, or public-private partnerships.

Please note that the term "partnership" is used generically herein and does not refer to any specific type of organizational form or ownership and/or management structure, and the City is not expressing a preference for one particular type of model over another.

E. Ongoing Business Model

Proposals should detail how the Project will be operated over time, including delineation of responsibilities among partners, financial responsibility and liability, operating costs of the proposed technology and a business plan summary.

The business plan summary should address:

² "Mains" are conduit or cable, both ends of which terminate at a box or manhole within the public right of way. "Laterals" are conduit or cable that terminates at one end in a box or manhole within the public right of way and at the other end on outside of the public right of way and/or serves as a point of connection for an end device.

1. Roles and responsibilities for the respondent, the City and other partners, if any, including financial responsibilities.
2. The services and facilities that will be available within the project area and otherwise accessible by customers located there.
3. The services and facilities that will be offered directly by the respondent and indirectly via third parties.
4. The means by which these services and facilities will be marketed, provisioned, supported and maintained.
5. Pricing strategy, including provisions for maintaining competitive market-based rates over time.
6. Financial performance metrics necessary to ensure project sustainability.
7. Technical performance metrics that will be used to evaluate system performance over time.
8. Operational details, for example how network operations will be managed, customer support provided and maintenance scheduled and performed.

The City is willing to consider a wide range of business models and roles within those models. However, its preference is for a model that does not involve a direct City role in ongoing operations and does provide an opportunity for competitive providers to offer services via the system created by the Project. The City will look favorably on proposals that strike an equitable balance between its economic development goals and partners' return on investment requirements.

F. Implementation schedule

Respondents should provide a schedule for implementing the Project. Phased schedules will only be acceptable to the extent that construction is timed to coincide with development of project areas or build out of City-owned conduit. At a minimum, the first phase of the Project should meet the above described Project Objectives within the Downtown area and the Agricultural Technology Corridor and should provide for completion within twelve months of the finalization of an agreement. The schedule for the first phase may be conditioned on the availability of specific resources, such as a particular intercity fiber network, but must include contingency plans that provide for completion within a reasonable amount of time if such conditions are not met.

III. PROPOSAL FORMAT

Proposals should include a description of the qualifications and capabilities of respondents, including examples of past projects, particularly of a similar nature. A summary of the financial structure and condition of the company is required, and the City may request more detailed information, including audited financial statements, during the evaluation and selection process.

The proposal must include the name, contact information and a brief biography of the proposed project manager and the person who is the primary point of contact during the evaluation,

selection and negotiation process, if different. Brief biographies of other key personnel should also be included.

The City does not wish to discourage respondents by requiring lengthy or time-consuming submissions. Proposals should not contain detailed system designs, but should include sufficient technical detail to evaluate performance and technical and financial feasibility. Proposals should not exceed 25 pages in length and shorter proposals are welcome so long as the above points are addressed. Additional material such as background information on the company, resumes, general product and technology specifications or other information the respondent considers relevant may be included as an appendix, however materials that are overly elaborate or of an advertising or promotional nature are not desired.

The City reserves the right to request additional information during the evaluation and selection, process and to require substantially more extensive and detailed information in the course of any subsequent contract negotiations.

IV. SELECTION PROCESS

A. Qualifications

All proposals received by the due date will be evaluated by the City. Only information which is received in response to the RFP or any subsequent interview or information request will be evaluated. The City will judge the responses of each proposing firm in several critical areas. Selected proposers may be invited to an oral interview.

B. Selection Criteria

The City will select the most qualified proposal based on the following factors. Responses to the RFP should address the qualities and indicators that are listed below:

1. *Ability of the Respondent to Meet the Project Requirements and Objectives.*

An assessment of the overall quality of the proposal. Qualities and indicators that will receive consideration include the proposer's performance in converting the Scope of Project into a plan that meets the City's objectives; the detail and clarity of the discussion as to the proposer's approach to undertaking the project; the proposer's performance in identifying any special problems or concerns which may be associated with the project and preliminary ideas about how these obstacles should be addressed; the inclusion of any unique approaches which are designed to save time and money or increase the benefits or effectiveness of the proposed work; the demonstrated ability to work with governmental bodies; and a full understanding of applicable laws or regulations that relate to the project.

