

PUBLIC WORKS DEPARTMENT

DEVELOPMENT PLAN REVIEW/INSPECTION FEE, SANITARY SEWER/STORMWATER PROGRAM NEXUS AND STORMWATER UTILITY FEASIBILITY STUDIES



Proposals may be mailed or delivered in person to:
City of Salinas, Public Works Department
ATTN: Heidi Niggemeyer
200 Lincoln Avenue, Salinas, CA 93901

Proposals must be received by 4:00 p.m. On Tuesday, July 31, 2018

REQUEST FOR PROPOSALS

DEVELOPMENT PLAN REVIEW/INSPECTION FEE, SANITARY SEWER/STORMWATER PROGRAM NEXUS AND STORMWATER UTILITY FEASIBILITY STUDIES

1. DESCRIPTION

The City of Salinas, California is soliciting proposals from qualified consulting firms with expertise in sanitary sewer and stormwater utility engineering, stormwater programs, and financial services to perform the following tasks:

- Developing stormwater plan review and inspection fees: This will entail reviewing the City's current operating costs to perform a review of development plans to meet stormwater post-construction requirements, perform stormwater inspections of construction sites and commercial/industrial facilities, and perform structural BMP assessments. From this review, create a cost-justified stormwater fee for development plan review and performance of each type of inspection;
- Evaluating a nexus between sanitary sewer rates and stormwater program funding: This will include reviewing the City's current sanitary sewer fee structure and performing research to support funding a portion of the City's stormwater program needs, if and where a nexus exists (subject to legal review);
- Evaluating the feasibility of a City stormwater utility: This involves developing a stormwater utility, determining the capital and financial needs necessary for its establishment, and creating the methodology for community outreach for a successful publicity campaign. The team's ability to provide a clear project plan and approach towards the successful implementation of a stormwater utility are critical factors in the selection process.

The goal of these three efforts is to provide a sustainable funding mechanism for the City's stormwater program needs, which include but are not limited to compliance with NPDES regulations, pollutant reduction efforts, flood damage prevention, low impact development requirements, stream restoration efforts, installation and/or ongoing maintenance of stormwater control measures, and operation/maintenance of stormwater MS4 infrastructure. The selected consultant shall perform the tasks specified in the "Scope of Services" section of the Request for Proposals (RFP). The consultant is encouraged to suggest additions or modifications to the scope that will enhance or clarify the work; these suggestions should be incorporated into the submitted proposal.

2. SCOPE OF SERVICES

Task 1 – Plan Review/Inspection Fee Study: The goal of this effort is to establish a cost-justified fee for development plan review, construction site inspections, structural BMP assessments, and commercial/industrial facility inspections that are required by the City’s NPDES permit. The study will identify the full operational cost required to perform these NPDES-required activities and facilitate the recovery of those costs in the newly established fees. Related taxes, penalties, fines, fees regulated or set by the State, as well as development impact fees and utility rates are not included in this effort. An analysis of fees and charges will establish the estimated and reasonable cost of service for activities required under the NPDES construction, post-construction, and commercial/industrial inspection program. The scope of services for the NPDES plan review/inspection fee study is as follows:

- A. **Fee Structure Design** – Work with City staff to gain an understanding of the purpose and use of the fee while considering staff’s ideas for modifying or enhancing current practices. The consultant will provide a final fee structure for review and approval by the City. The fees must not exceed the reasonable cost of providing the services necessary to the activity on which the regulatory fees are based.
- B. **Cost of Service Analysis** – Perform a time and service analysis to define the direct and indirect costs to the City to perform the plan review and inspections, to ensure that the cost of service reflects the direct and indirect costs, and these costs are defensible and reasonable. Incorporate the city’s Cost Allocation Plan to determine the appropriate shares of administrative, support services, and/or governance costs. The City will provide overhead cost information.
- C. **Regional/State Fee Comparison** – Perform a comparative analysis of similar fees assessed by other comparable agencies throughout the region or state. Salinas is the only Phase 1 municipality within the Central Coast region. Other smaller agencies within the region do not have the same NPDES permit requirements for performance of the activities being assessed for cost of service. Therefore an “apples to apples” comparison of cost recovery policy and fee structures between agencies may be challenging. However, a comparative analysis may ensure a smoother implementation process given public perception.
- D. **Fee Development Technical Memo** – Prepare a technical memorandum that explains how the fee was developed. The memo should focus on providing a clear, concise memo that could be understood by the General Public.

Task 2 – Evaluate nexus between sanitary sewer rates and stormwater program funding: The goal of this effort is to evaluate if the City’s current sewer utility would be a viable funding source for the City’s stormwater program. This task includes review of the most recent sewer utility and stormwater program documents, plans and rate studies, with a focus on determining what, if any, stormwater program costs could be funded by the sewer utility.

Task 3 – Stormwater Utility Feasibility Study: The goals of this effort are to determine the feasibility of developing a stormwater utility (or other alternative funding mechanism) to fund the City’s stormwater program and successful procurement/implementation of this utility. The study will be used to determine the capital and financial needs necessary to establish a successful stormwater utility in the City of Salinas. The consultant’s ability to provide a clear project plan and approach to successfully implement a stormwater utility are critical factors in the selection process.

