

**PREDEVELOPMENT AGREEMENT
FOR THE CITY OF SALINAS PUBLIC SAFETY CENTER PROJECT**

THIS PREDEVELOPMENT AGREEMENT ("Agreement") is by and between the City of Salinas ("City") and Griffin/Swinerton, a joint venture, ("Developer") (hereafter collectively the "parties"). This Agreement will be effective on the latest date on which either of the parties executes.

WITNESS:

WHEREAS, the City completed an assessment of its needs for a police facility titled "City of Salinas California, Police Center Space Needs Assessment/Master Plan" on September 15th 2014 that provides various options and a strategic plan to move forward if sufficient funding can be secured to build a new Public Safety Center; and

WHEREAS, in November 2014, the citizens of Salinas approved the levy of a one cent sales tax to focus resources to improve public safety in the City, and in 2015, initiated the steps necessary to acquire the property to develop a new public safety center to meet the specifications proposed in the Space Needs Assessment/Master Plan; and

WHEREAS, on December 6, 2016, the City Council adopted Resolution 21095 approving the process by which the Public Safety Center would be funded and developed, and approved the issuance of an RFP to select a development team; and

WHEREAS, consistent with the approved development process, the City published a Request for Proposals ("RFP") with respect to selection of a developer that may develop a new Public Safety Center project ("Project") that meets the needs described by the Needs Assessment/Master Plan. The Project will be constructed on property owned by or under the control of the City (as described in **Exhibit D**, the "Property"); and

WHEREAS, based upon its response to the RFP, relative to those other responses received by the City, and based upon the experience, capability, resources and reputation of the Developer's Proposal, Griffin/Swinerton has been recommended to the City Council to be the Developer of the new Public Safety Center; and

WHEREAS, Developer and the City desire to proceed with certain predevelopment services required for the Project in order to expedite the Project development schedule; and

WHEREAS, the cost of the predevelopment services is a necessary expense if development of the Project is to occur in a timely manner; and

WHEREAS, in order to ensure that this Project proceeds in a timely fashion, the City will reimburse Developer for its performance of the predevelopment services as described in and consistent with the Developer's response to the RFP and as further described in this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Purpose & Scope of Services to be Performed by the Developer.

- A. The purpose for this Agreement is to facilitate the design and development of the Project. Accordingly, the Developer shall provide sufficient organization, personnel, and management during the term of this Agreement to design and develop the Project as described in the Developer's Proposal in an expeditious and economical manner and consistent with the interests of the City and the City shall pay for such services in accordance with the terms of this Agreement.
- B. The Developer and its development team as defined in the Developer's Proposal ("Development Team") shall perform the predevelopment services ("Services") described herein and provide the predevelopment deliverables outlined in **Exhibit A** ("Deliverables"). No material, labor, or facilities will be furnished by the City, unless otherwise provided for in this Agreement. In performing these Services, the Developer shall at all times comply with all federal state and local statutes, rules and ordinances applicable to the performance of such Services. The Services and all duties incidental or necessary therefore, shall be performed within the timeframes agreed upon in the Schedule provided in **Exhibit C**, and shall be performed diligently and completely and in accordance with professional standards of conduct and performance.
- C. The City's review or acceptance of plans, drawings, designs, specifications, reports, and other professional service products produced in connection with the Services rendered hereunder shall not in any way relieve Developer of responsibility for the technical adequacy or accuracy thereof, provided that the requirements identified by the City are correct. Neither the City's review or acceptance of, nor payment for, any of the Services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

2. Compensation.

- A. The Developer shall be paid in accordance with **Exhibit B** for the Services and the Deliverables rendered by Developer and the Development Team. The Developer shall ensure that the appropriate members of the Development Team are paid from payments received by Developer from the City. Developer and its consultants shall defer compensation for the Services it renders under this Agreement as set forth in **Exhibit B** until the City and Developer reach agreement on a "Guaranteed Maximum Price" for the Project. Developer and its consultants accept the risk that it may not receive portions of their compensation for the Services it renders under this Agreement as set forth in **Exhibit B** unless and until the Project proceeds to a formal closing, which will incorporate the executed documents required to memorialize a build-to-suit, lease-to-own development transaction for a new City of Salinas Public Safety Center. All payments made hereunder by the City shall be paid by Developer to Developer's Team. Developer agrees that it shall take no fees or other consideration for its efforts under this Agreement.
- B. Predevelopment Services will be rendered for a fixed fee of One Million Six Hundred and Fourteen and Six Hundred and Seventy Nine Dollars (\$1,614,679), according to the schedule set forth in

