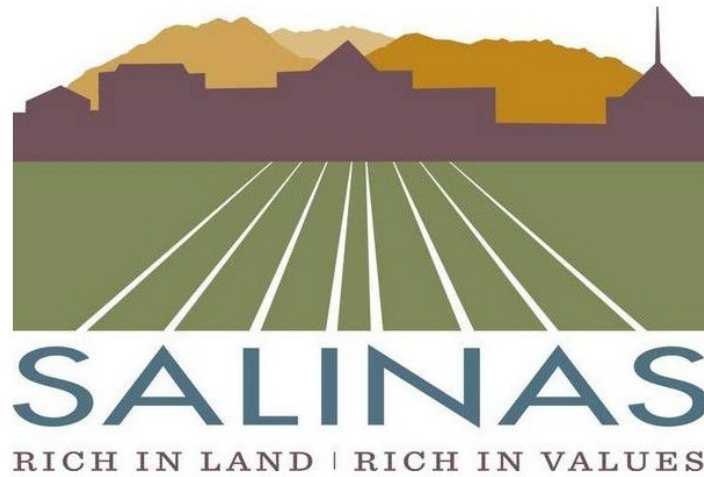


REQUEST FOR PROPOSALS



PREPARATION AND PROCESSING OF A COMPREHENSIVE ZONING CODE UPDATE

Released October 29, 2024

Important Dates

Questions Due: November 12, 2024 – 4 PM

Proposals Due: December 6, 2024 – 4 PM

Project Manager: Jonathan Moore, Senior Planner

Email: jonathanm@ci.salinas.ca.us

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SUMMARY OF REQUEST

The City of Salinas (the City) is requesting proposals for consulting firms (the Consultant) to provide planning services related to the preparation and processing of a comprehensive update to its Zoning Code and map (the “ZCU”). The City is in the process of completing its first comprehensive General Plan update in over two decades, which will include a place-based approach to land use planning, an Environmental Justice Element, and the simultaneous completion of the City’s first Climate Action Plan (CAP).

The ZCU shall accomplish the following goals:

- Implement the Visión Salinas 2040 General Plan policies once adopted
- Implement relevant programs of the 2023-2031 Housing Element
- Bring the Zoning Code into compliance with state and federal law
- Create a code that is user-friendly for the public and staff
- Generate “buy-in” from the community and stakeholders through its engagement process

The selected Consultant will develop a hybrid zoning code that utilizes form-based standards, performance standards, traditional zoning standards, and incentives, depending on the area of the city and land use.

BACKGROUND

The City launched a comprehensive General Plan update, [Visión Salinas 2040](#), in the summer of 2021. In addition to updating each chapter of the General Plan, Visión Salinas 2040 will also include a new Environmental Justice Element and the City’s first Climate Action Plan (CAP). Through the Visión Salinas 2040 General Plan Update, the City is proposing a new approach to land use designations and a land use map that aims to create and reinforce quality places where people want to live, work, play, and learn. Draft Place Types incorporate land use policies and recommendations of other recent planning documents including the Alisal Vibrancy Plan and Economic Development Element. These draft Place Types will offer greater flexibility and density and place less emphasis on strict use classifications. Their focus on place and form will make it easier to implement Objective Design Standards and other changes to state law intended to reduce approval times for housing projects. The City anticipates completing the new General Plan by late 2025, and wants to start the ZCU concurrently with that process to ensure consistency within six months of adoption.

The [2023-2031 Housing Element](#), adopted in December 2023 and subsequently found in substantial compliance with state law by HCD, is a tool for the City to continue to address its housing challenges and plan for the community’s housing needs. It includes a detailed work program of the City’s goals, policies, quantified objectives, and programs for the preservation, improvement, and development of housing for a sustainable future. Development of the City’s Future Growth Areas is a key strategy to meet the City’s housing needs and its Regional Housing Needs Allocation numbers. While the 6th cycle Housing Element was based on the 2002 General

Plan and current Zoning Code because of its statutory deadline, Program 6 of the Housing Element calls for the adoption of the General Plan update and details necessary amendments the Zoning Code for implementation and for compliance with changes in State law.

