

Funding Agreement

Scannell Properties for Amazon Facility

This Funding Agreement is entered into by and between the City of Salinas, a California charter city and municipal corporation, hereinafter referred to as “the City,” and Scannell Properties, a California Corporation, hereinafter referred to as “the Developer.”

RECITALS

WHEREAS, Developer has proposed to develop a new proposed warehouse/logistics facility for Amazon (the “Project”); and

WHEREAS, City has entered into an agreement with TRB and Associates (hereinafter “TRB”) and hereinafter referred to as “the Consultants”, which agreement is attached hereto as **Exhibit A**, respectively, to complete the permitting process for a proposed new logistics facility; and

WHEREAS, Developer has agreed to be responsible for additional costs and expenses associated with the Consultants’ work for value added services to deliver the Project at an expedited rate on the Project for services rendered on an hourly basis, reimbursables and administrative overhead incurred for this project, as determined by the Chief Building Official;

NOW, THEREFORE, in mutual consideration of the covenants, terms, and conditions contained herein, the parties agree as follows:

TERMS

1. Purpose. The purpose of this Agreement is to define the City’s and the Developer’s obligations with regard to the Consultants’ completion of the permitting of a proposed new logistics facility.
2. Developer’s Funding Obligations.

(a) Developer shall be solely responsible for additional costs and expenses incurred by the Consultants work for value added services to deliver the Project at an expedited rate as set forth in the attached professional services agreement and as set forth in Section 3 of this Funding Agreement. Further, Developer shall reimburse the City for all additional costs and expenses incurred by the City related to permitting of a proposed new logistics facility as further defined in **Exhibit B**.

(b) The total estimated amount of costs and expenses to be incurred by the Consultant and its subconsultants for services and work contemplated in **Exhibit B** is estimated to be approximately \$1,000,000. Both City and Developer understand and acknowledge the total amount of costs and expenses may differ from such estimate due to changes in the scope of work and to circumstances and events now unknown and which may arise during the course of the Consultant’s work on the Project.

3. Deposit. On the date this Funding Agreement is signed by its authorized representatives, Developer will deposit with City the sum of two-hundred and fifty thousand dollars (\$250,000) to be held and applied by City toward payment of services rendered by the Consultants.

4. Balance of Account. The deposit shall remain at the authorized amount of \$250,000 until such time that the developer and the City agree the deposit is no longer necessary or the project is completed. The Developer shall, within seven (7) days after receipt of written notice from City, replenish the deposit in an amount of the expenditure to cover additional anticipated costs and expenses. City shall keep a full and detailed accounting of all disbursements from the funds so deposited, which accounting shall be made available to Developer upon request. Developer agrees that City will not authorize the Consultants to perform additional services or to continue work on the Project until Developer shall have deposited with the City sums sufficient to cover all additional estimated costs and expenses determined by the City to be necessary to fund the Consultants' continued work. Upon completion of the Consultants' work on the Project, City will return to Developer all deposited sums remaining after payment of all costs and expenses.

In the event Developer fails to pay additional sums necessary to cover additional reimbursable costs and expenses, City shall have no obligation to continue processing any applications, permits, other approvals or services requested by Developer or required for the Project and further Developer acknowledges that the Consultants shall have no obligation to continue their work on the Project.

5. Indemnification and Hold Harmless. Developer agrees to and shall at its own cost and expense defend, indemnify, and hold City and all of its board, commissions, officers and employees harmless from any and all claims, actions or proceedings to attack, set aside, challenge, void or annul the City's permitting process completed by the Consultants on the Project or any other services associated with the Project. Developer agrees and shall hold the City and all of its boards, commissions, officers and employees harmless from any and all damages, costs or expenses, including attorney fees and other professional fees, and any and all liabilities, claims, actions, suits or proceedings to attack, set aside, challenge, void or annul any determination regarding the Consultants' permitting process or any other services associated with the Project. City agrees to and shall promptly notify Developer of any such claim, action or proceeding. Nothing contained in this section shall prohibit City from participating in the defense of any claim, action or proceeding if City bears its own attorney fees and costs and City defends the action in good faith.

Developer shall reimburse the City for all costs and expenses including, but not limited to, reasonable fees and charges of architects, engineers, attorneys, and other professionals, in addition to any court costs, incurred by City in enforcing the provisions of this section.

6. Notices. Written notices shall be sent by first class mail, postage prepaid, to the parties as follows:

If to City:

David Gonzalves

City of Salinas
65 W. Alisal Street
Salinas, California 93901

With a Copy to:

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

If to Developer:

Name
Scannell Properties
3468 Mt. Diablo Boulevard Suite B-115
Lafayette, CA 94549

With a Copy to:

Attorney
Address

7. Exhibits Incorporated. All exhibits referred to in this Funding Agreement and attached to it are hereby incorporated in its by this reference. In the event there is a conflict between any of the terms of this Funding Agreement and any of the terms of any exhibit to this Funding Agreement, the terms of the Funding Agreement shall control the respective duties and liabilities of the parties hereto.

8. Integration and Agreement. This Funding Agreement represents the entire understanding of City and Developer 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. No prior oral or written understanding shall be of any force and effect with respect to those matters covered in it. This Funding Agreement may not be modified or altered except by amendment in writing signed by both parties.

9. Jurisdiction. This Funding Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of any disputes arising from or under this Funding Agreement shall be in the State of California, in the County of Monterey.

10. 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 Funding Agreement shall continue to be in full force and effect.

11. Attorney Fees. In case suit shall be brought to interpret or to enforce this Funding 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 attorney fees in addition to such costs

as may be allowed by the Court. City’s attorney fees, if awarded, shall be calculated at the market rate.

12. Successors and Assigns. This Funding Agreement and all of the provisions herein shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the undersigned, as authorized representatives of the City of Salinas and Scannell Properties have executed this Funding Agreement.

CITY OF SALINAS

René Mendez
City Manager

Date

APPROVED AS TO FORM:

Christopher Callihan
City Attorney

Date

Scannell Properties
A California General Partnership

By: Name
Its: Title

Date