

CITY OF SALINAS
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

GATEWAY CENTER COMMERCIAL PROJECT

This Economic Development Incentive Agreement ("the Agreement") is entered into this 11th day of October 2011 (the "Effective Date"), by and between the City of Salinas, a California charter city and municipal corporation hereinafter referred to as "the City," and Rexford Title, Inc., a California corporation hereinafter referred to as "the Developer." The City and the Developer are, from time to time, referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The Salinas City Council has identified economic development objectives of an enhanced sales tax revenue base, increased job creation, and diversification of the local economy. To meet those objectives the Salinas City Council has adopted Economic Development Incentive Policy Guidelines to assist the City Council and City staff in the retention of an existing business, to encourage the expansion of local businesses, and the attraction of targeted businesses.

B. The City of Salinas is authorized to collect sales taxes from retail uses operating throughout the City pursuant to Article XI, Section 5 of the California Constitution and pursuant to Chapter 32 of the Salinas City Code. Such taxes are used for the general benefit and operations of the City of Salinas.

C. City wishes to provide economic incentives for new retail uses because providing such incentives encourages the development of new retail uses which might not otherwise be viable and the existence of quality retail uses within the city furthers the economic climate for businesses and residents in the city and also generates new sales tax revenue in excess of amounts made available in the form of incentives.

D. To be eligible for incentives available through the Economic Development Incentive Policy Guidelines, retail development projects considered for the receipt of incentives should generate sales tax revenues normally associated with a community or regional shopping center. For a retail center project the minimum new retail sales qualifying for a sharing of the sales tax should be at least \$10,000,000 per annum, unless otherwise directed by the City Council.

E. The Developer has represented that it will construct a retail project commonly known as the "Gateway Center" on approximately 20.23 acres of real property in the City of Salinas, a part of the North of Boronda Future Growth Area located within the city limits of the City of Salinas, which property is more precisely shown on Attachment A, which is attached hereto and which is incorporated herein by this reference. The Gateway Center is a retail center, which is anticipated to be anchored by a Lowe's home improvement store, consisting of a maximum of 207,500 square feet of floor area (176,000 square

feet of buildings and 31,500 square feet of garden center), as more precisely described in the Specific Plan approved by the Salinas City Council on October 11, 2011, in accordance with all governmental requirements.

F. The Salinas City Council finds and determines that development of the Gateway Center as proposed by the Developer and as evidenced by the independent economic analysis prepared for the Gateway Center by Allan D. Kotin & Associates (ADK&A) as well as the information and the analysis provided by City staff, will result in positive diversification of the local economy and will provide a substantial positive economic impact on the community through job creation and through the net increase in sales and use tax revenues projected to be generated by the Gateway Center.

G. The Salinas City Council further finds and determines that the proposed Gateway Center meets the requirements set forth in the Economic Development Incentive Policy Guidelines for the receipt of economic incentives.

The Gateway Center is expected to generate an estimated \$51,000,000 in total gross sales per annum (Table 7 of the AADK&A analysis) and an estimated \$388,600 in net sales tax per annum (Table 19 of the ADK&A analysis), which sales tax revenues will exceed the amounts made available in the form of incentives over the term of this Agreement.

The economic analysis prepared by ADK&A indicates that the annual revenues projected to be generated by the Gateway Center will exceed the annual municipal service costs projected to result from the development and the operation of the Gateway Center. (Table 19 of the ADK&A analysis)

The economic analysis prepared by ADK&A projects that a total of 325 new full time equivalent (FTE) jobs will be created at the Gateway Center. Of those new jobs, the Lowe's store is projected to create 154 full-time equivalent (FTE) jobs with estimated annual wages for a Lowe's employee of \$30,150. (Table 11 of the ADK&A analysis) And, the ancillary retailers located with the five outbuildings proposed to be developed within the Gateway Center are projected to create 171 full-time equivalent (FTE) jobs. (Table 12 of the ADK&A analysis)

H. The Developer has represented that it has entered into an Agreement to Enter Into a Ground Lease with Lowe's HIW, Inc. ("Lowe's") dated October 28, 2009. The Agreement to Enter Into a Ground Lease provides for a basic ground lease term of twenty (20) years and contains requirements and obligations which the Developer and Lowe's must comply with respect to the construction and the operation of the Gateway Center.