Exhibit B, including all fees and reimbursable expenses. Subject to the provisions set forth in this Agreement, the City shall pay Developer on a monthly basis for authorized and satisfactorily completed Services and Deliverables as set forth in **Exhibit B**. Such payment shall be full compensation for Services and Deliverables rendered, including costs and expenses, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case shall such payment exceed the earned value (i.e., percentage of work completed) as reasonably determined by the City. In the event the cost of the Services and Deliverables exceeds the above fixed fee, Developer shall pay such costs from its own funds, the City shall not be required to pay any additional fees or costs for the Services and Deliverables and Developer shall have no claim against the City on account thereof.

- C. The City shall pay the Developer for Services and Deliverables rendered hereunder after receipt of a billing voucher. A billing voucher will include the monthly progress reports required under Section 6 E, and detailed descriptions of the costs incurred to the City's reasonable satisfaction. Payments will be processed when complete vouchers are submitted and approved by the City, usually within thirty (30) days from receipt of billing voucher.

3. Term.

The term of this Agreement shall commence upon the completed execution by both parties and expire two-hundred and ninety (290) days after the commencement ("Performance Period") as identified in the Schedule attached as **Exhibit C**, and not more than sixty (60) days following the issuance of a Guaranteed Maximum Price. The Performance Period and Schedule may be extended and/or modified by a written agreement signed by the parties, up to three times, each time for a thirty (30) day period but will not exceed the cumulative total of ninety (90) days.

4. Termination.

A. Termination for Default

- i) Any one or all of the following shall constitute an event of default: 1) Developer fails to perform any of the obligations of this Agreement; 2) Developer becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or 3) Developer makes an assignment for the benefit of creditors. If an event of default occurs, the City may, by written notice to the Developer pursuant to Section 6, Paragraph B, terminate the Agreement if the default is not cured within fifteen (15) days following such notice. In that event, the City's may, at its option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Developer shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Developer. The Developer shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.
- ii) If a notice of termination for default has been issued and it is later determined for any reason that the Developer was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public

Convenience paragraph hereof.

B. Termination for Public Convenience

- i) The City may terminate the Agreement in whole or in part whenever the City determines, in its sole discretion, that such termination is in the interests of the City. Termination of this Agreement by the City at any time during the term, whether for Developer's default or for convenience, shall not constitute a breach of the Agreement by the City.
- ii) The City reserves the right to terminate this Agreement at any time, with or without cause by giving seven (7) days' written notice to Developer in writing. In the event of such termination, all finished or unfinished documents, data, studies, worksheets, models and reports, or other material prepared by the Developer pursuant to this Agreement shall be submitted to the City.
- iii) In the event this Agreement is terminated by the City, the Developer shall be entitled to payment for Services and Deliverables rendered by Developer and the Development Team through the effective date of termination, less all payments previously made. This provision shall not prevent the City from seeking any legal remedies it may have for Developer's violation or nonperformance of any of the provisions of this Agreement and any amounts due the City shall be deducted from the final payment due the Developer. No payment shall be made by the City for any expenses incurred or work done following the effective date of termination unless authorized in advance in writing by the City.
- vi) The Developer reserves the right to terminate, in its sole discretion, this Agreement with not less than fifteen (15) days written notice to the City. In the event this Agreement is terminated by the Developer, the Developer shall be entitled to payment for services and deliverables rendered by the Developer and the Development Team to the effective date of termination, less all payments previously made. This provision shall not prevent the Developer from seeking any legal remedies it may have for the City's violation or non-performance of any provisions of this Agreement. No work shall be performed by the Developer nor the Development Team from the effective date of termination of this Agreement by the Developer.
- v) If, because of death, unavailability or any other occurrence, it becomes impossible for any Key Personnel engaged by Developer or Developer's Team (as described in Section 6, Paragraph A) to render Services or Deliverables, Developer shall not be relieved of its obligations to complete performance under this Agreement without the concurrence and written approval of the City. If the City agrees to termination of this Agreement under this provision, payment shall be made as set forth in this Section 4, Paragraph B.
- vi) If, after termination for failure of Developer to fulfill contractual obligations under Section 4, Paragraph A, it is determined that Developer has not so failed, the termination shall be deemed to be effected for the convenience of the City. In such event, the equitable adjustment shall be determined as set forth in this Section 4, Paragraph B.