The 2002 Salinas General Plan identified a Future Growth Area (FGA) which is located generally north of Boronda Road, west of Williams Road, east of San Juan Grade Road and south of Rogge Road. The General Plan requires that new development in the North of Boronda FGA be based on New Urbanism as well as other design principles to promote walkability and the use of alternative modes of transportation, provide a variety of housing choices, ensure access to parks and open space, and promote sustainability, etc. For planning purposes, the North of Boronda FGA was divided into three separate proposed Specific Plan Areas; the West Area (WASP), Central Area (CASP) and East Area (EASP). Subsequently a fourth Specific Plan; the Gateway Center Specific Plan (GCSP), consisting of approximately 20 acres, was carved out of the WASP to facilitate the development of a large commercial center. The GCSP was approved by the City Council in 2011, the WASP in 2019 and the CASP in 2020. The City has started the preparation of an East Area Specific Plan, with anticipated adoption following the General Plan Update. While each of these specific plans has, or will have, its own unique zoning regulations, these should at least inform the ZCU.

ZONING CODE UPDATE

The Zoning Code, Chapter 37 of the City's [Municipal Code](#), had its last comprehensive update adopted in 2006 following the 2002 General Plan. The current Zoning Code is flexible but complex and often challenging for the public and staff to interpret. Creating a document that improves clarity, objectiveness, and predictability while increasing flexibility in certain spots of the City is paramount in this effort. In addition, the Zoning Code Update should address:

- Consistency with the Visión Salinas 2040 General Plan and 2023-2031 Housing Element, including updates to the zoning map,
- Consistency with recent changes in State law, particularly those related to facilitating housing and objective design and development standards,
- Recommendations from staff and community stakeholders,
- Streamlining development administration processes, including applications, that interface with other municipal requirements, to create transparent and predictable paths to approval,
- Making the Zoning Code visually informative; and
- Appropriate CEQA review based on the Environmental Impact Report for the 2040 General Plan.

SCOPE OF WORK

The following describes general components to be included in the scope of work. The City is open to suggestions other than or in addition to those listed which facilitate the completion of the project or improve project outcomes. It is anticipated that the final scope of work will not be approved

until the final contract is executed with the selected Consultant and the scope has been further refined as determined by City staff and the Consultant. Descriptions of each phase of work and work product shall be in sufficient detail to permit evaluation of the relative merits of the analysis and procedures. The proposal shall identify a budget per task as well as an overall budget.

The Community Development Department will provide the Consultant with the following:

- Background information and copies of relevant reports, plans and data,
- Staff participation in the review and comment of project draft documents, including engagement documents and translation review,
- Staff attendance at public meetings and stakeholder meetings,
- Staff assistance in publicizing community meetings and events,
- Final approval of staff reports and resolutions,
- Responses to and collaboration with other City departments involved as well in the review and comment of draft documents,
- A designated City Project Manager will coordinate the internal review process upon delivery of draft documents by the Consultant.

Work products must be provided electronically in Word and pdf formats with changes provided in track changes. Consultant is to provide all new maps in ArcGIS or a compatible format, and any digital illustrations and figures in an editable format, so that all work produced by the consultant can also be manipulated and reproduced by City staff without conversion problems.

