



# **REQUEST FOR PROPOSALS (RFP)**

## **Housing Development Impact Fee Nexus Study**

**RFP Issued: March 14, 2019**

**City of Salinas**  
**Community Development Department (CDD)**  
**65 West Alisal Street (Second Floor), Salinas, CA 93901**

**Project Manager: Christopher Valenzuela**  
**Phone: (831) 775.4244**  
**Email: [christopherv@ci.salinas.ca.us](mailto:christopherv@ci.salinas.ca.us)**

## **GENERAL INFORMATION**

The City of Salinas (City) is located on California's Central Coast, 12 miles from the Pacific Ocean and Monterey Bay. In addition to being the county seat, Salinas is the largest city in Monterey County with a population of 161,784 people. The City is a compact, urban community surrounded by agriculture on all sides. Agriculture in Monterey County is over a \$2 billion-dollar industry, and the surrounding Salinas Valley is known as the "Salad Bowl of the World."

## **SUMMARY OF REQUEST**

The City seeks an experienced consulting firm to conduct a comprehensive Housing Development Impact Fee Nexus Study (Nexus Study). The City is committed to increasing the supply of housing, particularly housing for the working class and lower-income residents. To do so, the City's current Housing Development Impact Fees (Impact Fees) need to be re-evaluated for feasibility to determine whether the current fee structure accurately reflects the impacts generated by different unit types. The consulting firm will determine the fair share for different housing types and establish a reasonable connection between the type of housing development and the Impact Fees charged.

The City largely charges Impact Fees per unit except for a few fees, which are based upon number of bedrooms. Considering best practices to encourage housing affordability, the City wants to consider modifying its Impact Fee schedule based upon square footage and type of development to encourage more affordable housing. The Nexus Study should determine the fair share cost of Impact Fees based upon square footage and development type.

In addition to the Nexus Study, the Consultant will be asked to analyze the City's Traffic Improvement Program to create new housing/occupancy categories for traffic per daily trip Impact Fees. For example, the City would like to evaluate trip rates for Accessory Dwelling Units (ADUs), Adaptive Reuse Projects (ARPs), senior housing or other types of affordable housing. The Consultant will evaluate the impact and feasibility of those occupancy/development types and determine adequate trip rates.

The purpose of the Nexus Study is to have a fee structure that is not cost-prohibitive to smaller housing developments and for the Impact Fees to be charged based on actual impact. Housing Element, Policy H-1.1 states that the City should encourage development of a variety of housing types and innovative approaches such as micro units and smaller houses on smaller lots. Right sizing Impact Fees to often less expensive housing types would incentivize development of more affordable housing. Development of innovative housing types such as ADUs could facilitate much needed housing production in Salinas. The current fee structure is an impediment to these smaller scale developments or adaptive reuse of existing buildings.

## Background

According to the City's adopted 2015-2023 General Plan Housing Element, the City has one of the highest housing cost burdens among cities of similar size. 50.8% of Salinas households (owner and renter) pay 30% or more of their income for the cost of housing. 24.4% of households (owner and renter) pay 50% or more of their income to housing. The Salinas Plan (a study by the National Resource Network) indicates that one of the reasons for the high cost burden is the supply gap among low income renters. For example, 4,124 renter households identify as extremely low income, but there are only 1,947 existing units which are affordable at that income level. Facilitating housing development that is innovated in design and more affordable can alleviate some of the housing crisis's facing the City. The current impact fee structure creates an incentive for developers to build larger and fewer housing units, which is does not meet the affordability levels of the current City's population.

## Project Scope

1. **Data Collection and Development** - Consultant shall work with City Departments to collect necessary data and documents required to fully support a comprehensive Nexus Study and feasibility study on Impact Fees.
2. **Prototypes** - Consultant shall coordinate with the CDD to establish up to **ten (10) prototypes** representing different housing types such as Single Family (detached or attached), Apartments, ADUs or Adaptive Reuse to utilize for the Nexus Study and/or feasibility study.
3. **Fee Calculation and Analysis** - Consultant shall prepare and provide a Nexus Study which provides an analysis and results in order to provide legal Nexus Study fee recommendations. Analysis shall document fee study results, including but not limited to, a description of the overall methodology, findings, and supporting justification.
4. **Feasibility Study** – Consultant shall prepare and provide a feasibility study to determine Impact Fees that can be supported based off different development types and sizes. The feasibility study should include the estimated impact for each housing development type and recommendations on the rescaling of the Impact Fee structure.
5. **Comparison Analysis and Table** – The Consultant shall provide the CDD with Impact Fee data of similar jurisdictions that are comparable in size and demographics to the City. This research should also consider best practices on ways to encourage affordable housing production related to Impact Fees.
6. **New Housing/Occupancy Categories for Traffic Per Daily Trip Impact Fees** - Analyze the City's Traffic Improvement Program to create new housing/occupancy categories for traffic per daily trip Impact Fees. Consultant to evaluate trip rates for Accessory Dwelling Units (ADUs), Adaptive Reuse Projects (ARPs), senior housing or other types of affordable housing. The Consultant will evaluate the impact and feasibility of those occupancy/development types and determine adequate trip rates.

