

AGREEMENT FOR WEB-BASED DATA MANAGEMENT SERVICES

BETWEEN THE CITY OF SALINAS AND CITY DATA SERVICES

This Agreement for web-based data management services ("Agreement") is entered into this 1st day of July 2017, by and between the City of Salinas, a California charter city and municipal corporation hereinafter referred to as "the City," and City Data Services a California Partnership hereinafter referred to as "CDS."

RECITALS

WHEREAS, the Housing Division of the City's Community Development Department administers various programs including the Community Development Block Grant (CDBG), HOME Investment Partnerships Grant (HOME), Emergency Solutions Grant (ESG), State of California Emergency Solutions Grant (State ESG), First Time Home Buyer (FTHB), and Residential Rehabilitation (RR) programs ("the Programs"); and

WHEREAS, the City desires to use a custom web-based grants data management system to assist City Housing Division staff with the management and implementation of the Programs and the grants related to the Programs; and

WHEREAS, CDS has represented that it is specially trained, experienced, competent, and willing to develop, to service, and to maintain a custom web-based grants data management system according to the City's direction and to otherwise provide the services specified in this Agreement.

NOW, THEREFORE, in mutual consideration of the covenants, terms, and conditions set forth herein the City and CDS agree as follows:

TERMS

1. **Term.** This Agreement shall commence on July 1, 2017, ("Commencement Date") and shall remain in effect for a period of one year from the Commencement Date of this Agreement and then shall be automatically renewed for additional one-year period(s) thereafter unless this Agreement is terminated early as provided herein or unless either party provides written notice to the other at least sixty (60) days prior to the end of the then current one-year term that it does not wish to renew this Agreement.

2. **Scope of Services.** CDS provides web-based data management services for a web-based data management program developed for the City of Salinas by CDS in 2010 for use in its CDBG, HOME, ESG, State ESG, FTHB, and RR programs.

3. **Compensation and System Maintenance.** For service and maintenance of the Data Management System, as more specifically defined in this Agreement and its attachments, the City agrees to compensate CDS in the following amounts:

3.1 **Community Development Block Grant (CDBG) and Emergency Solutions Grant (ESG) Programs.** The City shall compensate CDS for maintenance fees in the total amount of five hundred and sixty-five dollars (\$565.00) per month billed at the end of each quarter. CDS agrees to provide maintenance and management services for the Data Management System as more specifically identified in Attachment A, attached hereto and incorporated herein by reference.

3.2 **Housing Loan Module.** The City shall compensate CDS for maintenance fees in the total of two hundred and forty-five dollars (\$350.00) per month, billed at the end of each quarter. CDS agrees to provide maintenance and management services for the Data Management System as more specifically identified in Attachment A, attached hereto and incorporated herein by reference.

3.3 **Multi-Family Housing Module.** The City shall compensate CDS in the total amount of

four hundred dollars (\$400.00) per month, billed at the end of each quarter. CDS agrees to provide maintenance and management services for the Data Management System as more specifically identified in Attachment A, attached hereto and incorporated herein by reference.

4. **Provision Date.** CDS agrees to provide the City with full access to the Data Management System upon the **City's** approval of this Agreement (the "Provision Date").

5. **Billing.** CDS 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, CDS shall not bill City for duplicate services performed by more than one person. CDS'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. A brief description of any costs incurred; and
- d. The CDS'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 CDS 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 CDS until thirty (30) days after a correct and complying invoice has been submitted by CDS. The City shall process undisputed portion immediately.

6. **Manuals.** CDS shall provide on-line user manuals to the City covering all components of the Data Management System.

7. **City Access.** The City shall at all times have access to the Data Management System, including any medium on which the City's databases, records, or information is stored and shall at all times have access to all of the City's databases, records, or information. The City acknowledges, however, there may be infrequent periods when CDS's server is not operable due to conditions beyond the control of CDS during which times the City may have no or limited access to its databases, records, or information.

8. **Enhancements and Changes in Software.** The City shall be entitled, at no additional cost, to improvements and updates in the software and the services to be provided hereunder. The City understands and agrees that CDS may modify, enhance, or change its software at any time and without notice, provided that the City's access to its databases, records, and information is not prohibited or otherwise compromised. CDS warrants that it shall not diminish the functionality of the Data Management System and that as enhancements may be made to the system it will notify the City in writing that such enhancements have been added.