2. *Ability of the Proposer to Carry Out and Manage the Proposed Project and Sustain It Over Time.*

An assessment of the past experience of the organization in general. Qualities and indicators that will receive consideration include the number, types and scale of projects the organization or its employees have completed and operated; the variety of projects completed and a demonstration of the organization's ability to undertake this project; the general level of experience in the areas of supervision, observing, monitoring and financing projects; the organization's ability to realize timetables and quality control objectives; and the demonstrated general ability to bring about a successful completion of the projects under the proposer's direction and operate projects over the long term.

3. *Financial Position and Capabilities of the Proposer.*

An assessment of the proposer's financial capacity and expertise. The proposer must demonstrate the ability to fund the project to completion and sustain operations over the long term, including covering unanticipated expenses due to higher than anticipated costs or lower than anticipated revenues.

4. *Current Workload of the Consultant Organization and/or Team.*

An assessment of the perceived ability of each organization to devote the necessary human resources and management attention to the project. Qualities and indicators that will receive consideration include the number and size of the projects presently being performed by each organization and the assigned staff; the status of existing projects; the past ability of the organization to deliver projects on a timely basis; and the nature of the existing projects that are behind schedule or past the completion date.

V. PROPOSAL DUE DATE, DELIVERY AND AWARD

A. Proposed Selection Schedule

Advertise RFP: January 25, 2016
Deadline for Submitting Written Questions: February 10, 2016
Pre-Proposal Meeting: March 9, 2016
City's Response to Written Questions: March 14, 2016
Tentative Selection Interviews: April 8, 2016
Final Selection and Notification: April 12, 2016

B. Delivery

The proposal, clearly marked with the project description, should be submitted no later than:

March 21, 2016 at 5:00 p.m.

to the addresses below. All copies received by that time will be date and time stamped. Proposals may not be accepted after this time. Proposals should be addressed to:

City of Salinas
Public Works Department
Attn: Salinas Ag Tech Broadband Project
200 Lincoln Avenue
Salinas, CA 93901

Emailed proposals will be accepted and are preferred. Hand carried proposals will be accepted at the above address. Faxed proposals will not be accepted.

C. Award of Contract

It is anticipated that a final decision regarding a contract award will be made by the Salinas City Council at the April 19, 2016 meeting (tentative date).

VI. CONDITIONS OF REQUEST

A. General Conditions

The City reserves the right to cancel or reject all or a portion or portions of the Request for Proposal without notice. Further, the City makes no representations that any agreement will be awarded to any organization submitting a proposal. The City reserves the right to reject any and all proposals submitted in response to this request or any addenda thereto.

Any changes to the proposal requirements will be made by written addendum.

B. Liability of Costs and Responsibility

The City shall not be liable for any costs incurred in response to this Request for Proposal. All costs shall be borne by the person or organization responding to the request. The person or organization responding to the request shall hold the City harmless from any and all liability, claim or expense whatsoever incurred by or on behalf of that person or organization. All submitted material becomes the property of the City of Salinas.

The selected proposer will be required to assume responsibility for all services offered in the proposal whether or not they possess them within their organization. The selected proposer will be the sole point of contact with regard to contractual matters or other liabilities, including payment of any and all charges resulting from the contract.

C. Public Nature of Proposal Material

Responses to this Request for Proposal become the exclusive property of the City. At such times as a formal recommendation to award an agreement to one proposer is made to the awarding authority, all submittals received in response to this Request for Proposal become a matter of public record and shall be regarded as public records, with the exception of those elements in each submittal which are defined by the proposer as business or trade secrets and plainly marked as “Confidential,” “Trade Secret,” or “Proprietary”, unless disclosure is required under the California Public Records Act or other applicable law. Any submittal which contains language purporting to render all or significant portions of the proposal “Confidential,” “Trade Secret,” or “Proprietary,” shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a proposer submits is a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the City will provide the proposer who submitted the information with reasonable notice to allow the proposer to seek protection from disclosure by a court of competent jurisdiction.

D. Validity

The proposer agrees to be bound by its proposal for a period of ninety (90) days commencing from the date proposals are due, during which time the City may request clarification or correction of the proposal for the purpose of evaluation. Amendments or clarifications shall not affect the remainder of the proposal, but only the portion so amended or clarified.