I. The Economic Development Incentive Policy Guidelines provide that generally, retail development should fill a gap in existing retail capacity, and that the Buxton Report commissioned by the City is a reference for such new retail businesses. The Buxton Report states that a Lowe's home improvement store will provide retail development that will fill a gap in the existing retail capacity within the city and is expected to provide services, goods, and products that are not currently fully

represented in the city. The development and the operation of a Lowe's home improvement store in the Gateway Center is the primary reason for the City's consideration of this Agreement. Without the development and the operation of a Lowe's home improvement store in the Gateway Center, the City would not otherwise agree to provide economic incentives to the Developer.

J. The development, improvement, use, and operation of the Gateway Center, and the fulfillment of this Agreement, are in the vital and the best interest of the City and the welfare of its residents, and in accordance with the public purposes and provisions of applicable laws.

NOW, THEREFORE, it is mutually agreed by and between the City and the Developer as follows:

TERMS

1. **Incorporation of Recitals.** The Recitals set forth above are found and acknowledged by the City and by the Developer to be true and correct and each of them is herein incorporated by reference as a term and condition of this Agreement.

2. **Term.** This Agreement shall commence automatically on the date first written above upon which the City Council has adopted a resolution authorizing the Mayor to enter into this Agreement on behalf of the City and shall continue for a period of no more than ten (10) years from the date of the Commencement of Operations as defined in Section 7 of this Agreement, or until such time as the Total Incentive Payment, as defined in Section 3 of this Agreement, has been made, whichever occurs first ("Termination Date"). This Agreement shall automatically terminate, without the requirement for any action on the part of either Party, prior to the Termination Date in the event the conditions imposed upon the use and the operation of the Gateway Center set forth in Section 5 of this Agreement are not met.

3. **City Payments.** In exchange for the Developer's covenants and commitments set forth in this Agreement, over the Term of this Agreement and in accordance with this section and the requirements and the conditions of this Agreement, the City shall make incentive payments to Developer in the maximum cumulative amount of \$1,712,800 ("Total Incentive Payment").

a. **Time of Payment.** The Total Incentive Payment shall be made by the City in arrears through a series of Quarterly Incentive Payments which shall begin with the first Calendar Quarter following the Commencement of Operations, as defined and as required in Section 7 of this Agreement, until such time as the Total Incentive Payment set forth in this Section 3 has been paid. However, in no event shall any Quarterly Incentive Payments be made after the tenth anniversary of the Commencement of Operations defined in Section 7 of this Agreement, whether or not the full amount of the Total Incentive Payment has been reached.

Each Quarterly Incentive Payment shall be based on the total sales tax revenue cash receipts reported on a quarterly report prepared for and on behalf of the City by The HdL Companies (HdL). The

City shall make each Quarterly Incentive Payment within thirty (30) days after receiving the report from HdL. The quarterly reports are typically received by the City within three months after the end of the quarter. Therefore, as an example, the 2nd quarter sales for April through June will be reported by HdL in September which will result in a Quarterly Incentive Payment being paid in October.

b. **Amount of Quarterly Incentive Payment.** Each Quarterly Incentive Payment shall be made in an amount equal to fifty percent (50%) of the calendar quarter's gross sales tax revenue cash receipts reported on the quarterly report prepared for and on behalf of the City by HdL. The sales tax revenue cash receipts for purposes of this Quarterly Incentive Payment shall be the gross sales tax paid by or caused to be paid by the Gateway Center, or any portion thereof, and ultimately collected by the State Board of Equalization for the City based upon returns filed pursuant to Chapter 32, Article III, of the Salinas City Code, or any successor section or chapter of the Salinas City Code. The first Quarterly Incentive Payments shall be based upon sales tax associated with the first Calendar Quarter during which operations at the Gateway Center commenced, as defined and as required in Section 7 of this Agreement. The Measure V Transactions and Use Tax shall not be included in the calculation of the Quarterly Incentive Payments.