Unless otherwise noted, the Consultant is responsible for the completion of all work tasks below:

Task 1: Project Kickoff, Coordination and Management

The Consultant shall be responsible for project management and logistics for the ZCU document. The Consultant will be expected to:

1. Attend a kick-off meeting, coordinated by City staff (the City's Project Manager) between the project team (City staff, the Consultant and others, as applicable). In advance of this meeting, the Consultant is to prepare a detailed draft work program for review by the project team at the meeting, including a detailed schedule/timeline for the completion of each task. The work program will be finalized following the kick-off meeting.
2. Coordinate with relevant County, State and local responsible Agencies.
3. Attend staff coordinated bi-weekly virtual meeting with project team to ensure the project remains on-task and budget. Review follow-up meeting notes reflecting the completion status of each task and any actionable items in accordance with the project.
4. Participate in periodic discussions, with the City's Project Manager (upon the initiation of either party) on an as needed basis to address any issues that arise between project team meetings.
5. Subcontract as needed with other consultants in specific disciplines and manage any subcontracts including, but not limited to, editing and integration of sub-consultant work to ensure consistency of format, management of time schedules and billing, insurances, etc.

Deliverables:

- Detailed work program (schedule and timeline)

- Detailed budget tracking document
- Monthly invoices and progress reports
- Management of subcontract agreements

Task 2: Public Engagement

The Consultant shall work with the City to design a robust engagement campaign to inform the community of the process and work collaboratively with stakeholders to develop the new code. Transparency and culturally responsive engagement are critically important to the City and to the success of the ZCU. The Consultant may offer modifications and work with the City to refine the engagement plan, but the City proposes it includes a minimum of:

- Two (2) in-person and one virtual (1) public workshops,
- Five (5) stakeholder group meetings (such as an advisory committee or other organization) with Consultant,
- Two (2) study sessions with the Planning Commission and one (1) with the City Council, and
- Two (2) pop-ups at community events.

The City may conduct additional engagement beyond that which requires Consultant attendance (virtual or in-person). If so, the City will need support creating materials for these meetings. In the response to this RFP, firms should also describe how they educate the community and generate support and consensus for similar projects.

Deliverables:

- Preparation of materials in English and Spanish for workshops and other engagement, and presenting at identified meetings.

Task 3: Preparation of bridge zoning code amendments

Because of the proposed land uses and other changes, in order to achieve consistency between General Plan and Zoning Code within six months of General Plan adoption, the City anticipates that a set of interim amendments will be needed. This may include, but is not limited to:

- Updating Zoning Map to align existing zones with the closest Place Type(s),
- Updating density and heights of existing zones,
- Creating more flexible non-conforming use regulations, and
- Completing short-term changes described in Program 6 of the 2023-2031 Housing Element, possibly ahead of General Plan adoption if necessary for compliance with state law.

Deliverables:

- Draft bridge/interim zoning code amendments
- Final bridge/interim zoning code amendments

Task 4: Complete Zoning Code Update

The main task of this effort is a comprehensive Zoning Code update. This is most likely through a new Zoning Code but may take the form of a major overhaul of the existing Zoning Code, depending on what the selected Consultant and City agree is the best course of action. Responses shall describe how the Zoning Code update will address the goals and issues identified in this RFP. Responses shall also describe how the Consultant will de-bug or stress test the Zoning Code in the drafting process to improve process flows and mitigate unintended project outcomes.

Deliverables:

- Internal Review Draft Zoning Code and Zoning Map.
- Public Review Draft Zoning Code and Zoning Map.
- Revised Draft Zoning Code and Zoning Map for consideration of adoption.
- Final Zoning Code and Zoning Map with all revisions, in PDF form and for web viewing (Municode).

Task 5: ZCU Approval Processing and Environmental Review

Support City staff with packaging and processing the bridge amendments and final zoning code. This includes preparation of reports and other materials necessary for formal review and adoption. Environmental review is anticipated at the IS-ND/MND level due to tiering off the full EIR for the Visión Salinas 2040 General Plan. If proposing another avenue or level of environmental review, the response shall describe why the Consultant is recommending that approach. Deliverables below are assumed for both any necessary bridge amendments and the final Zoning Code.

Deliverables:

- Draft staff reports, resolutions, ordinances and PowerPoint presentations for the Planning Commission and City Council.
- Draft notices for the public and for government agencies.
- CEQA review and draft and final documentation.

Optional Tasks

Please provide any recommended additional optional tasks with costs.