E. Permits and Licenses

Proposer, and all of proposer’s subcontractors, at its and/or their sole expense, shall obtain and maintain during the term of any agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License, which will be required in connection with the performance of services hereunder.

F. Oral and Written Explanations

The City will not be bound by oral explanations or instructions given at any time during the review process or after the award. Oral explanations given during the review process and after award become binding only when confirmed in writing by an authorized City official. Written responses to question(s) asked by one proposer will be provided to all proposers who received this Request for Proposal.

G. Proposer’s Representative

The person signing the proposal must be a legal representative of the firm authorized to bind the firm to an agreement in the event of the award.

H. Insurance

General liability, automobile, professional liability, and workers' compensation insurance are required in the amount set forth in the attached sample agreement.

VII. AVAILABILITY OF DOCUMENTS

Copies of the study referenced above are available for review at the Public Works Department office located at Salinas City Hall, 200 Lincoln Ave., Salinas, CA 93901.

The study is also available for download at:

http://www.ci.salinas.ca.us/services/engineering/pdf/salinas_final_10_hi_res.pdf

VIII. APPENDICES

A. Standard Contract

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE CITY OF SALINAS AND _____**

This Agreement for Professional Services (the "Agreement") is made and entered into this 18th day of December, 2012, 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. **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.
2. **Term; Completion Schedule.** This Agreement shall commence on _____, 2011, and shall terminate on _____, 2012, 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 on a time and materials basis according to the hourly rates of compensation set forth in **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. 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.

c. _____, 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.

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

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, recklessness 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. 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 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 - Contractor shall at all times during the term of this Agreement maintain in effect a policy or policies having an A.M Best rating of A-Class VIII or better for bodily injury liability, personal injury, advertising injury and property damage, including product liability insurance with limits on the Declarations Page but not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000) in the general aggregate and products/completed operations aggregate insuring against any and all liability of the insured with respect to premises and products/completed operations. Liability coverage shall also include coverage for underground work and/or construction performed (if applicable). The coverage afforded to the additional insureds under the Contractor's policy shall be primary insurance and non-contributory. If coverage is on a claims-made basis, the Contractor shall maintain "tail coverage" no less than ten (10) years after the expiration date of the policy or policies. Any policy or policies carrying a deductible of more than \$25,000.00 may be subject to review by the City of the Contractor's financials.

Umbrella or Excess - Contractor shall provide limits on the Declarations Page but not less than Two Million and 00/100 Dollars (\$2,000,000) per occurrence and Two Million and 00/100 (\$2,000,000) in the aggregate on a follow - form basis having an A.M Best rating of A-Class VIII or better.

Auto Liability - Contractor shall provide limits on the Declarations Page but not less than One Million and 00/100 (\$1,000,000.00) combined single limit for bodily injury and property damage having an A.M Best rating of A - Class VIII or better. Automobile Liability Symbol 1 (any auto), if the Company owns automobiles. An entity without autos shall have "Non -owned and Hired" coverage (Auto Symbols 8 & 9). The City and its elected and appointed officers, boards, commissions, agents and employees shall be named as Additional Insureds.

Workers' Compensation – Contractor shall provide Workers' Compensation Insurance sufficient to meet its statutory obligation and to provide benefits for employees with claims of bodily injury or occupational disease (including resulting death) as required by the State of California and Employer's Liability Insurance for One Million and 00/100 Dollars (\$1,000,000). Waiver of Subrogation for Workers' Compensation in favor of the City of Salinas is required.

Professional Liability - Contractor shall provide limits on the Declarations Page but not less than One Million and 00/100 Dollars (\$1,000,000) per claim and One Million and 00/100 Dollars (\$1,000,000) in the aggregate having an A.M Best rating of A-Class VIII or better.

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 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 hourly rates 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 based upon the hourly rates of compensation 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. 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:

Deputy Director of Permit Services
City of Salinas
65 West Alisal Street
Salinas, California 93901

With a Copy to:

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

Ray E. Corpuz, Jr., City Manager

Date

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

Date

Consultant

By:
Its:

Date

By:
Its:

Date