c. **Definitions.**

i. **"Calendar Quarter"**. For the purposes of this section, including the calculation of each Quarterly Incentive Payment and for calculating the timing of each Quarterly Incentive Payment, the term "Calendar Quarter" shall mean the three month period of each calendar year ending on March 31, June 30, September 30, and December 31.

ii. **Change in Tax Law.** If the Bradley-Burns Uniform Local Sales and Use Tax Law is modified or repealed with the result that sales tax revenues to the City are calculated in a different manner or are replaced by an alternate revenue stream (i) arising from the retail sale, storage, use or other consumption of tangible personal property from or on the Gateway Center, or any portion thereof, or (ii) designated as being a replacement for Net New Sales Tax previously generated by the retail sale, storage, use or other consumption of tangible personal property on or from the Gateway Center, or any part thereof, then the Parties shall meet and confer in good faith to arrive at a modification of this Agreement that will realize the Total Incentive Payment to Developer within the term of this Agreement, utilizing if necessary other City revenue sources attributable to the Project, including, but not limited to, property tax, business license fees and utility and franchise fees. Any such modification shall require the consideration and the approval of the Salinas City Council.

4. **Developer Payments.** Developer shall have the right to pay all City-imposed development impact fees listed in Exhibit C-2 to the Development Agreement to which this Agreement is an exhibit (i.e., excluding the MRWPCA sanitary sewer fee, the Regional Development Impact Fee (TAMC), and the school impact fees) in five (5) equal annual installments, without interest. The first installment for each building shall be due and payable on the date the Certificate of Occupancy is issued

for that building. Subsequent installments shall be due and payable on the first and each subsequent anniversary of the issuance of the Certificate of Occupancy for that building.

5. **Use and Operation of the Site.** It is specifically understood and acknowledged by the City and by the Developer that the development and the operation of a Lowe's home improvement store in the Gateway Center was and is a material and substantial inducement to the City in the absence of which the City would not have entered into this Agreement. Consequently, notwithstanding what is otherwise set forth in this Agreement, the development and the operation of a Lowe's home improvement store in the Gateway Center is expressly made a condition of this Agreement and a condition precedent to the City's obligation to share sales tax revenue with the Developer and to defer City-imposed development impact fees. In the event this Agreement is automatically terminated as set forth in Section 2 of this Agreement, the City-imposed development impact fees otherwise deferred pursuant to this Agreement shall become due and payable by the Developer in accordance with the City's ordinances and policies.

As additional consideration to the City to enter into this Agreement, and as a material and substantial inducement to the City in the absence of which the City would not have entered into this Agreement, the Developer covenants and agrees for itself, its successors, tenants, lessees, assigns, and every successor in interest to the Gateway Center to use commercially best efforts to commence operation of the Gateway Center in accordance with the Specific Plan and with the Development Agreement to which this Agreement is an exhibit. The Developer further covenants and agrees to use its commercially best efforts to continuously use and operate the Gateway Center as a retail use in accordance with the Specific Plan and with the Development Agreement to which this Agreement is an exhibit for the term of this Agreement.

6. **Compliance With Governmental Regulations.** The Developer shall carry out the design, construction, and operation of the Gateway Center in conformity with all Project Approvals. For purposes of this section, the term "Project Approvals" shall have the meaning ascribed to it in Recital D of the Development Agreement to which this Agreement is an exhibit.

7. **Commencement of Operations.** For purposes of this Agreement and for the commencement of Quarterly Incentive Payments, the Gateway Center shall be deemed to have commenced operations on the date a Certificate of Occupancy is issued for the Lowe's home improvement store to be constructed within the Gateway Center or twenty-four months from the date the City Council approves a Development Agreement with Rexford Title, Inc., whichever occurs first ("Commencement of Operations").

