

MAINTENANCE AGREEMENT

SALINAS ROTARY ARCH

THIS MAINTENANCE AGREEMENT (“Agreement”) is entered into this 20th day of June, 2023, (“Agreement”) by and between the City of Salinas, a California Charter city and municipal corporation (hereinafter “City”) and the Salinas Rotary Club, a California non-profit mutual benefit corporation, (hereinafter “Rotary”).

WHEREAS, the City adopted the Downtown Vibrancy Plan in 2015 which included as one of its key implementation measures the creation of a streetscape plan for Main Street; and

WHEREAS, the City approved the Main Street Master Plan in October 2017 with the intent to create an attractive and safe area along Main Street from Central Avenue to San Luis Street and to revitalize the Downtown Area; and

WHEREAS, Rotary proposed the construction of a landmark Salinas sign, to be named the Salinas Rotary Arch, (the “Arch”), as a component of the streetscape plan; and

WHEREAS, the City agreed to incorporate the Arch into the Streetscape plan; and

WHEREAS, the final Main Street Streetscape Project included the installation of new concrete and paver sidewalks along Main Street, the installation of new street trees, a new traffic signal system at Main Street and San Luis Street, new electrical and lighting systems throughout the 100, 200, and 300 blocks of Main Street, a new automatic landscape irrigation system, new landscaping and amenities, and the construction of the Arch across the 200 block of Main Street; and

WHEREAS, Rotary contributed substantial funds towards the costs to design and to construct the Arch and has a vested interest in ensuring the Arch is maintained; and

WHEREAS, on November 15, 2022, the Salinas City Council accepted the Main Street Streetscape Project, including the Arch and all other components of the project, for maintenance and responsibility.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

1. **Grant of License; Non-Exclusive Right of Entry.** City grants to Rotary a non-exclusive license to maintain and repair the Arch to include the following: graffiti removal from the brick, graffiti removal from the pre-cast concrete, maintenance/reapplication of water-repellant coating on the brick and pre-cast concrete (“Maintenance Services”). Rotary shall at its sole cost and expense provide all labor, supervision, supplies, materials, equipment, and all other tools and manpower necessary to perform the Maintenance Services which shall be subject to City review and approval. The City understands and acknowledges that Rotary may contract with

one or more contractors to perform the Maintenance Services including, but not necessarily limited to, the Salinas City Center Improvement Association (SCCIA).

Rotary and each of its contractors and agents shall have a non-exclusive right to enter into, over, and across Main Street and the City sidewalks for the limited purpose of performing the Maintenance Services. Rotary and its contractors and agents shall coordinate with City prior to the closure of Main Street or the sidewalk as may be necessary to perform the Maintenance Services.

Rotary shall not have any other responsibility to maintain or repair the Arch beyond the Maintenance Services described in this Agreement. City agrees to perform all other maintenance including, but not limited to (a) the adjustment of the lighting direction, as needed, (b) replacement of light bulbs, (c) periodic inspection by the appropriate qualified professional of the structural and non-structural elements of the Arch, (d) reapplication of high performance coating on the steel and any related repairs, and (e) all other maintenance.

2. **No Lease.** This Agreement (i) is not a lease and does not grant Rotary any real property rights in the Arch or any City street or other public improvements and (ii) shall not make Rotary an agent for the City.

3. **Term.** This Agreement shall commence upon Rotary's execution of this Agreement ("Effective Date") and shall continue for a period of six (6) years thereafter. This Agreement may be extended only upon the mutual written consent of the parties and may be terminated sooner by either party upon no less than thirty (30) days' notice. Upon the expiration or the earlier termination of this Agreement, full responsibility for the Maintenance Services shall revert to City and Rotary shall have no obligations under this Agreement.

4. **Compensation.** For its performance of the Maintenance Services, City shall pay to Rotary annual compensation in the total amount of five thousand dollars (\$5,000). City shall make the first annual compensation payment within thirty (30) days of the Effective Date and shall make successive annual compensation payments on the anniversary of the Effective Date. Total amount of compensation to be paid by City under this Agreement shall not exceed thirty thousand dollars (\$30,000).

5. **Insurance.** Rotary shall procure and maintain for the duration of this Agreement insurance meeting the requirements specified in Attachment A hereto covering itself and all contractors and agents performing the Maintenance Services.