5. Ownership of Documents.

- A. All documents, data, drawings, specifications, software applications and other products or materials produced by the Developer or its Development Team in connection with the services rendered under this Agreement shall become the property of the City whether the Project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Developer are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Developer and its consultants harmless for such use.
- B. All or portions of materials, products and documents produced under this Agreement may be used by the Developer upon confirmation from the City that they are subject to disclosure under the Public Disclosure Act.
- C. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City.
- D. The City shall make available to Developer, without cost, copies of plans, drawings, survey notes, studies, soil reports, and other relevant data relating to the Property described in **Exhibit D** which are readily available and on file at the City. These documents are available solely as additional information to Developer and do not relieve Developer of its duties and obligations under this Agreement nor constitute any representation or warranty by the City as to conditions or other matters related to the Project, nor obligate the City to perform studies or surveys. It shall be the sole responsibility of Developer to gather and become familiar with all site information including existing improvements.
- E. The Developer shall preserve the confidentiality of all City documents and data accessed for use in Developer's work product.
- F. Developer shall maintain, for at least three years after completion of all work under this Agreement, the following:
 - i) Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Agreement; and
 - ii) Records, including written quotes, bids, estimates or proposals submitted to Developer by all businesses seeking to participate on this Agreement, and any other information necessary to document the actual use of and payments to sub-consultants and suppliers in this Agreement, including employment records. The City may visit, at any time, Developer's office to review the foregoing records. Developer shall provide commercially reasonable assistance requested by the City during such visits. In all other respects, Developer shall make the foregoing records available to the City for inspection and copying on request.

6. Administration

- A. Developer acknowledges that the experience and skill of the following Key Personnel was and continues to be an important factor in the City's selection of Developer to perform the work: Roger Torriero, Managing Member. The Key Personnel shall be assigned to the Project so long as such Key Personnel are employed by Developer. The City will be contacted immediately in the event the Key Personnel are no longer assigned to the Project.
- B. The City's "Project Representative" is Don Reynolds, Assistant Public Works Director who shall perform day-to-day management of this Agreement. The Project Representative will approve all requests for payment, authorize termination or modification of the Services and Deliverables, and approve in writing changes to the task budgets set forth in **Exhibit B**, provided the changes do not increase the total Budget provided in **Exhibit B** and stated in Section 2, "Compensation." The Project Representative shall also be responsible for determining when Developer has satisfactorily rendered all Services and Deliverables and for ensuring that Developer complies with all provisions of this Agreement.
- C. Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears below (as modified in writing from time to time by such party), and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective on the date of receipt.

Project Representative: City of Salinas

200 Lincoln Avenue

Salinas, California 93901

Attn: City Manager

with a copy to:

City of Salinas

200 Lincoln Avenue

Salinas, California 93901

Attn: City Attorney

Project Representative: Roger Torriero, Managing Member
Griffin/Swinerton, a Joint Venture
2 Technology Drive Suite 150
Irvine, CA 92618
(949) 497-9000
rtoriero@griffinholdings.net

- D. The City hereby authorizes Developer to contract with the persons and firms listed in The Developer's Team, pages 3-8_ of the Developer's Proposal and in Section 6, Paragraph A for the Project. In addition, Developer may engage and utilize additional sub-consultants as may be reasonably approved by the City.
- E. Developer shall submit monthly reports detailing all work completed by sub-consultants during the preceding month and copies of all invoices relating thereto together with a billing voucher as described Section 2, Paragraph C.