8. **Payment of Sales Tax and Transaction and Uses Tax.** The specific and the timely performance of all obligations of the Developer to pay sales taxes under the Salinas City Code is a material part of this Agreement, and this Agreement shall not alter any provision of the Salinas City Code or the California Revenue and Taxation Code pertaining to sales tax, and all such taxes shall be due and payable at all times according to the law. Nothing in this Agreement shall relieve the Developer of its obligation to file

all returns and other reports in a timely manner, and to remit the full amount of sales taxes due and payable to the City pursuant to state law or the Salinas City Code. The failure of the Developer or tenants to make all sales tax payments lawfully due and payable under state law or the Salinas City Code shall render this Agreement immediately null and void, provide that the City shall have first given the Developer written notice of such failure and sixty (60) days opportunity to cure. Thereafter, in the event such failure has not been cured in full, the City shall be under no obligation to make any further Quarterly Incentive Payments.

9. Developer's Indemnity. The Developer shall indemnify, defend, and hold harmless the City and its officers, employees, agents, and representatives from any action brought by a third party (i) challenging the validity of this Agreement or (ii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Nothing in this section shall be construed to mean that the Developer shall hold the City harmless or defend it to the extent that such claims, costs or liability arise from, or are alleged to have arisen from, the sole negligence or willful misconduct of the City.

10. Taxes and Assessments. At all times, the Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Gateway Center, subject to the Developer's right to contest in good faith any such taxes. The Developer shall remove or have removed any levy or attachment made on the site of the Gateway Center accruing after the commencement of the term of this Agreement. The Developer shall not apply for or receive any exemption from the payment of property taxes or assessments on any interest in or to the Gateway Center.

11. Relationship Between the City and the Developer. It is hereby acknowledges that the relationship between the City and the Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other.

12. City Approvals and Actions. Any and all modifications or amendments to this Agreement shall require the consideration and action of the Salinas City Council and the approval of the Developer.

13. Assignment. It is recognized by the Parties hereto that a substantial inducement to the City for entering into this Agreement was, and is, the professional reputation and competence of the Developer. This Agreement is personal to the Developer and shall not be assigned by it without express written approval of the Salinas City Council, which approval shall not be unreasonably withheld, conditioned or delayed.

14. Successors and Assigns. All of the covenants, terms, and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns as more specifically defined in the Development Agreement to which this Agreement is an exhibit.

15. Compliance with Laws, Rules, and Regulations. All of the obligations and requirements imposed upon the Developer 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.

16. 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.

17. Integration and Agreement. This Agreement represents the entire understanding of the City and the 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. This Agreement may not be modified or altered except upon the approval of the Salinas City Council which shall be memorialized by amendment in writing signed by both parties.

18. Jurisdiction. This Agreement shall be administered and interpreted under the laws of the State of California. 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.

19. 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.

20. 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:

Community and Economic Development Director
City of Salinas
65 West Alisal Street
Salinas, California 93901

City Attorney
City of Salinas

200 Lincoln Avenue
Salinas, California 93901

b. Written notices to the Developer shall, until further notice by the Developer, be addressed to:

Rexford Title, Inc.
Attn: Mark Kelton
2716 Ocean Park Blvd. #3006
Santa Monica, California 90405-5207

With a Copy to:

Brian Finegan
Attorney at Law
P.O. Box 2058
Salinas, California 93902

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

21. 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.

22. Attorney's 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.

23. 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.

24. Further Acts. Each of the Parties agrees to take whatever further action, including the execution of other and further documents, as may be required to effectuate the intent of the Parties and to carry out the terms of this Agreement.

25. 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.

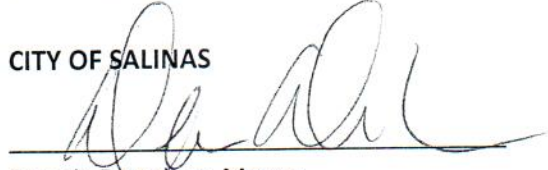
26. Legal Representation. Each Party affirms that it has been represented by legal counsel of its own choosing regarding the preparation and the negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents 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.