7. **Presentation of Materials** – In addition to frequent phone calls and email communications with staff, during which portions of the work may be discussed and reviewed, Consultant will present initial findings at an internal City staff meeting (conference/in-person meeting) for further refinement. Consultant will also participate in three (3) in-person meeting presentations: 1) CDBG/Housing Subcommittee, 2) Finance Committee, and 3) City Council.

## PROPOSAL FORMAT

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In order to expedite and maintain consistency in the evaluation process, each proposal to this RFP shall be organized in accordance with this section. Proposal submissions shall contain the following information in the order presented below:

1. **Letter of Interest** - Please include a letter expressing the Consultant's interest in being considered for the project. Include a statement regarding the Consultant's availability to dedicate time, personnel, and resources to the project. The letter of interest must include a commitment to the availability of the Consultant and all key project staff during the planning period and a proposed schedule designed to meet the City's deadline for the project. Describe your approach to completing the project successfully and within the proposed budget and schedule.
2. **Project Understanding** - Consultant is required to demonstrate understanding of the overall project scope and proposed schedule.
3. **Technical Approach** - Provide a detailed explanation of the approach for completing the work, addressing each of the tasks above and discussing the deliverables.
4. **Proposed Staffing Plan** - Designate the Principal in Charge and Project Manager throughout the duration of the contract. The Project Manager (the key contact) should be readily available for meetings, etc. The proposal should describe the individuals and their roles on the team. The proposal should include a brief resume describing similar projects on which they have been involved and their role on that project, their availability over the duration of this project, and a description of the benefits the person brings to the team. Indicate recent, relevant experience and references on similar projects where a similar role was performed. Full resumes must be included. Proposals shall clearly establish principal team member firms and sub-consultants (if applicable). An organization chart must be included. Any substitution of key staff during the project will require approval from the City.
5. **Estimated Hours, Schedule and Cost Proposal ("Cost Proposal")** - The Consultant must provide the hourly rate for each participating staff person and must estimate the hours for all activities and tasks discussed above, with itemized cost summaries by task and the project overall. The hours should be further divided by the Prime Consultant's staff time and the staff time of sub-consultants. The Consultant may include additional tasks if relevant. A total proposed "Not to Exceed Cost" shall be provided and should include travel

and all other costs. The Consultant shall provide a timeline for completion of the project. Estimated milestone and deliverable dates shall be provided.

## **EVALUATION CRITERIA**

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It is the City's sole desire to contract with a qualified, professional Consultant that has the proven experience, resources, and professional expertise to deliver the requested document(s). A committee comprised of City staff members will conduct evaluation of the proposals. The initial screening will be based on an objective review of the proposal received based on the criteria set forth in this RFP.

Proposals will be evaluated according to qualifications, experience, capabilities, references, resources, scope, schedule, cost, and demonstrated competence in performing the work required (not necessarily in that order). The proposal needs to fully respond to items listed in this RFP; needs to constitute a team that is experienced and qualified to meet the requirements of this project based on relevant experience; and needs to demonstrate the ability to identify and plan specific tasks to complete the project in a professional manner on schedule and within budget. The City will select the Consultant that best meets the requirements put forth in the RFP. The following standards will be considered in evaluation of proposals:

- a) demonstrated understanding of the scope of work;
- b) past experience, performance, and ability of Consultant to deliver high quality, innovative work for relevant projects of similar complexity in diverse, rural/urban communities including: individuals assigned to do the work; quality of work; cost control; track record for meeting scheduled milestone dates; and quality of performance in previous contracts;
- c) demonstrated ability to deliver excellent writing quality and communicate in ways that are engaging and accessible to the general public;
- d) adequate technical, financial, and staffing resources for completion of the scope of work within the proposed time schedule;
- e) demonstrated qualification of the project leader and assurance of his or her principal involvement in the project through completion; and
- f) costs which are competitive with other submitted proposals.

