

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE CITY OF SALINAS
AND
BOOTS ROAD GROUP LLC**

This Agreement for Professional Services (the "Agreement") is made and entered into this ____ day of August, 2016, by and between the **CITY OF SALINAS**, a California charter city and municipal corporation (hereinafter "City"), and **BOOTS ROAD GROUP LLC** (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is specially trained, experienced, and competent to perform the special communications 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 Services.** The scope of Consultant's services shall be more specifically set forth in Attachment A and shall generally include strategic communication consulting, website development, social media management, production, and training services for the City.
2. **Term; Completion Schedule.** This Agreement shall commence as of September 1, 2016, and shall terminate on August 31, 2017. This Agreement may be terminated by either party for any reason whatsoever upon at least thirty (30) days written notice. The City Manager shall have authority to terminate this Agreement on behalf of the City.
3. **Compensation.** the City hereby agrees to pay Consultant for services rendered to City pursuant to this Agreement in the total amount of eleven thousand dollars (\$11,600) per month for the consulting services contemplated under Section 1, above. This amount may be reduced by the City Manager through the term of this Agreement as the services rendered in this area are reduced.

Any services provided in addition to those contemplated in Section 1 (and Attachment A), or amounting to ten percent (10%) or more over the monthly retainer fee, will be billed in addition to the monthly retainer fee at the same hourly rates as shown on Attachment A.

4. **Billing.** Consultant shall submit to City an itemized invoice describing its services and costs for the period covered by the invoice. City shall make payment on each such correct and complying invoice within thirty (30) days of receipt.

5. **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 the profession 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. Consultant shall provide written reports and records to the City Manager of all activities performed and services provided or activities performed or represented on behalf of the City.

(B) Consultant shall assign a single Project Director to have overall responsibility for the execution of this Agreement for Consultant. **Spencer Critchley**, 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.

6. **Responsibility of City.** To the extent appropriate to the services to be provided by Consultant pursuant to this Agreement, City shall:

(A) Assist Consultant by placing at its disposal all pertinent and available information, including but not limited to, previous reports and any other data. 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, 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) Give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any information relevant to the services to be provided by Consultant under this Agreement.

7. **Indemnification and Hold Harmless.** Consultant 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 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. This indemnification and hold harmless clause shall apply whether or not such insurance policies as identified in Section 8 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 and reasonable fees and charges of attorneys and other professionals) incurred by the City in enforcing the provisions of this section.

8. **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.

9. **Access to Records.** Consultant shall maintain all records, documents, and similar materials prepared by Consultant and 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.

10. **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.

11. **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.

12. 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 and Consultant shall be solely responsible for the conduct and control of the work performed under this Agreement. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee or servant of the City.

13. 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.

14. 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 the appropriate federal court with jurisdiction over the matter.

15. 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.

16. Notices.

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

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

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

Boots Road Group LLC
348 Roberts Ave.
Seaside, CA 93955

(C) The execution of any such notices by the City Manager 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.

17. **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.

18. **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.

19. **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. Consultant shall, however, immediately advise the City of any instances where there is an immediate or potential conflict between Consultant's representation of the City and Consultant's representation of any of its other clients, and in each and every such instance Consultant shall not take any such action for or on behalf of the City without the written consent of the City.

20. **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.

21. **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.

22. 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.

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

CITY OF SALINAS

Ray Corpuz, City Manager

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

BOOTS ROAD COMMUNICATIONS

Spencer Critchley, Managing Partner