

AGREEMENT NO. A -11162

AGREEMENT FOR EXAMINATION OF FINANCIAL
STATEMENTS AND COMPLIANCE AUDITS
YEAR ENDING JUNE 30, 2008

This Agreement, made and entered into this 12th day of May 2008 by and between GALLINA LLP, Certified Public Accountants, hereinafter called "Contractor," and the County of Monterey, a political subdivision of the State of California, hereinafter called "County."

RECITALS:

This Agreement is made with reference to the following facts and circumstances:

WHEREAS, County desires to engage Contractor to perform, and the Contractor desires to perform, the annual audits of the County for the fiscal year ending June 30, 2008 in a timely manner; and

WHEREAS, County has requested Contractor to audit its financial statements for the fiscal year ending June 30, 2008.

NOW THEREFORE, it is mutually agreed as follows:

1. Definitions

- A. "Contract Proposal" means that proposal made by Contractor to County dated April 9th, 2008, and entitled "County of Monterey Proposal For Audit Services For The Year Ending June 30, 2008, 2009 and 2010". The Contractor's Contract Proposal is incorporated herein by this reference as a component part of this Agreement as if fully set forth herein.
- B. "Project" means the set of tasks as set forth on sections 4, 5, 6, and 7 of this Agreement and sections entitled "Audit Methodology," "Single Audit Approach" "Audit Work plan, and "Professional Fees."
- C. "Project Director" means the Monterey County Auditor-Controller or his designee.

2. Contractor's Responsibility

- A. Contractor agrees to provide the Project Director with a schedule showing the dates by which the Contractor expects the various phases of the audit will be completed.

- B. Contractor agrees to provide bi-monthly progress reports to the Project Director on the status of the audit.
- C. Contractor agrees to perform the tasks described in its Contract Proposal and shall not delegate, subcontract, or assign performance of tasks described therein.
- D. Contractor agrees to notify Project Director in writing of the need for documents or information, which have been requested but not provided by County departments.
- E. Contractor shall use reasonable efforts, subject to laws, regulations and professional standards applicable to the services hereunder, to adhere to the schedule provided pursuant to Section 6 hereinabove, and to complete the audit and submit the report thereon by December 1, 2008.
- F. Contractor agrees to attend, upon request, all the County meetings for purposes of discussing the audit, provided, however, that such attendance shall not be unreasonably time-consuming.
- G. Contractor agrees to provide two copy-ready and twenty-five (25) bound copies of its report on the Financial Statements to the Project Director for distribution to the County.
- H. Contractor agrees to provide twenty-five (25) copies of its report of compliance with the County Investment Policy and related Government Code provisions. This report is to be completed by August 15, 2008 and August 15th of succeeding years.

3. Project Director's Authority

- A. County hereby appoints and delegates to the Project Director the authority to carry out County's obligation under this Agreement.
- B. County understands that the proper and timely completion of the Contractor's services hereunder require the reasonable cooperation of County, including, without limitation, entities under its control, and their respective officers, directors, employees, other personnel and agents. County agrees to provide all such reasonable cooperation requested by Contractor, including, without limitation, fulfilling the responsibilities specified in Sections 4 and 5 hereunder.

4. Project Director's Responsibility

- A. The County's Project Director shall coordinate the County's activities, which will ensure the completion of timely audits. This responsibility includes resolving questions between the Contractor and County departments, providing status

reports to the Board of Supervisors' Finance and Capital Projects Subcommittee, facilitating and coordinating responses to the audit and management letter, and authorizing payment to Contractor.

- B. - The County's Project Director shall inform the Contractor regarding those federally financed programs to which the Single Audit Act procedures apply.
- C. The County's Project Director shall Complete complete the financial statements and other data the Contractor requires by December 1, 2005.