## **PROPOSAL SUBMITTAL**

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Only completed proposals that are submitted by the RFP due date will be accepted. Incomplete or late proposals will not be accepted. The Proposal shall consist only of the materials outlined above will only be accepted via email to:

Christopher Valenzuela, Interim Planning Manager  
[christopherv@ci.salinas.ca.us](mailto:christopherv@ci.salinas.ca.us) (E-mail)

**E-mail subject line should read:**

**“City of Salinas Housing Development Impact Fee RFP Nexus Study”  
PDF Format Preferred**

Upon receipt, all material submitted in response to this request become the property of the City and may be considered public information pursuant to applicable law.

## **INQUIRIES**

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There will be no pre-RFP meeting for this proposal. Proponents are strongly encouraged to visit the following website below on their own as part of proposal preparation. Any questions regarding this RFP may be emailed to Christopher Valenzuela, Interim Planning Manager at [christopherv@ci.salinas.ca.us](mailto:christopherv@ci.salinas.ca.us). Any updates to this RFP will be posted on the City’s website <https://www.cityofsalinas.org/our-city-services/community-development/housing-and-community-development-division/rfps-public-notice>. No questions regarding this RFP will be answered over the phone. All addenda shall become part of this RFP. A signed copy of any addendum shall be included in the proposal.

## **CITY PROCESS**

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City staff and key stakeholders will review and evaluate the submitted proposals based on the stated evaluation criteria. Staff will contact other agencies and references for feedback concerning previous work. One or more firms may be invited for an interview; however, it is the quality of the proposals received that will determine whether an interview will take place. The City reserves the right to forgo the interview process and proceed directly to selection of the preferred firm in the event that a proposal is deemed superior in content.

The City retains the right to select the qualified finalists. The staff recommendation will be based upon the quality of the proposal, including the experience of the proposed project team, project manager, and experience conducting similar type of work. The City anticipates entering into an agreement with the selected firm based on a negotiated fee and a negotiated scope of work. If an agreement on the fee cannot be reached, the City reserves the right to end negotiations and enter into negotiations with the next highest ranked Consultant.

## **CONDITIONS AND RESPONSIBILITIES OF REQUEST**

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1. **General Conditions.** The City reserves the right to (1) reject any or all responses, (2) postpone award of the contract for a period not to exceed sixty (60) days from the date replies are due, (3) waive informalities in the responses, and (4) take whatever action or make whatever decision it determines to be in the best interest of the City. All proposals will remain in effect and legally binding for at least sixty (60) days from the date of

submission. A contract agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City and of the selected Consultant.

The City reserves the right to request additional information from any and all prospective firms as deemed necessary by the City in order to evaluate the proposals. This process may not be used, however, as an opportunity to submit missing documentation or to make substantive revisions to the original proposal.

A prospective firm may withdraw their proposal at any time prior to the date and the time which is set forth herein as the deadline for submittal of proposals.

2. **Liability of Costs and Responsibility.** Each prospective firm submitting a proposal in response to this RFP agrees that the preparation of all materials and presentation for submittal to the City is at the prospective firm's sole cost and expense, and the City will not, under any circumstances, be responsible for any costs or expenses incurred by a prospective firm.

Prospective firms are responsible for making necessary investigations and examination of records. Failure to do so will not act to relieve any condition of the proposed agreement or the requirements set out in this RFP. It is mutually understood and agreed that the submission of a proposal shall be considered conclusive evidence that the prospective firm has made such examinations and investigations. No request for modification of a proposal shall be considered after its submission on the grounds that the prospective firm was not fully informed as to any fact or condition.

The selected Consultant shall be required to assume responsibility for all services offered in the proposal whether or not they possess them within their organization. The selected Consultant will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

3. **Standard Agreement.** A sample professional services agreement is attached for the proponent's reference. It is the responsibility of the prospective Consultant to be familiar with and accept the terms of this standard contract. In some instances, contract provisions can be modified after review and approval of the City during final contract negotiations. Overall, however, the provisions in this contract are those preferred by the City for the engagement of consulting services relating to this RFP. If any of the terms and conditions contained in the standard agreement are not agreeable, these should be identified specifically, otherwise it will be assumed that the Consultant is willing to enter into the agreement as it is written. Failure to identify contractual issues can be a basis for City to disqualify a Consultant.
4. **Insurance.** Consultant shall, throughout the duration of project, maintain comprehensive general liability and property insurance covering all operations of Consultant, its agents and employees, performed in connection with the project in the amounts and in the types of coverages shown in the sample professional services agreement.
5. **Non-Discrimination/Non-Preferential Treatment.** The successful Consultant shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion,

sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City contracts.