7. Independent Contractor Relationship

- A. Developer is retained by the City only for the purposes and to the extent set forth in this Agreement. The Services and Deliverables shall be furnished by Developer as an independent contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant.
- B. Developer and its consultant's entire compensation for this Agreement is specified in **Exhibit B** and Developer and its consultants are not entitled to any City benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to City of Salinas employees. Developer represents that it maintains a separate place of business and serves clients other than the City. Developer understands and acknowledges that the City will not withhold Federal or State income taxes. Where required by State or Federal law, Developer authorizes the City to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by Developer will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. Developer shall make its necessary estimated tax payments throughout the year, if any, and Developer is solely liable for any tax obligation arising from Developer's performance of this Agreement. Developer shall indemnify the City against any demand to pay taxes arising from Developer's failure to pay taxes on compensation earned pursuant to this Agreement.
- C. Developer is required to obtain and maintain a City Business license at its own expense through the duration of the Project.

- D. The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. Developer must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on Developer's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax.
- E. The performance of all or part of this Agreement by Developer shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of Developer or any employee of Developer or any subcontractor or any employee of any subcontractor by the City at the present time or in the future.
- F. The Developer shall have the power to control and direct the details, manner or means of the Services and Deliverables. Specifically, but not by means of limitation, the Developer shall have no obligation to work any particular hours or particular schedule and shall retain the right to designate the means of performing the Services and Deliverables, and the Developer shall be entitled to employ other workers at such compensation and on such other conditions as it may deem proper, provided, however, that any contract so made by the Developer is to be paid by it alone, and that employing such workers, it is acting individually and not as an agent for the City.

8. Insurance, Hold harmless and Indemnification

A. Insurance Policies Required

Developer shall procure and maintain for the duration of this Agreement insurance meeting the Insurance Requirements specified at **Exhibit E** hereto against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services and Deliverables by the Developer, its agents, representatives, or employees.

B. Hold Harmless and Indemnification.

Developer shall indemnify, including the cost to defend, City and its officers, officials, employees, and volunteers from and against any and all claims, demands, costs, or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Developer and its employees or agents in the performance of the Services and Deliverables, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the City; and does not apply to any passive negligence of the City unless caused at least in part by the Developer.

9. Delays

Developer is not responsible for delays caused by factors beyond the Developer's reasonable control. When such delays are beyond the Developer's reasonable control occur, the Developer shall not be responsible for damages, nor shall the Developer be deemed to be in default of the Agreement.

10. Successors and Assigns

Neither the City nor the Developer shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

11. Confidentiality

Developer, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the City or acquired by Developer in performance of this Agreement, except upon the prior written consent of the City Attorney or an order entered by a court after having acquired jurisdiction over the City. Contractor shall immediately give to the City notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the City, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

12. Nondiscrimination

In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or services made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or in the presence of any sensory, mental or physical handicap.

13. No Contingency Fees and Conflict of Interest Provisions

- A. Developer warrants and covenants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty the City shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract fee or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- B. Developer warrants and covenants that no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by Developer or any of its agents, employees or representatives to any official member or employee of the City in an attempt to secure a contract or favorable treatment in awarding, amending or making any determination related to the performance of this Agreement.
- C. Developer warrants and covenants it has no direct or indirect pecuniary or proprietary interest,

and that it shall not acquire any such interest, which conflicts in any manner or degree with the performance of the services required to be performed under this Agreement and that it shall not employ any person or agent having any such interest. In event that Developer or its agents, employees or representatives hereafter acquires such a conflict of interest, Developer shall immediately disclose such interest to the City and take action immediately to eliminate the conflict or to withdraw from the Agreement as the City may require.

- D. If the City has reason to believe that the covenants set forth in Section 13, Paragraphs A, B or C above, have been breached, it shall so notify Developer in writing. Developer shall respond to said notice within ten days of receipt with a detailed written explanation or answer to any facts, allegations or questions contained or referenced in said notice. Developer may request a hearing on the matter by the City Manager which shall be conducted within fifteen (15) days of the receipt of the request unless a later date is concurred to by the City and Developer. The decision of the City Manager shall be a prerequisite to appeal thereof to the Monterey County Superior Court. If, after consideration of Developer's response and any hearing, the City Manager determines that the covenants have been breached, the City Manager shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Agreement in the event of said breach and/or prohibited conflicts of interest.

14. Governing Law and Venue

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of California in and for the County of Monterey or in the appropriate federal court with jurisdiction over the matter.

15. Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Developer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

16. Liens/Encumbrances

Neither Developer nor any of its subcontractors, agents, employees or consultants shall allow liens, claims, causes of action, judgments or encumbrances to attach to the Property as a result of any of its services or performance under this agreement. In the event Developer violates any provision of this paragraph, the City may withhold and retain payment to Developer up to the amount of all expenses incurred in settling any lien, claim, cause of action, judgment or other encumbrance including the City's reasonable attorney's fees and costs, or in the event the City has made all payments owed Developer, Developer shall reimburse the City for the same.

17. Dispute Resolution

Except as provided herein, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced until the dispute, claim or controversy has been submitted to a mutually agreed upon mediator. The parties agree that they will participate in the mediation in good faith, and that they will share equally in its costs. Each party shall be responsible for the costs of their own legal representation. Either party may seek equitable relief prior to the mediation process, but only to preserve the status quo pending the completion of that process. Jurisdiction and venue for any action arising out of or relating to this Agreement shall be in Monterey County Superior Court.

18. Right to Review

This Agreement is subject to review by any Federal or State auditor. The City or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Contracting Officer. Such review may occur with or without notice, and may include, but is not limited to, on site inspection by City agents or employees, inspection of all records or other materials which the City deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Developer shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 3 years after contract termination, and shall make them available for such review, within Monterey County, State of California, upon request.

19. Entire Agreement

This Agreement contains the entire agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties hereto. Either party may request changes in the Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendment to this Agreement.

This Agreement is executed by:

CITY OF SALINAS

By: _____

Name: Ray Corpuz

Title: **City Manager**

Date: April 18, 2017

Approved as to form:

By: _____

Name: Chris Callihan

Title: **City Attorney**

Attachments:

Exhibit A -- Predevelopment Services / Predevelopment Deliverables

Exhibit B -- Task Budget Summary for Predevelopment Services

Exhibit C -- Schedule

Exhibit D --Property Description

Exhibit E—Insurance Policy Types and Limits Required by this Agreement

ND: 22014.002 4830-3630-8797v2

**GRIFFIN/SWINTERTON,
a Joint Venture**

By: _____

Name: Roger Torriero

Title: **Managing Member**

Date: _____

By: _____

Name: David Callis

Title: **Managing Member**

Date: _____

Exhibit A

Predevelopment Services/Predevelopment Deliverables

Scope of Developer's work includes requirements identified in the Predevelopment Agreement combined with and/or in addition to the following:

Project Design

- Coordination with consultants to design buildings that meet the agreed upon space requirements.
- Review of design parameters with City representatives.
- Coordination of survey and an appropriate amount of civil engineering input for the Project.
- Preparation of design documents through 100% Design Development Phase for execution of a Development Agreement establishing a Guaranteed Maximum Price (GMP) for completion of the Project.
- Collaboration with the City to agree upon a GMP for a specific scope of work and schedule.
- Work product prepared under the authority of this Agreement will be incorporated into a final Project Development Agreement between the parties.
- Establishment of a master schedule for the entire Project through construction completion will all distinct milestones.

Permits and Approvals

- Coordinate, obtain and secure required entitlements and permits with City and other required agencies.
- Coordinate design review.

Administration

- Prepare and issue development budgets and schedules on a periodic and necessary basis for the Project and maintain updates of each.
- Establish an accounting system to monitor all Project costs and provide cash flow projections for the term of the Project.
- Prepare a monthly report documenting design decisions, permit status, consultant contracts and Predevelopment costs.

- Review and approve payment of all consultant invoices.
- Prepare a monthly summary of Project costs and submit to City with a request for payment.
- Oversee disbursement of funds.

Meetings

- Developer will participate in community meetings and/or work groups as needed to discuss the design concepts with all stakeholders.
- Developer will meet a minimum of every two weeks, (weekly to begin with and then adjust as progress necessitates) with the design team and as necessary with the City to review Project status and make key decisions. Separate task specific meetings will be held on an as needed basis.

Budget Management

- Developer will prepare an estimated Project Budget and update when and as necessary during the term of this Agreement. In addition, Developer will produce a periodic report on the budget status for the team to review.
- Between budgets, Developer will maintain a budget options program and log that will track any design considerations between key design milestones (i.e. between program and schematic, schematic and conceptual, conceptual and design development). This log will be used to evaluate the cost benefits of each design option for consideration by the team as the design progresses. The purpose is to prevent budget surprises along the way as design evolves.
- A final GMP budget will be prepared at the 100% Design Development Phase.