9. **Back-up of City Records.** CDS shall back-up all City databases, records, and information on a daily basis, weekends and holidays excepted.

10. **User Licenses.** The number of concurrent user licenses which may be provided hereunder shall be unlimited, so that there shall be no restriction on the number of admitted users to the system.

11. **Termination of Services by the City.** The City shall be free to cancel this Agreement at any time upon giving no less than thirty (30) days' written notice to CDS. In the event the City so terminates this Agreement, CDS agrees to provide to the City its databases and all other records and information stored on CDS's servers or other storage medium at no cost to the City and to refund any pro-rated unused monies. Upon such termination, CDS shall be entitled to payment of such amount as fairly compensates CDS for all services satisfactorily provided up to the date of termination, less any refund which may be due to the City as specified in this Agreement.

12. **Responsibility of CDS.** By executing this Agreement, CDS 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, CDS further agrees and represents to City that the CDS 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 CDS to do and perform CDS's work. CDS further agrees and represents that CDS 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.

CDS shall assign a single Project Director to have overall responsibility for the execution of this Agreement for CDS. **Chris Davidson**, is hereby designated as the Project Director for CDS. Any changes in the Project Director designee shall be subject to the prior written acceptance and approval of the Community Development Director.

13. Responsibility of the City. To the extent appropriate to the scope of services contemplated under this Agreement, the City shall:

- 13.1. Assist CDS by placing at its 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.
- 13.2. Examine all documents presented by CDS, 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 CDS.
- 13.3. Planning Manager, Housing Division, 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 CDS's services. City may unilaterally change its representative upon notice to the CDS.

14. Training. At the mutual convenience of the City and of CDS, CDS shall provide training to the City's Information Systems Manager, the Interim Planning Manager (Housing Division), and others from the City who may choose to be included in the training on the use of the system. Such training shall occur in person or remotely via telephone and internet and shall be to the reasonable satisfaction of the City.

15. Privacy Statement. CDS warrants that it will not disclose to any third party specific information contained within database files applicable to the City including, but not limited to, names, addresses, property, and grant information or any other data provided by the City and contained therein.

16. Ownership and Confidentiality of Records. Title to all documents, specifications, data, reports, summaries, databases, and any other materials provided by City and stored on CDS's server (s) shall remain with the City.

16.1 Ownership of Documents. Title to all final documents, including data, reports, correspondence, 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 CDS, as provided herein, for the services rendered by CDS in connection with which they were prepared. City agrees to hold harmless and indemnify CDS 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 CDS.

16.2 Confidentiality. CDS, and its officers, representatives, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws which provide

for the confidentiality of records and other information. CDS shall not disclose any records or other information received from the City or prepared in connection with this Agreement, unless the City specifically permits CDS to disclose such records or information. CDS shall not use any information provided by the City except for the sole purpose of carrying out CDS's obligations under this Agreement. Neither party shall disclose any records or other confidential information received from the other or prepared in connection with the performance of this Agreement, unless the party specifically permits such disclosure of records or information, or such disclosure is specifically required by law.

- 16.3 **City Records.** When this Agreement terminates or expires, CDS shall return to the City any records, databases, or other information which CDS used or received from the City pursuant to this Agreement.

17. **Access to Records.** CDS shall maintain all records, documents, and similar materials 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 CDS by City. Any duly authorized representative(s) of the City shall have access to such records for the purpose of inspection, audit, and copying at reasonable times during CDS's usual and customary business hours.

18. **Changes to Scope of Work.** The City may at any time, upon a minimum of ten (10) days written notice, seek to modify the scope of basic services to be provided under the Scope of Services. CDS shall, upon receipt of said notice, determine the impact on both time and compensation of such change and shall notify the City in writing. Upon agreement between the City and CDS as to the extent of said impacts to the time and the compensation, an amendment to this Agreement shall be prepared identifying both the change to the Scope of Services and the compensation. Execution of such amendment by the City and CDS shall constitute the notice to proceed with the changed scope.

19. **Indemnification and Hold Harmless.** CDS shall indemnify, defend, and hold the 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 CDS, 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. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall be applicable to any of such damages or claims for damages and shall survive the expiration or earlier termination of this Agreement.

CDS shall reimburse the City for all costs and expenses incurred by the City in enforcing the provisions of this section.

20. **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 CDS. This Agreement is personal to CDS and shall not be assigned by it without express written approval of the City.

21. **Compliance with Laws, Rules, and Regulations.** Services performed by CDS 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.