- 6. Rights to Submitted Materials.** All proposals and related correspondence, reports, charges, schedules, exhibits and other documentation submitted with the proposal will become the property of the City and a matter of public record. All documents submitted in response to this RFP will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to these disclosure requirements. Any information that a prospective Consultant considers confidential, the disclosure of which would be an unwarranted invasion of personal privacy, should be submitted in a sealed envelope marked "CONFIDENTIAL; NOT PUBLIC RECORDS." During the selection process, the City will keep such information confidential and will not disclose it except as may be required under applicable law, including the California Public Records Act. This means that, depending on the nature or timing of the request, or future court decisions, that information may not remain private and may be publicly disclosed. Once the selection process is completed, the City will return this information to the Consultant if not selected. Budgets and cost proposals submitted by proposers shall not be considered confidential or proprietary and may be subject to disclosure.

**Prohibition of Gifts.** City staff and officials are subject to several legal and policy limitations regarding receipt of gifts from persons, firms, or corporations either engaged in business with the Agency, or proposing to do business with the City. The offering of any illegal gift shall be grounds to disqualify a Consultant. To avoid even the appearance of impropriety, Proponents and Selected Consultant should not offer any gifts or souvenirs, even of minimal value, to City officers or employees.

## RESOURCE DOCUMENT LINKS

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### City's Current Fee Schedule

[https://www.cityofsalinas.org/sites/default/files/departments\\_files/finance\\_department\\_files/fy\\_18-19\\_city-wide\\_fee\\_schedule\\_web\\_posting.pdf](https://www.cityofsalinas.org/sites/default/files/departments_files/finance_department_files/fy_18-19_city-wide_fee_schedule_web_posting.pdf)

### City's Current Development Impact Fees

<https://www.cityofsalinas.org/our-city-services/permit-center/development-fees>

### City's Traffic Improvement Program

[https://www.cityofsalinas.org/sites/default/files/services/engineering/pdf/Salinas2010TFO\\_FINAL.pdf](https://www.cityofsalinas.org/sites/default/files/services/engineering/pdf/Salinas2010TFO_FINAL.pdf)

### 2015-2023 General Plan Housing Element

[https://www.cityofsalinas.org/sites/default/files/Departments\\_Files/Community\\_Development\\_Files/General\\_Plan\\_Files/Adopted\\_Salinas\\_HE\\_2015-2023\\_1.pdf](https://www.cityofsalinas.org/sites/default/files/Departments_Files/Community_Development_Files/General_Plan_Files/Adopted_Salinas_HE_2015-2023_1.pdf)

### Salinas Plan

[https://www.cityofsalinas.org/sites/default/files/departments\\_files/city\\_manager\\_files/salinas\\_ltfp\\_final\\_report.pdf](https://www.cityofsalinas.org/sites/default/files/departments_files/city_manager_files/salinas_ltfp_final_report.pdf)

Farmworker Housing Study and Action Plan

[https://www.cityofsalinas.org/sites/default/files/departments\\_files/community\\_development\\_files/farmworker\\_housing\\_study.salinas-pajaro.june\\_15-2018.complete.pdf](https://www.cityofsalinas.org/sites/default/files/departments_files/community_development_files/farmworker_housing_study.salinas-pajaro.june_15-2018.complete.pdf)

Monterey Bay Economic Partnership White Paper

[https://mbep.biz/wp-content/uploads/2018/08/MBRegionLocalHousingPolicyWP\\_Final.pdf](https://mbep.biz/wp-content/uploads/2018/08/MBRegionLocalHousingPolicyWP_Final.pdf)

**RFP PROPOSED TIMELINE\***

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Issue Date:	March 14, 2019
Proposal Due Date:	April 15, 2019 @ 5:00 p.m.
Award of Contract:	May 17, 2019
Project Initiation:	May 27, 2019

**\*Dates subject to change**

**ATTACHMENTS**

1. Professional Services Contract Template
2. Conflict of Interest Statement

**ATTACHMENT 1  
PROFESSIONAL SERVICES CONTRACT TEMPLATE**

**AGREEMENT  
FOR PROFESSIONAL SERVICES  
BETWEEN  
THE CITY OF SALINAS AND **XXX****



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**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN  
THE CITY OF SALINAS AND [XXX]**

This Agreement for Professional Services (the “Agreement” and/or “Contract”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_, between the **City of Salinas**, a California Charter city and municipal corporation (hereinafter “City”), and [XXX], a [California corporation/limited liability company/dba/etc.] (hereinafter “Consultant”).

