

AGREEMENT
FOR PROFESSIONAL SERVICES
BETWEEN
THE CITY OF SALINAS AND ALLIED
UNIVERSAL SECURITY SERVICES



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**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE CITY OF SALINAS AND ALLIED UNIVERSAL SECURITY SERVICES**

UNIFORMED SECURITY GUARD SERVICES

This Agreement for Professional Services (the “Agreement” and/or “Contract”) is made and entered into this 5TH day of January 2021, between the **City of Salinas**, a California Charter city and municipal corporation (hereinafter “City”), and Allied Universal Security Services, a California limited liability partnership (hereinafter “Contractor”).

RECITALS

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

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

NOW, THEREFORE, City and Contractor agree as follows:

TERMS

1. **Scope of Service.** The scope of Contractor’s services are discussed in City’s Request for Proposal, **Attachment B** and Contractor’s Proposal dated November 17, 2020, **Attachment C**, attached hereto and incorporated herein by reference.

2. **Term; Completion Schedule.** The initial term of this agreement shall commence on February 1, 2021 and will continue for two (2) years through January 31, 2023, unless terminated earlier (the “Initial Term”). This agreement may be renewed or extended for three (3) optional one (1) year periods (“Renewal Terms”) by either party upon (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 this Agreement.

3. **Compensation.** City hereby agrees to pay Contractor for services rendered the City pursuant to this Agreement on a time and materials basis according to the rates of compensation as set forth in **Exhibit C**.

Contractor’s fees and charges do not include any sales, use, excise or similar taxes, levies or duties (“Taxes”). City is responsible for paying for all such Taxes in respect of Contractor’s Services or in respect of amounts payable by City hereunder. If Contractor has the legal obligation to pay or collect Taxes for which City is responsible under this section, the appropriate amount shall be promptly paid by City to Contractor unless City provides Contractor with either a valid and current tax exemption certificate or direct pay certificate, authorized by the appropriate taxing authority.

4. **Billing.** Contractor 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, Contractor shall not bill City for duplicate services performed by more than one person. Contractor's bills shall include the following information to which such services cost or pertain:

- A brief description of services performed;
- The date the services were performed;
- The number of hours spent and by whom;
- A brief description of any costs incurred; and
- The Contractor'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 Contractor 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 Contractor until thirty (30) days after a correct and complying invoice has been submitted by Contractor. The City shall process undisputed portion immediately.

5. Meet & Confer. Contractor agrees to meet and confer with City or its agents or employees with regard to services as set forth herein as may be required by the City to ensure timely and adequate performance of the Agreement.

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

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

8. Responsibility of City. To the extent appropriate to the projects to be completed by Contractor pursuant to this Agreement, City shall:

(A) Assist Contractor 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.

(B) Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Contractor, 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 Contractor.

(C) Jim Pia, Interim City Manager, or his designee, 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 Contractor's services. City may unilaterally change its representative upon notice to the Contractor.

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

9. **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 Contractor from professional responsibility for the work performed.

10. **Indemnification and Hold Harmless.**

Contractor shall defend, indemnify, and hold harmless the City and its officers, officials, employees, volunteers, and agents from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder, including the performance of work of any of Contractor's subcontractors or agents, or Contractor's failure to comply with any of its obligations contained in the agreement, to the extent such loss or damage was caused by the negligence or willful misconduct of the Contractor, its subcontractors or agents.

Anything to the contrary notwithstanding: (a) under no circumstances will Contractor be liable to the indemnified parties identified above, for consequential, incidental, indirect or punitive damages, or for lost profits.

11. **Insurance.** Contractor shall procure and maintain for the duration of this Agreement insurance meeting the requirements specified in **Exhibit A** hereto.

12. **Access to Records.** Contractor 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 Contractor 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 Contractor's usual and customary business hours.

Contractor shall provide proper facilities to City's representative(s) for such access and inspection.

13. Non-Assignability. 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 Contractor. This Agreement is personal to Contractor and shall not be assigned by it without express written approval of the City.

14. 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. Contractor shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify City in writing. Upon agreement between City and Contractor 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 Contractor shall constitute the Contractor's notice to proceed with the changed scope.

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 Contractor, as provided herein, for the services rendered by Contractor in connection with which they were prepared. City agrees to hold harmless and indemnify the Contractor 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 Contractor.

16. Termination.

(A) City shall have the authority to terminate this Agreement, upon ten days written notice to Contractor, as follows:

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

(2) For any reason whatsoever.

(B) Contractor shall have the authority to terminate this Agreement, upon written notice to the City as follows:

If the City fails to timely pay any invoice and such invoice is not paid within fifteen (15) after written notice to the City

(C) Upon termination, Contractor shall be entitled to payment of such amount as fairly compensates Contractor for all work satisfactorily performed up to the date of termination based upon the Contractor's rates shown in **Exhibit C** and/or Section 3 of this Agreement, except that:

(1) In the event of termination by the City for Contractor's default, City shall deduct from the amount due Contractor the total amount of additional expenses incurred by City as a result of such default. Such deduction from amounts due Contractor 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 Contractor(s) for such purposes. In the event that such additional expenses shall exceed amounts otherwise due and payable to Contractor hereunder, Contractor shall pay City the full amount of such expense.