Subcontracting and Quality Control

- Developer will establish a list of bid and/or negotiated packages and the timeline for buyout of each component of work and identify any long lead items. Key decisions needed in design will be coordinated with long lead equipment, materials and systems. (e.g. exterior materials, HVAC equipment, re-routing of exterior utility systems for new construction, elevators, etc.)
- Developer will bring on design assist, design-build and other trade subcontractors in a timely and appropriate manner to assist with budgeting and constructability issues.

Exhibit B

Task Budget Summary for Predevelopment Services – Through 100 % Design Development

Item	Consultant	Total Pre-Development Phase Cost	Deferred Pre-Development Costs	Total Cost of Pre-Development (non-deferred)
1	Developer (overhead + fee)	\$531,000	\$531,000	\$0
2	Contractor – Pre-Development	\$180,000	\$30,000	\$150,000
3	Architect (LPA)	\$1,226,000	\$203,900	\$1,022,100
4	Structural and Civil Engineer (LPA)	Incl with Architect	Incl with Architect	Incl with Architect
5	Mechanical Engineer (LPA)	Incl with Architect	Incl with Architect	Incl with Architect
6	Sustainability and/or LEED Consultant (LPA)	Incl with Architect	Incl with Architect	Incl with Architect
7	Storm Water Engineer (LPA)	Incl with Architect	Incl with Architect	Incl with Architect
8	Electrical Engineer (LPA)	Incl with Architect	Incl with Architect	Incl with Architect
9	Technology Consultant (LPA)	Incl with Architect	Incl with Architect	Incl with Architect
10	Lighting Design (LPA)	Incl with Architect	Incl with Architect	Incl with Architect
11	Parking Consultant (LPA)	Incl with Architect	Incl with Architect	Incl with Architect
14	Elevator Consultant (LPA)	Incl with Architect	Incl with Architect	Incl with Architect
12	Landscape Architect (LPA)	Incl with Architect	Incl with Architect	Incl with Architect
13	Survey (ALTA) (LPA)	\$40,000	—	\$40,000
15	Structural / MEP Peer Review (allowance)	\$25,000	—	\$25,000
16	Communication/Public Involvement & Facilitation (MIG)	\$21,700	—	\$21,700
17	Geotechnical Survey (allowance)	\$40,000	—	\$40,000
17A	Additional Site Investigations:			
17B	A. Site Potholing (allowance)	\$25,000	—	\$25,000
17C	B. Archeo / Paleo Investigation (allowance)	\$20,000	—	\$20,000
17D	C. Phase I Environmental (assume completed)	NIC	—	NIC
17E	D. Phase II Environmental	NIC	NIC	NIC
17F	E. ACM / Lead	NIC	NIC	NIC
18	F. Environmental Mitigation	NIC	NIC	NIC
19	Permits (site plan review & entitlements, etc.) (allowance)	\$25,000	—	\$25,000
20	CEQA (allowance)	\$50,000	—	\$50,000
21	Traffic Study (in CEQA allowance)	Incl above	—	Incl above
22	Reimbursable (allowance)	\$82,566	—	\$82,566
23	Contingency (5%)	\$113,313	—	\$113,313
	Total Budget	\$2,379,579	\$764,900	\$1,614,679