Contingency

The proposal should include a contingency for unanticipated tasks which would require City of Salinas approval in advance of undertaking. The contingency may be up to ten percent (10%) of total Specific Plan proposal cost.

PROPOSAL FORMAT

In order to expedite and maintain consistency in the evaluation process, each proposal to this RFP shall be organized in accordance with this section. Proposals will be rated and ranked according to evaluation criteria provided in the next section. Proposal submissions shall contain thorough description and analysis of the following information in the order presented below:

1. Brief Cover Letter/Letter of Introduction

- Executive Summary (maximum two pages)
- Name, title and telephone number of the prospective consultant's designated lead contact person for communications pertaining to this proposal.

2. Project Team

- Description of team members assigned to the project and their respective roles. It is expected that once the analysis begins, the project team will remain in place until the work is completed. Please include statements regarding the length of commitment of the proposed staff if they are not available for the duration of this project.
- Organizational chart illustrating team members assigned to the project and their respective roles.
- A brief biography or resume of each team member.
- Identification of specific sub-contractors who will be assigned to the project, and their specific roles and responsibilities.

3. Firm Experience and Qualifications

- A list of representative projects, with links, completed by the firms and individuals proposed to work on this project that best exemplify the work requested in this RFP.
- For each project reference, include the project name, the client contact, the client's phone number and email, the dates the work was accomplished, and a brief description of the work accomplished.

4. Scope of Work including Tasks and Deliverables

- A narrative describing the approach and work plan, including any studies for completing the scope of work. On a per task basis the narrative should identify the designated team member(s) responsible for completing the work, specific deliverables, and the number of meetings attended.
- Any additional suggestions Consultant believes would be valuable to include in this effort and any suggestions for further clarifying the scope or work and the

usefulness of the product to meet the City’s stated goals for the Zoning Code Update.

- A signed copy of any acknowledgement of any addendum to this RFP shall be included in the final submitted proposal.

5. Budget Estimate

- A detailed budget estimate in matrix form including the hourly rates and time commitments for all team members and sub-consultants by task for the project.
- Denote any proposed optional tasks.
- Include similar information for any sub-contractor.
- A sample billing invoice. Invoices shall include an update on “percent complete” of each task.

6. Project Schedule

- Include timeframe for completion of tasks, including milestone dates for primary deliverables.
- Include discussion of where the project timeline may slip or is susceptible to delay if assumptions are not met relative to project task completion. As it is anticipated the project will have an assertive schedule, it is important for the City to understand the proposer’s expectations for City staff document review timeframes included in this schedule.
- For project management purposes, the schedule should indicate how often there are meetings with City staff, as well as Commission and City Council meetings.

7. General Contract Requirements

- *Proof of Insurability.* A brief statement or certificate of insurance from an acceptable insurance company setting forth that insurance coverage as required in the attached sample contract, at a minimum, will be available at the time of commencement of the project. The City reserves the right to request additional insurance coverages and amounts through the final Agreement negotiated between the City and Consultant.
- *Concurrence with contract provisions.* A brief statement that the proposer concurs with the provisions of the City’s standard contract as attached to the RFP. Under certain circumstances, and subject to the discretion of the City, some provisions of the contract may be modified upon final contract negotiations with the Consultant.

EVALUATION CRITERIA

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, current workload, demonstrated competence in performing the work required, and actual or perceived conflicts of interest (not necessarily in that order). The proposal needs to fully respond to items listed in this RFP; needs to propose a team that is experienced and qualified to meet the requirements of this project based on relevant experience; and needs to demonstrate the ability and capacity 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 (or consultants) that best meet(s) the requirements put forth in the RFP. The following criteria will be considered in evaluation of proposals:

Evaluation Criteria	Points
Demonstrated project understanding and scope of work and Consultant’s proposed methodology for the proposed work.	30
Firm qualifications and demonstrated past experience, performance, and ability of to deliver high quality work for relevant projects of similar complexity.	25
Team member qualifications and experience: adequate technical, financial, and staffing resources for completion of the scope of work within the proposed time schedule; demonstrated qualification of the project leader and assurance of his or her principal involvement in the project through completion.	30
References from previous clients.	10
Completeness of response, adherence to the requested format, and quality of submittal	5

PROPOSAL SUBMITTAL

Proposal shall consist only of electronic materials; pages must be numbered. Submittals must be sent to:

Jonathan Moore, Senior Planner
jonathanm@ci.salinass.ca.us

All submittals shall be received no later than **December 6, 2024, at 4:00 pm**. Proposals received after 4:00 pm on the due date will not be reviewed. Upon receipt, all material submitted in response to this request become the property of the City of Salinas and may be considered public information pursuant to applicable law.

INQUIRIES

There will be **no pre-submittal meeting** for this proposal. Any questions regarding this RFP may be emailed to Jonath Moore, Senior Planner at jonathanm@ci.salinas.ca.us by **4:00 pm on November 12, 2024**. All submitted questions and responses will be sent to the invitation list and posted on the City's website by **November 19**. No questions regarding this RFP will be answered over the phone. Proposers that contact City personnel or City Council members after the City releases the RFP shall be disqualified. All addenda shall become part of this RFP. A signed copy of any addendum shall be included in the proposal.

CITY PROCESS

City staff will review and evaluate the submitted proposals based on the stated evaluation criteria. Staff will contact other agencies for feedback concerning previous work. It is expected that one or more firms will be invited for an interview, however it is the quality of the proposals received that will determine who will be invited to take part in an interview process. The City reserves the right to forgo the interview process and proceed directly to selection of the preferred firm (or firms) 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 criteria set forth above. The City anticipates entering into an agreement with the selected firm(s) 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. The City Manager will consider the staff recommendation and award the contract for the negotiated final scope of work pursuant to the Municipal Code, which may also include consideration by the City Council.

CONDITIONS AND RESPONSIBILITIES OF REQUEST

1. **General Conditions.** The City of Salinas 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 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.

Consultant may withdraw its 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.** Consultant agrees that the preparation of all materials and presentation for submittal to the City is at the Consultant's sole cost and expense, and the City will not, under any circumstances, be responsible for any costs or expenses incurred by Consultant.

Consultant is 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 Consultant has made such examinations and investigations. No request for modification of a proposal shall be considered after its submission on the grounds that the Consultant was not fully informed as to any fact or condition.

The Consultant shall be required to assume responsibility for all services offered in the proposal whether or not they possess them within their organization. The 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 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 the 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.** 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 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 make reasonable efforts to 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.

7. **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 Consultant should not offer any gifts or souvenirs, even of minimal value, to City officers or employees.

ATTACHMENTS

- City of Salinas Agreement for Professional Services Template
-

ANTICIPATED TIMELINE

Release of RFP: October 29, 2024

Questions due: November 12, 2024

Proposal Due: December 6, 2024

Rating and Ranking of Proposals: December, 2024

Interviews (if necessary): January, 2025

Contract Authorization by Council: February, 2025

Attachment: Agreement for Professional Services Template

AGREEMENT
FOR PROFESSIONAL SERVICES
BETWEEN
THE CITY OF SALINAS AND
[CONSULTANT'S LEGAL NAME]



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

This Agreement for Professional Services (the “Agreement” and/or “Contract”) is made and entered into this ____ day of _____, 20_, between the **City of Salinas**, a California Charter city and municipal corporation (hereinafter “City”), and **[LEGAL NAME]**, 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 **[dollar amount)]**.

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:

[Notice Contact Information for Consultant including Title, Address, Email, and Phone #
(in same format as (A) above)]

(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

René Mendez, City Manager

APPROVED AS TO FORM:

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

CONSULTANT

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

Exhibit A- Insurance Requirements

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.

Exhibit B- Scope of Service

[Scope of Service; Compensation]