22. **Exhibits Incorporated.** All exhibits and/or attachments 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.

23. **Independent Contractor.** It is expressly understood and agreed by both parties that CDS, 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. CDS expressly warrants not to represent, at any time or in any manner, that CDS is an employee or servant of the City.

24. **Integration and Agreement.** This Agreement represents the entire understanding of City and CDS 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.

25. **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 or in the appropriate federal court with jurisdiction over the matter.

26. **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.

27. **Notices.**

27.1 Written notices to the City hereunder shall, until further notice by City, be addressed to:

Community and Economic Development Department Director
City of Salinas
65 West Alisal Street
Salinas, California
93901

27.2 Written notices to the CDS shall, until further notice by the CDS, be addressed to:

City Data Services
403 Alvarado St
Brisbane, CA 94005

27.3 The execution of any such notices by the Community Development Director of the City shall be effective as to CDS as if it were by resolution or order of the City Council, and CDS shall not question the authority of the Community Development Director to execute any such notice.

27.4 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.

28. **Nondiscrimination.** During the performance of this Agreement, CDS 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. CDS 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.

29. **Conflict of Interest.** CDS 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. CDS 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, CDS shall promptly notify City of the existence of such conflict of interest so that City may determine whether to terminate this Agreement. CDS further warrants its compliance with the Political Reform Act (Government Code section 81000 et seq.) and

Salinas City Code Chapter 2A that apply to CDS as the result of CDS's performance of the work or services pursuant to the terms of this Agreement.

30. **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.

31. **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.

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

33. **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.

34. **Licenses.** If a license of any kind, which term is intended to include evidence of registration, is required of CDS, its representatives, agents or subcontractors by federal, state or local law, CDS 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.

35. **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.

36. **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.

37. **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.

38. **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.

39. **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.

40. **Insurance**

40.1 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.

40.2 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 occurrence 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.

- 40.3 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.
- 40.4 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.
- 40.5 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.
- 40.6 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.

40.7 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.

40.8 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.

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

CITY OF SALINAS

Ray Corpuz, City Manager

RECOMMENDED FOR APPROVAL

Megan Hunter, Community Development Director

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

CITY DATA SERVICES

By Steve Crounse
Its: Partner

CDS City Data Services, LLC

citydataservices@yahoo.com

www.citydataservices.com

City of Salinas
Anastacia Wyatt
Housing Division
200 Lincoln Ave
Salinas, CA 93901

June 2017

Dear Ms. Wyatt,

City Data Services' provides web-based data management services. As per your request, please find following the scope of services and hourly rates for work for the City of Salinas. These services are provided for the following modules:

1. Community Services, (CDBG and ESG), (\$565/mo.)
2. Housing Loan Program (Single Family Housing), (\$350/mo.)
3. Multi-Family Housing, (\$400/mo.)

SCOPE OF SERVICES – System Maintenance

Under the scope of the maintenance contract, CDS will provide:

- Ability to store, display, and summarize individual program administration information;
- Ability to store, display, and summarize individual program contract information;
- Ability to enter, store, display, and summarize applications, reports and fiscal information to assist with management of Community service activities;
- Ability to transmit sub-recipient report information into HUD's reporting system, IDIS, as needed;
- Maintain all database and report elements created under this development proposal;
- Maintain data backups and download to the City of Salinas on a determined schedule;
- Modify database as needed to add or remove fields, or improve presentation of data;
- Modify existing reports as needed to meet City of Salinas's requirements;
- Provide customer service to City of Salinas and their clients throughout the term of contract and
- Promptly respond to request for assistance, training, or database repair.

The monthly maintenance fee is an amount not to exceed amounts listed above for term of the agreement. This fee remains constant regardless of the number of users, trainings, units, programs, projects or reports included in the system. Total annual amount is \$15,780.

HOURLY RATES

Maintenance and ongoing operations of City of Salinas's CDS database are included in the monthly maintenance fee. New reports or forms are covered under the maintenance contract without additional charge. In the unlikely event that forms outside of these programs are required, the typical charge for developing a new form or report, and integrating it into the database, would be billed either by an hourly rate of \$185.00/hr, or by the job as determined by CDS Staff, with discounts for larger documents.

Invoices are billed quarterly and require payment within 30 days of submission of invoice. A one percent fee will be incurred for bills that are 30 days past due.



Steve Crounse, Principal
City Data Services

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