5. County Resources

County agrees to pay Contractor and Contractor agrees to receive compensation for the services performed hereunder, as follows:

- A. The amount to be paid under this Agreement shall not exceed \$154,338 for examination of financial statements and compliance audits for the fiscal year ending June 30, 2008.
- B. The Contractor shall submit to the Project Director an invoice on a form acceptable to County. If not otherwise specified, the Contractor may submit such invoice periodically or at the completions of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by Contractor for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to invoice as the County may require. The Project Director or his or her designee shall certify the invoice, either in the requested amount or such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the Auditor-Controller for payment. The Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- B. During the contractual period covered by this Agreement, County may request Contractor to provide services in addition to the audit services provided hereunder. Contractor may, at its option, agree to provide such additional services upon terms and conditions mutually agreed upon by County and Contractor. The amount to be paid for such additional work requested by County will be based on the number of hours actually worked by employees of the Contractor at the rate per hour as set forth in Appendices "Standard Hourly Rates.". Such billings shall be in addition to the amounts in Section 7.
- C. County shall withhold ten percent (10%) of each billing until the final audit report and management letter, if applicable, is received by Project Director, at which time all payments withheld shall be due and payable to Contractor.
- D. (1) The County and the Contractor recognize that the scope of services and

compensation under this Agreement are predicated upon current audit requirements imposed by laws, regulations and professional standards relating to such services. The County and the Contractor further recognize that the scope of services and compensation under the Agreement are predicated upon expectations of reasonable cooperation with the Contractor by the County pursuant to this Agreement, and the absence of any irregularities or circumstances which might necessitate the extension of audit services beyond the normal scope of auditing services.

- (2) Should irregularities, or the absence of such reasonable cooperation, increase in the level of services required under applicable law, regulations or professional standards, or should other unforeseen conditions be encountered which might necessitate the extension of auditing work beyond the scope of normal auditing procedures, the Contractor agrees to advise the County promptly in writing of the circumstances and may request an equitable adjustment in the maximum fee specified in Section 7, page 18 herein above before significant additional time is incurred by the Contractor. Any such requests for adjustments shall be in writing and shall contain a detailed explanation of why the adjustments are necessary.
- (3) The County and the Contractor agree to negotiate in good faith to determine an equitable adjustment in the maximum fee. Should the County and the Contractor be unable to agree upon an equitable adjustment within fourteen (14) days of receipt of the Contractor's written request, or such other time period as agreed upon in writing by the County and the Contractor, either party may, notwithstanding any other provision in this Agreement, terminate this Agreement upon seven (7) days notice to the other party. The County shall be liable for time charges actually incurred by the Contractor except for any such additional time, which has been incurred as a result of the circumstances necessitating the adjustment.

6. Term of Agreement

The term of this Agreement shall begin effective May 12, 2008 and shall remain in effect through completion of the audit for Fiscal Year 2007-08. Upon successful completion of the Fiscal Year 2007-08 audit, the County may, in its sole discretion, extend the term of the Agreement for not more than two (2) additional one-year periods based on the terms set forth herein. The amount to be paid for the audit for Fiscal Year 2008-09 shall not exceed \$161,015 and the amount for Fiscal Year 2009-10 shall not exceed \$163,666.

7. Indemnification

Contractor shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities and losses, whatsoever (including damages to property and injuries to or death of persons, court costs, and

reasonable attorney's fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting from any person, firm, or corporations for damage, injury, or death arising out of or connected the Contractor's performance of the Agreement, unless such claims liabilities or losses arise out of the sole negligence or willful misconduct of the County. "Contractor's performance" includes Contractor's action or inaction and the action or inaction of Contractor's officers, employees agents and subcontractors.

8. Insurance

Without limiting Contractor's duty to indemnify, Contractor shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- A. Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- B. Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$ 1,000,000 per occurrence.
- C. Workers' Compensation Insurance, if Contractor employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
- D. Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.
- E. Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted

insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subContractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subContractor showing each subContractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, Contractor shall file certificates of insurance with the County's Contract Administrator and County's Contracts/Purchasing Division, showing that the Contractor has in effect the insurance required by this Agreement. The Contractor shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

Contractor shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify Contractor and Contractor shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Contractor to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

9. Termination for Breach of Contract

This agreement may be terminated by either party by giving thirty (30) days written notice of intention to terminate. The agreement may be terminated for reasons of nonperformance or unsatisfactory performance as determined by Project Director, including the provisions of Paragraph 11 below. Upon such termination, County shall pay Contractor for all satisfactory work performed up until such termination, including any amounts previously withheld, and the county shall receive copies of all work papers through the date of termination.

10. Non-Assignability by Contractor

This Agreement shall not be assigned by Contractor either in whole or in part without prior written consent by the County.