6. **Indemnification.** Rotary shall hold harmless, defend at its own expense, and indemnify the City and its officers, employees, representatives, and agents from and against all liability, claims, damages, losses, and/or expenses including reasonable City attorney fees arising from all acts or omissions of Rotary or its officers, contractors, agents, or employees arising out of the performance of the Maintenance Services under this Agreement. In no event shall Rotary be

obligated to defend or indemnify the City with respect to any liability, claims, damages, losses, and/or expenses caused by the sole negligence or willful misconduct of the City, its officers, employees, representatives, agents or any third party.

7. **Prevailing Wage.** Rotary shall carry out and cause its contractors to carry out the maintenance services contemplated under this Agreement in conformity with all applicable laws and regulations, including without limitation, all applicable federal and state labor laws and standards. To the extent applicable to the maintenance services, Rotary and its contractors and agents shall comply with California Labor Code Section 1720 et seq. and regulations adopted pursuant thereto and shall be responsible for carrying out the requirements of such provisions.

8. **Ownership.** City shall own the Arch and related improvements. Nothing stated in this Agreement shall transfer any ownership rights, interests or other responsibilities of ownership in the Arch from City to Rotary.

9. **Agency.** In performing the services specified under this Agreement, Rotary is hereby deemed to be an independent contractor and not an agent or employee of City.

10. **Non-Assignability.** Except as is otherwise acknowledged in Paragraph 1 of this Agreement with respect to the contracting out of the Maintenance Services, the rights and obligations of Rotary hereunder are not assignable and cannot be delegated without written consent of City.

11. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto and supersedes any and all prior agreements, whether oral or written, relating to the subject matter thereof. Any modification of the Agreement will be effective only if it is in writing signed by both parties hereto.

12. **Validity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

13. **Counterparts.** This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

14. **Laws.** Rotary agrees that in the performance of the Maintenance Services it will comply with all applicable State, Federal and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California, County of Monterey, and City of Salinas.

15. **Notices.** All notices, demands, or other communications given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been given upon personal delivery or as of the second business day after mailing in the United States certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address or to such other person as either party may designate:

If to City:

City Manager
200 Lincoln Avenue
Salinas, California 93901

With a copy to:

City Attorney
200 Lincoln Avenue
Salinas, California 93901

If to Rotary:

Salinas Rotary Club
Attn: President
P. O. Box 676
Salinas, CA 93902

Anne C. Leach, Esq
Ottone & Leach LLP
1418 South Main Street, Suite 203
Salinas, CA 93908

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

CITY OF SALINAS

Steven S. Carrigan, City Manager

Date

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

Date

SALINAS ROTARY CLUB

By (Printed Name): _____

Date

Its (Title): _____

ATTACHMENT "A"

INSURANCE REQUIREMENTS

Rotary shall procure and maintain for the duration of the contract, and for three years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Rotary, its officers, agents, representatives, employees, and/or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE Coverage shall be at least as broad as:

1. **Commercial General Liability** ("CGL"): Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: ISO Form CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage. As of the Effective Date of this Agreement the Rotary does not own or operate any automobiles. The Rotary will be required to obtain this insurance coverage in the event the Rotary later owns and/or operates an automobile(s).
3. **Workers' Compensation**: as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. As of the Effective Date of this Agreement The Rotary does not have employees. The Rotary will be required to obtain this insurance coverage in the event the Rotary later hires employees.
4. **Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions** (if project involves environmental hazards): with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate, on an annual basis.

If Rotary maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Rotary. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. At the option of the City, either: Rotary shall cause the insurer shall to reduce or eliminate such self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or Rotary shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Rotary including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of Rotary. General liability coverage can be provided in the form of an endorsement to Rotary's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).
2. For any claims related to this project, Rotary's **insurance coverage shall be primary** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Rotary's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City.
4. A copy of the claims reporting requirements must be submitted by Rotary to the City.
5. If the services involve lead-based paint or asbestos identification/remediation, Rotary's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Rotary's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

Waiver of Subrogation

Rotary hereby agrees to waive rights of subrogation which any insurer of Rotary may acquire from Rotary by virtue of the payment of any loss. Rotary agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Rotary, its employees, agents and subcontractors.

Verification of Coverage

Rotary shall furnish the City with original Certificates of Insurance including an additional insured endorsement and all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive Rotary's obligation to provide them. The City reserves the right to require complete, certified

copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Subcontractors

Rotary shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Rotary shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

Maintenance of Insurance

Maintenance of insurance by Rotary as specified shall in no way be interpreted as relieving Rotary of its indemnification obligations or any responsibility whatsoever and Rotary may carry, at its own expense, such additional insurance as it deems necessary.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.