27. 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.

28. 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.

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

CITY OF SALINAS


Dennis Donohue, Mayor

10/25/11
Date

APPROVED AS TO FORM:


Vanessa W. Vallarta, City Attorney

25 October 2011
Date

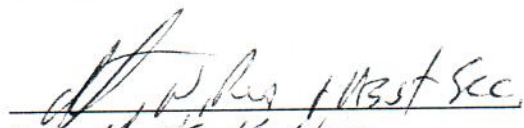
By

Christopher A. Callihan, Assistant City Attorney

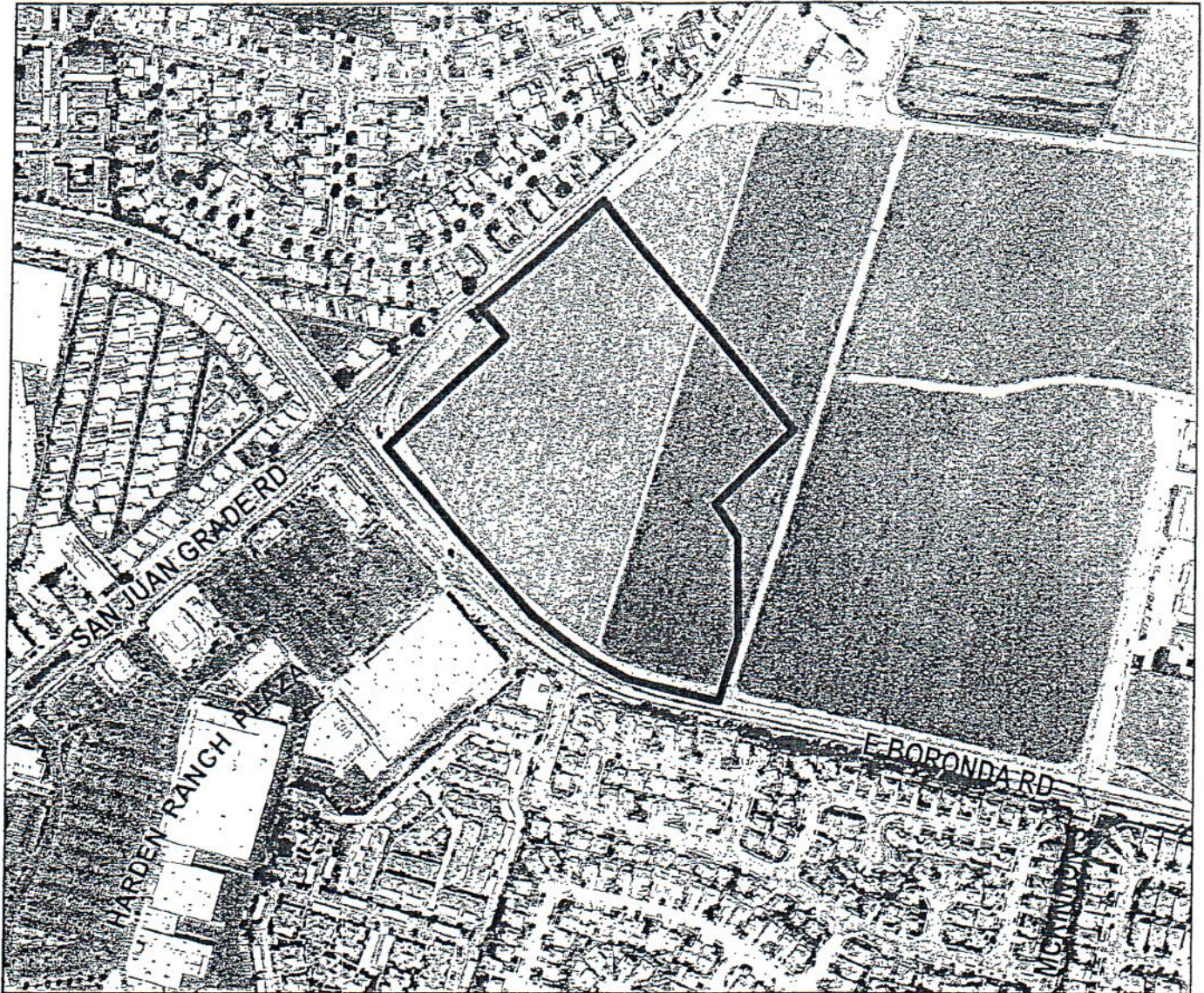
REXFORD TITLE, INC., A California Corporation