(D) In the event that this Agreement is terminated by City for any reason, Contractor 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 Contractor or prepared by or for Contractor 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 Contractor's delivery to the City of such material.

(E) In the event that this Agreement is terminated by party 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.

(F) The rights and remedy of the City and Contractor 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.

17. Compliance with Laws, Rules, and Regulations. Services performed by Contractor 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.

18. 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.

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

20. Integration and Entire Agreement. This Agreement represents the entire understanding of City and Contractor 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.

21. Jurisdiction and Venue. 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. 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.

22. 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.

23. Notices.

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

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

With a copy to:

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

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

Government Business Development Manager
Erik Homan
1473 N Davis Road
Salinas, CA 93907
Erik.homan@aus.com

(C) The execution of any such notices by the City Manager shall be effective as to Contractor as if it were by resolution or order of the City Council, and Contractor 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.

24. Nondiscrimination. During the performance of this Agreement, Contractor 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. Contractor 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.

25. Conflict of Interest. Contractor 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. Contractor 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, Contractor shall promptly notify City of the existence of such conflict of interest so that City may determine whether to terminate this Agreement. Contractor further warrants its compliance with the Political Reform Act (Government Code section 81000 et seq.) and Salinas City Code Chapter 2A that apply to Contractor as the result of Contractor's performance of the work or services pursuant to the terms of this Agreement.

26. 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.

27. Attorneys' 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.

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

29. 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.

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

31. 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.

32. Legal Representation. Each party affirms that it has been represented, if it so chose, 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.

33. 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.

34. 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.

35. 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.

36. Force Majeure. Force Majeure. No failure or omission by either party in the performance of any obligation under this contract (except for payment obligations) will be deemed a breach of this contract by such party or create any liability on the part of such party for damages or otherwise, if the same shall arise from any cause or causes beyond the control of such party, including but not limited to the following: acts of God, war, riot, insurrection, rebellion, fire, earthquake, flood, storm, disease, epidemic, pandemic, quarantine or governmental orders, acts or restrictions. The afflicted party shall notify the other party of such force majeure circumstances as soon as reasonably practical and shall promptly undertake all commercially reasonable efforts necessary to cure such force majeure circumstances.

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

CITY OF SALINAS

Jim Pia
Interim City Manager

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney, or
Rhonda Combs, Assistant City Attorney

CONTRACTOR

By (Printed Name): _____
Its (Title): _____

Exhibit A - Insurance Requirements

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees, or subcontractors. With respect to General Liability and Professional Liability, coverage should be maintained for a minimum of five (5) years after Agreement completion.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- (A) **Commercial General Liability** (“CGL”): Insurance Services Office Form (“ISO”) 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 **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- (B) **Automobile Liability**: ISO Form CA 0001 covering any auto, or if Contractor has no owned autos, hired and non-owned, with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
- (C) **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- (D) **Professional Liability** (also known as Errors and Omissions) insurance appropriate to the work being performed, with limits no less than **\$5,000,000** per occurrence or claim, **\$5,000,000** aggregate per policy period of one year.

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

OTHER INSURANCE PROVISIONS

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

Additional Insured Status

The City of Salinas, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy to the extent of the Contractor’s indemnification obligations under this Agreement and up to the required insurance coverage amount .General liability coverage can be provided in the form of an endorsement to the Contractor’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).

Primary Coverage

For any claims related to this Agreement or the project described within this Agreement, the **Contractor’s insurance coverage shall be primary coverage** at least as broad as ISO Form 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 Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

Waiver of Subrogation

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Salinas for all work performed by the Contractor, its employees, agents, and subcontractors.

Self-Insured Retentions

Self-insured retentions must be declared by Contractor to and approved by the City. Approval of self-insured retentions and deductibles shall not be unreasonably withheld upon Contractor's demonstration of financial capacity to carry said deductibles and self-insured retentions. Should the City require added security, the City shall accept a financial guarantee of Contractor's parent company guaranteeing payment of losses and related claims investigation, administration and defense expenses that fall within the policy self-insured retentions and deductibles.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of this Agreement or the beginning of Agreement work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the Agreement of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Date*** prior to the Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5) years*** after completion of Agreement work.
4. A copy of the claims reporting requirements must be submitted to the City for review.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable insurance language effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by the City before work

commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor'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

Contractor shall require and verify that all sub-Contractors and/or subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from such sub-Contractors and/or subcontractors.

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.

Maintenance of Insurance

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

Exhibit B - City's Request for Proposal

Exhibit C - Contractor's Proposal