**RECITALS**

**WHEREAS**, Consultant 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**, 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 Service.** The project contemplated and the scope of Consultant’s services are described in **Exhibit B**, attached hereto and incorporated herein by reference.
- 2. Term; Completion Schedule.** This Agreement shall commence on [XXX], and shall terminate on [XXX], unless extended in writing 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 Consultant for services rendered the City pursuant to this Agreement on a time and materials basis according to the rates of compensation of [or as set forth in **Exhibit B**]. The total amount of compensation to be paid under this Agreement shall not exceed [XXX].
- 4. Billing.** Consultant 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, Consultant shall not bill City for duplicate services performed by more than one person. Consultant’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) The number of hours spent and by whom;
- (D) A brief description of any costs incurred; and
- (E) The Consultant’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 Consultant 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 Consultant until thirty (30) days after a correct and complying invoice has been submitted by Consultant. The City shall process undisputed portion immediately.

**5. Meet & Confer.** Consultant 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 Consultant is required to furnish as part of the services under this Agreement, Consultant shall provide such additional copies as are requested, and City shall compensate Consultant for the actual costs related to the production of such copies by Consultant.

**7. Responsibility of Consultant.** 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.

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

(A) Assist Consultant 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 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) 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 Consultant's services. City may unilaterally change its representative upon notice to the Consultant.

(D) Give prompt written notice to Consultant 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 Consultant from professional responsibility for the work performed.

## ***10. Indemnification and Hold Harmless.***

Consultant 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 Consultant's performance of work hereunder, including the performance of work of any of Consultant's subcontractors or agents, or Consultant's failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

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

**12. Access to Records.** Consultant 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 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. Consultant 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 Consultant. This Agreement is personal to Consultant 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. Consultant 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 Consultant 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 Consultant shall constitute the Consultant'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 Consultant, as provided herein, for the services rendered by Consultant in connection with which they were prepared. City agrees to hold harmless and indemnify the Consultant 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 Consultant.

**16. Termination.**

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

- (1) If in the City's opinion the conduct of the Consultant is such that the interest of the City may be impaired or prejudiced, or
- (2) For any reason whatsoever.

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

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

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

(D) In the event that this Agreement is terminated by City 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.

(E) The rights and remedy of the City and Consultant 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 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.

**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 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. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee or servant of the City.

**20. Integration and Entire 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.

**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 Consultant shall, until further notice by the Consultant, be addressed to:

[XXX]

(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.

**24. 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.

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

**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.

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

**CITY OF SALINAS**

\_\_\_\_\_  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**CONSULTANT**

\_\_\_\_\_

By (Printed Name): \_\_\_\_\_

Its (Title): \_\_\_\_\_

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## Exhibit A

### Insurance Requirements

Consultant 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 Consultant, 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 **\$1,000,000** 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 Consultant has no owned autos, hired and non-owned, with limits no less than **\$1,000,000** 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 **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate per policy period of one year.

If the Consultant 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 Consultant. 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 with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant’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 **Consultant’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 Consultant’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***

Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant 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 Consultant, its employees, agents, and subcontractors.

### ***Self-Insured Retentions***

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

### ***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 Consultant 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***

Consultant 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 Consultant'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***

Consultant shall require and verify that all sub-consultants and/or subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that Entity is an additional insured on insurance required from such sub-consultants 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 Consultant as specified shall in no way be interpreted as relieving Consultant of its indemnification obligations or any responsibility whatsoever and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.

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**Exhibit B**

**[Scope of Service; Compensation]**

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ATTACHMENT 2  
CONFLICT OF INTEREST STATEMENT

CITY OF SALINAS

Conflict of Interest Statement

(All information must be completed; Please type or print clearly in ink)

Business Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Section 27 of the "Sample Contract" details the City's Conflict of Interest policy. Please read the section below and certify there is no conflict.

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

CERTIFICATION

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_