By: MARK LEEKIEY
Its: VICE PRESIDENT

10/18/2011
Date


By: MARK KELTON
Its: VICE PRESIDENT & 1st Secretary

10/20/11
Date



K:\GIS\Projects\Community Development\Gateway Center Specific Plan\Gateway_Visual.docx

Gateway Center Specific Plan

(Portions of APN 211-231-060 and 211-231-061)

EXHIBIT C-1

IMPACT FEES, DEDICATIONS AND EXACTIONS

1. **Development Impact Fees.** City and Developer agree that the maximum development impact fees payable with respect to the specific land uses developed in the Project shall be the amounts derived from those development impact fees set forth in Exhibit C-2. Using July 1, 2011, as the starting index date, on July 1 of each calendar year, the Development Impact Fees set forth in Exhibit C-2 shall be automatically adjusted based on the indexes and methodologies contained in the current version of the Salinas Municipal Code, in an existing resolution approved by the Salinas City Council or otherwise established in current City policy and practice and applicable city-wide. Fees paid after the date of such adjustment shall be paid at the adjusted rate.

2. **Traffic Mitigation Measures.** The Project shall pay City traffic impact fees in accordance with the City's Traffic Fee Ordinance. Traffic impact fees for the five (5) pad building uses shall be calculated at the trip generation rate for the appropriate land use category (which may include Regional Shopping Center [ITE 820] or Specialty Retail Center [ITE 814]) in accordance with the City's Traffic Fee Ordinance. For the purpose of making trip generation determinations pursuant to Resolution No. 18729, the City Engineer, in exercising his independent judgment and analysis, shall favorably consider, but not necessarily accept as the final determination on the matter, trip generation analyses by qualified traffic engineers submitted to the Applicant. The City Engineer shall be responsible for the final determination. The Project shall also pay Regional Development Impact Fees (RDIF) established by the Transportation Agency of Monterey County (TAMC). The City agrees not to require any traffic improvements or impose on the Project any traffic mitigation measures other than those specifically set forth in the Specific Plan, this Agreement (including Exhibit C-4), and in the Mitigation Monitoring and Reporting Program contained in the MND, including the City's traffic impact fee and the TAMC regional traffic impact fee.

3. **Environmental Mitigation and Implementation Measures.** The Parties understand that the MND was intended to be used in connection with the Project Approvals and the Subsequent Project Approvals needed for the Project. Consistent with the CEQA streamlining policies applicable to specific plans, including but not limited to California Code of Regulations, Title 14, Section 15182, the City agrees to use the MND in connection with the processing of any Subsequent Project Approval to the maximum extent allowed by law.

4. **Future Growth Area Public Facilities Fee.** The fee provided in Section 2.14.4 of this Agreement.

5. **Ag Mitigation Fee.** Payment to the City of the ag mitigation fee in the amount of \$750.00 per acre for the 20.23 acres of land within the project, as required by the 2006 Greater Salinas Area MOU and the City's adopted Agricultural Land Preservation Program.

EXHIBIT C-2
DEVELOPMENT IMPACT FEES

Sanitary Sewer Fee
City of Salinas
MRWPCA

Traffic Impact Fee (City)

Regional Development Impact Fee (TAMC)

School Impact Fee
Santa Rita Union Elementary School District
Salinas Union High School District

Fire Apparatus Mitigation Fee ¹

Agricultural Impact Mitigation Fee ²

Annexation Fee ³

¹ Applies only to the 55,000 sf outbuilding portions of the Project (Lowe's excluded).