Exhibit C

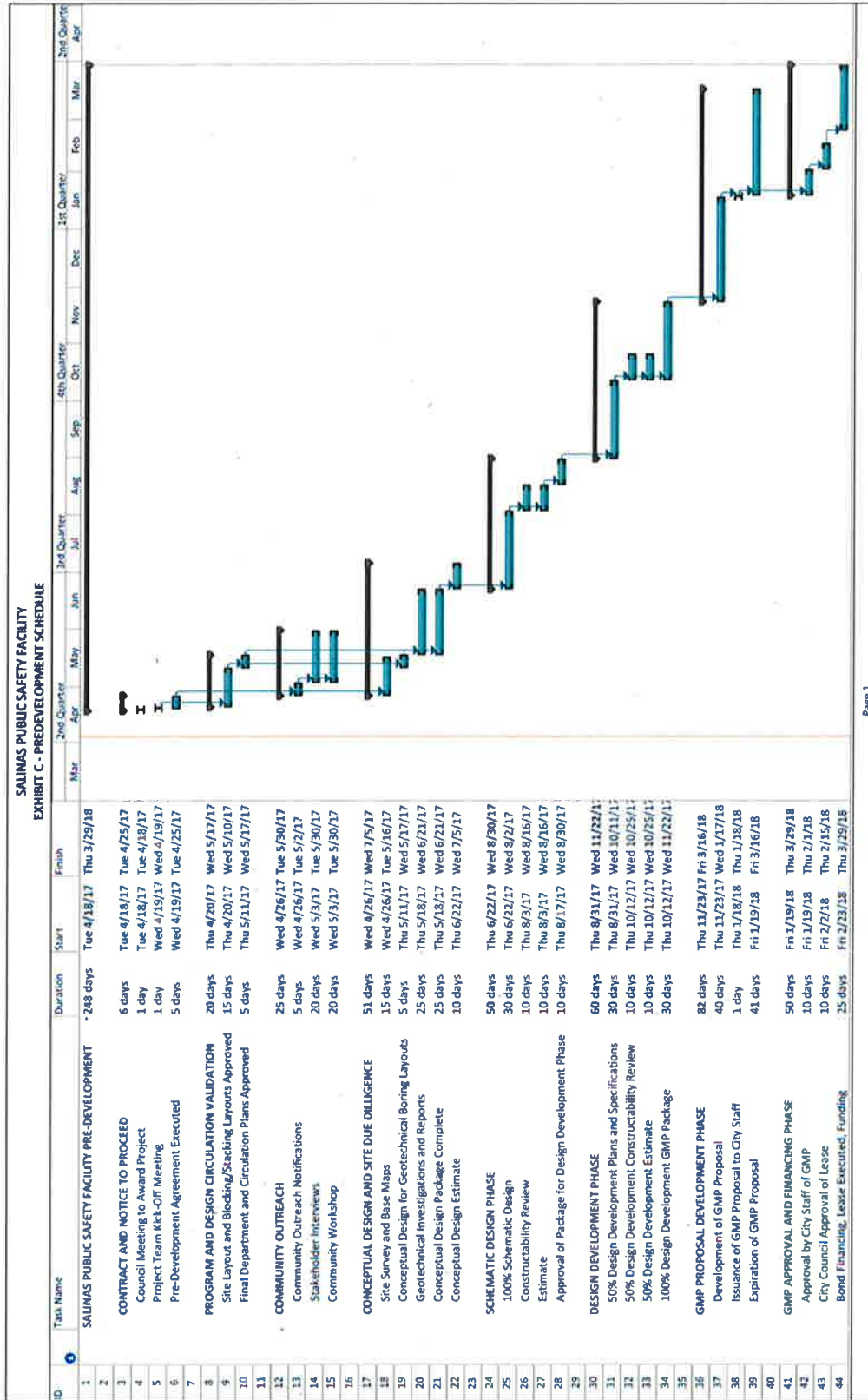


Exhibit D

Property Description

The property consists of approximately eight and one half (8.5) acres on six distinct parcels and potential abandonment of Murphy Street located at 268 to 312 East Alisal Street and 7 Murphy Street. Parcels will be cleared and lots consolidated once secure.

Google Map:



Parcel Map highlighting 312 East Alisal



Exhibit E
Insurance Requirements

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (“CGL”): Insurance Services Office Form 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 **\$2,000,000** 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 at least twice the required occurrence limit.
2. **Automobile Liability**: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Developer has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Developer’s profession, with limit no less than **\$5,000,000** per occurrence or claim.

If the Developer maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Developer. 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, 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 Developer 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 Developer’s insurance (at least as broad as ISO Form CG 20 10 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 contract, the **Developer’s insurance coverage shall be primary** insurance primary coverage at least as broad as ISO 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 Developer's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City.**

Waiver of Subrogation

Developer hereby grants to City a waiver of any right to subrogation which any insurer of said Developer may acquire against the City by virtue of the payment of any loss under such insurance. Developer 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.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Developer to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. 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 the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract 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 contract effective date, the Developer must purchase "extended reporting" coverage for a minimum of ***five (5) years*** after completion of contract work.

Verification of Coverage

Developer shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. 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 Developer'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

Developer shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and shall ensure that City is an additional insured on insurance required from 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.