11. Independent Contractor

The Contractor's relationship to the County is that of an independent contractor. The personnel performing services shall at all times be under the Contractor's exclusive direction and control and shall be employees of the Contractor. The Contractor shall pay all wages, salaries, and other amounts due its employees and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation insurance, and similar matters.

12. Approval by County

The requested reports or documents shall be deemed accepted by the County, unless the County gives Contractor written notice of rejection of the audit report within ten (10) working days of receipt of the reports or documents by the County specifying in detail the basis for such rejection and the changes desired by the County; provided, however, that the only permitted basis for such rejection shall be errors in the financial statements attached to the Contractor's report thereon. Any corrections deemed necessary by said notice, shall be effected by the Contractor within a reasonable period of time after receipt of said notice.

13. Modifications

Any modification to this Agreement shall be in writing and executed by both parties.

14. Audit and Inspection of Records

During the term of this Agreement and for three (3) years thereafter, during normal business hours, and upon reasonable notice to the Contractor, the Contractor shall make available to the County for examination all time sheets with respect to all matters covered by this Agreement. Unless otherwise specified by the County, said records should be

made available for examination at time and place specified by the County.

For a period of three (3) years after the date of Contractor's report on any audit completed hereunder, upon reasonable written notice to Contractor and County, representatives of the cognizant audit agency (or its designee), the responsible state auditing agency, and the United States General Accounting Office shall be entitled during Contractor's regular business hours during the said three (3) year period to inspect and designate for copying Contractor's non-proprietary audit work papers relating to such completed audit. Copies will be made at County's or requestor's expense by, or under the control of, Contractor. As used in the paragraph, non-proprietary documents are documents and other materials that do not relate principally to the conduct of Contractor's audit, and are not, or do not contain or reveal, any of Contractor's audit procedures or processes, proprietary or confidential information, or trade secrets.

All work papers of the Contractor shall remain the property of the Contractor. In addition, to the extent that the Contractor utilizes any of its property (including, without limitation, any hardware or software of the Contractor or any proprietary or confidential information or trade secrets of the Contractor) in performing the services hereunder, such property shall remain the property of the Contractor and County shall have no right or interest in such property.

15. Excuse from Performance

Notwithstanding any other provision in this Agreement, Contractor shall not be liable or held responsible for any failure to perform or delays in performing its obligations under this Agreement, including but not limited to, the completion of the audit and issuance of its report thereon, which result from circumstances or causes beyond Contractor's reasonable control, including, without limitation, acts or omissions or the failure to cooperate pursuant to this Agreement by County (including, without limitation, entities or individuals under its control, or any of their respective officers, directors, employees, other personnel and agents), fire or casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

However, the Contractor shall notify the County in writing of any such delays, and if any delay caused by such nonperformance is more than ten (10) work days, the County shall have the right to terminate the Agreement forthwith. County shall pay the Contractor for all work performed up until such termination, including any amounts withheld.

16. Resignation

Notwithstanding any other provision of this Agreement, Contractor may resign as County's auditor and terminate this Agreement at any time in accordance with the laws, regulations and professional standards applicable to the type of services provided under this Agreement.

17. Notices

All notices contemplated herein or permitted or required hereunder shall be in writing and shall either be delivered in person or sent by mail to the parties set forth below:

TO COUNTY: County Auditor-Controller
Monterey County
168 West Alisal Street
P. O. Box 390
Salinas, California 93902

TO CONTRACTOR: GALLINA LLP.
1520 Eureka Road
Roseville, California 95661

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized representatives on the day and year first above-written.

CONTRACTOR

By *Brad W. Walker*
GALLINA LLP

COUNTY OF MONTEREY

By *James Amato*

Approved as to Form:
Charles McKee, County Counsel

By *Ellen M. Jahn for*
Leroy W. Blankenship
Assistant County Counsel
Date *May 8, 2008*

Approved as to Fiscal Provisions:

By *Greg Walker*
Auditor-Controller
Date *5-17-08*

Approved as to Liability Provisions:
COUNTY OF MONTEREY

APPROVED AS TO INDEMNITY/
INSURANCE LANGUAGE

By *Ryan Schumaker*
Risk Management
Date: *9-18-08*