² See Exhibit C-1, item 5.

³ See Salinas Municipal Code, Section 19-52.

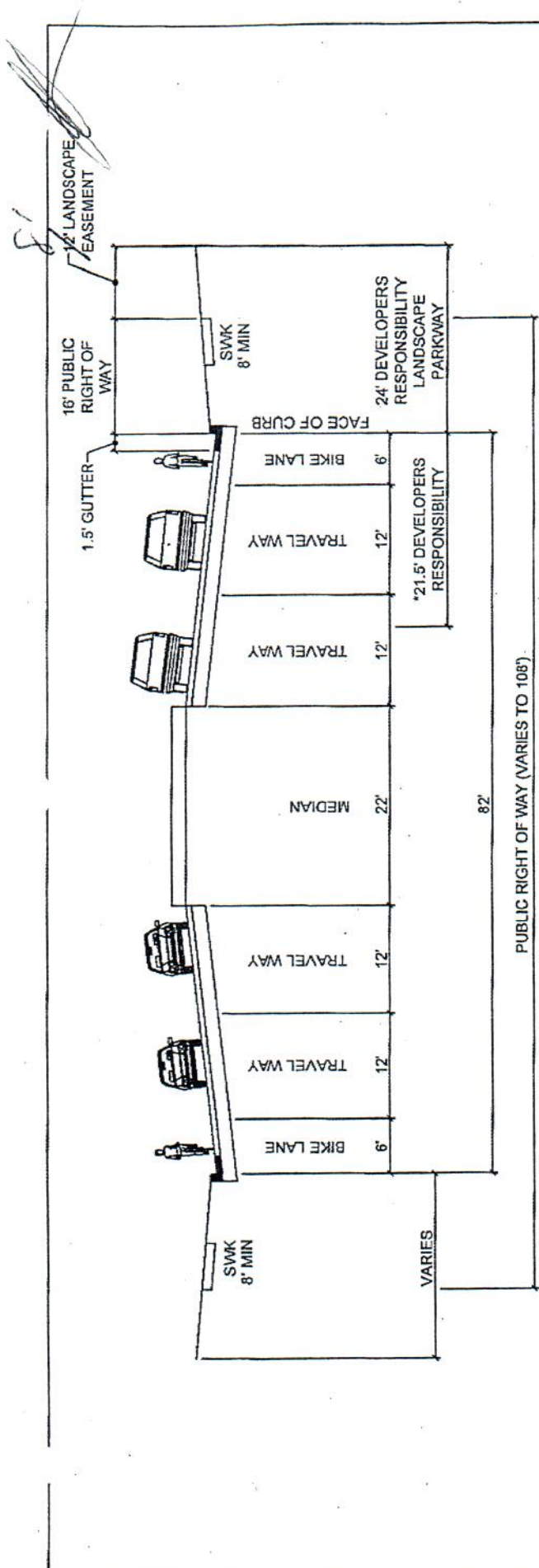
EXHIBIT C-3

PROCESSING FEES

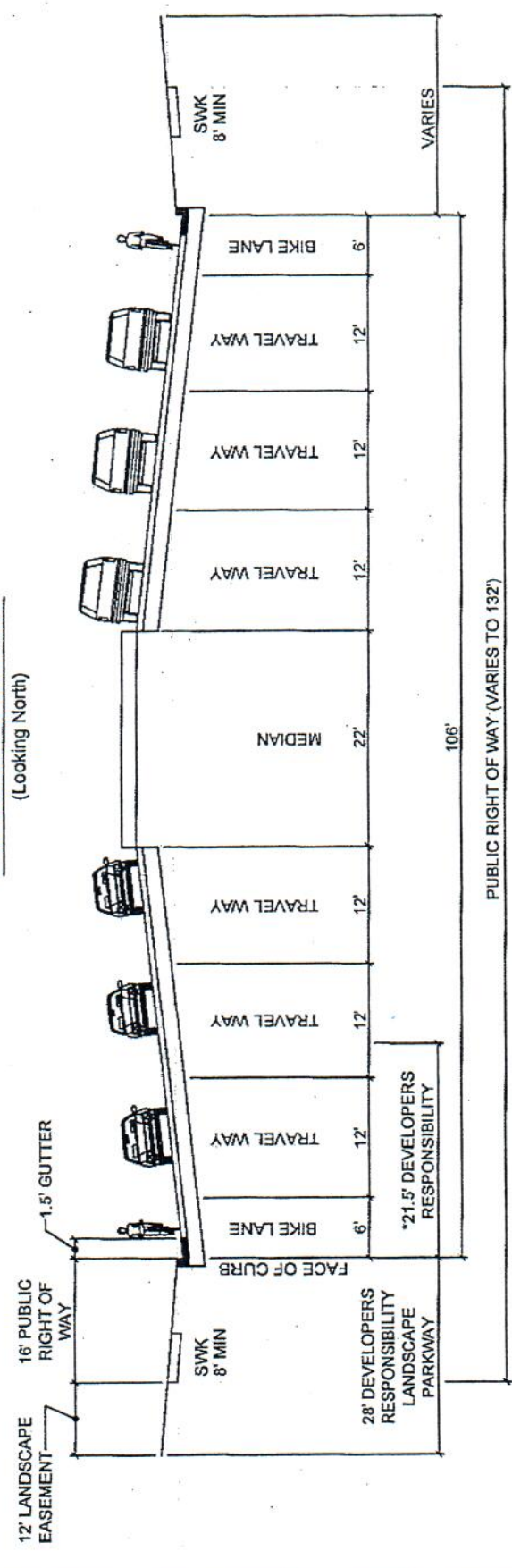
Development review application fees, including all fees related to Community and Economic Development reviews and approvals (for example, Site Plan Reviews and Subdivision Maps); building plan check fees; permit and inspection fees; and other similar City fees.¹

1. Fees for Development review applications, building plan checks, and permits and inspections will be charged in accordance with the City's fees in effect at the time the application for development review is submitted, at the time the applications for building permits are submitted, at the time building permits are issued, and at the time inspections are conducted.

EXHIBIT C-4
TRAFFIC IMPROVEMENTS/STREET SECTIONS
(Street Sections)



San Juan Grade Road
(Looking North)



East Boronda Road
(Looking East)

EXHIBIT C4 - GATEWAY CENTER PROJECT
General Cross Section of Street Facilities
(Per Resolution 18729 and 12963)

* REF: RESOLUTION NO. 18729 (N.C.S.)
A RESOLUTION ESTABLISHING TRAFFIC MITIGATION FEES
(BASED ON A TWO-TIER PROGRAM) AND ESTABLISHING
POLICIES AND PROCEDURES FOR COLLECTION OF TRAFFIC
MITIGATION FEES

REF: RESOLUTION NO. 12963 (N.C.S.)
A RESOLUTION ESTABLISHING POLICY REGARDING THE
PROVISION OF PUBLIC FACILITIES FOR NEW DEVELOPMENT

EXHIBIT D

APPLICABLE CITY REGULATIONS

The following rules, regulations and official policies in effect as of the Effective Date shall apply to the Project and Property except as superseded by the Specific Plan and the Project Approvals:

- A. City of Salinas General Plan, adopted September 17, 2002, in effect as of the Effective Date.
- B. The Salinas Municipal Code, in effect as of the Effective Date.
- C. City of Salinas Subdivision Ordinance, Chapter 31 of the City of Salinas Municipal Code in effect as of the Effective Date.
- D. All other federal, state and local ordinances, resolutions, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the Property subject to a development agreement in effect as of the Effective Date.
- E. Impact Fees, Dedications, and Exactions (see Exhibit C)

END OF DOCUMENT