The City’s stormwater program requirements consist of various operations, maintenance, and riparian area/stream restoration activities, environmental administration, and public education and outreach. Currently the City’s NPDES program is funded through the City’s general fund. The City’s infrastructure is aged, regulatory requirements are more demanding, and the City’s budget is limited. The role and responsibility of property owners of developed and undeveloped land to maintain stormwater conveyances and/or infrastructure on their properties will need to be integrated into the utility framework. The scope of services for this effort are:

- A. **Review of City Policies and Stormwater Program Budgets and Operations** - Review the City’s current policies related to financial metrics such as: target reserve fund balances, minimum coverage ratios, and sufficiency of funding for capital improvement costs. Review the most recent stormwater program documents and plans with a focus on determining what, if any, stormwater program costs could be funded by a stormwater utility.
- B. **Revenue Sufficiency Analysis** – Prepare a financial analysis that evaluates the City’s sources and uses of funds, including: annual rate revenue, operating and maintenance expenditures, reserve funds, stormwater program implementation costs, stormwater infrastructure capital improvement, and stormwater infrastructure repair and replacement costs. The following subtasks should be included in this analysis:
 - I. **Projected Revenues and Expenditures** – Using a cash-basis reflecting the City’s system of accounts, prepare a 10-year projection of revenues, expenses, and increases in revenue necessary to meet all obligations. This projection will be utilized to plan for future sanitary sewer rate increases (included in a separate and future sanitary sewer rate study), potential setting of stormwater utility rates, and maintaining appropriate reserve fund levels.
 - II. **Evaluate Reserve Fund Sufficiency** – Conduct a revenue sufficiency analysis, evaluating the the need for reserve funds, target year-end fund balances, reserve policies, and other rate covenants that are specific to the City. Provide recommended reserve fund target balances that are tailored to the City’s specific needs and develop a phased-in approach to funding reserves that minimizes the impact to ratepayers.
 - III. **Review Capital Improvement Funding** – Evaluate the City’s capital improvement plans and the timing, costs, and available reserves that can be used to fund various projects. Work with City staff to develop a well-conceived approach to funding these capital needs, which may include using existing cash reserves, incoming rate revenue, and outside financing.

- IV. **Provide a Cost-of-Service Analysis** – Determine the current cost-of-service to provide the infrastructure for stormwater conveyance through the City and the additional cost differential for new connections and additional loading to the City’s MS4 system.
- V. **Perform a Stormwater Utility Feasibility Study** – The consultant shall review existing information, including levels of service and funding, and develop plans to implement a fair and legally defensible program to provide the needed services and the means by which to fund the program. Expected components of the consultant’s work include, but are not limited to, the following:
- Meeting with City representatives to ensure a universal understanding of project scope
 - Assist with the creation of a Staff Technical Advisory Committee (STAC) to assist with any data needs
 - Work with the STAC to perform a stormwater program needs assessment
 - ✓ Review NPDES program elements
 - ✓ Assist in defining the appropriate Level of Service (LOS) both present and post utility implementation
 - ✓ Aide in the development of a maintenance and capital improvement plan for the City’s MS4 system and the associated costs for this program
 - ✓ Determine costs of existing service
 - ✓ Determine costs for total permit program compliance (staffing needs and program implementation costs)
 - ✓ Determine the financial needs for which the funds from the stormwater utility may be used
 - Evaluation of all potential stormwater funding options
 - Stormwater utility evaluation including implementation plan and timeline
 - Provide stormwater utility details
 - ✓ Data Collection needs
 - ✓ Utility policies to address:
 - Rate structure options
 - Recommended exemptions/credits
 - Fee adjustment models
 - Recommended rate model
 - Funded activities
 - Assignment of billing basis
 - ✓ Preliminary revenue projection/rate model
 - Describe consultant’s rate modeling approach
 - Develop a reasonable rate model for residential uses
 - Develop a reasonable rate model for commercial and industrial facility uses
 - Work with City’s GIS team to develop compatible parcel-based stormwater utility layers for identification of rates and to aid in the billing process
 - ✓ Aerial and parcel coverage city-wide
 - ✓ Impervious area calculations

- Determine billing and collection options and pros/cons of each option
 - ✓ Billing assessment (non-ad valorem)
- Identify financing options should the City so choose to try and finance a portion of stormwater utility procurement and implementation up front
- Research successful stormwater program mission statements and policies consistent with those principles
- Research successful public awareness, education, and involvement processes that have resulted in successful stormwater utility procurement

VI. **Prepare a Stormwater Utility Feasibility Report** – This task will provide the City with a basis for developing a follow-on RFP for support in implementing a stormwater utility, including determination of what the RFP will request and what City staff will do. The feasibility report should include the following at minimum:

- A ten-year financial plan, including a revenue and expense projection, reserve fund projection, and capital funding summary for the storm sewer system
- Develop a preliminary customer service model
- Estimate potential costs to initiate and implement a stormwater utility
- The overall study methodology with reference to the AWWA M1 Manual, Prop 218, and any related industry standards needed to support the analysis and study recommendations
- Proposed rate schedule spanning a ten-year period
- Determine billing options
- Customer bill comparisons and new rate impacts
- Determine possible rate structure models which should be considered
- Provide a matrix of proposed services a stormwater utility would provide to the residents of Salinas
- Identify key policy issues that must be decided and make recommendations
- Provide a menu of funding options to evaluate
- Develop organization, management, and operational options and correlate resultant fees to various levels of service
- Provide a summary of other CA municipalities that have successfully implemented a stormwater utility and recommend a method to legally implement a stormwater utility in Salinas given all the legislative hurdles (i.e. Prop 218, AB 2403, SB 231). Provide alternative approaches to public information, involvement, and education
- Provide any suggested modifications to the City's stormwater ordinance
- Aid in the development of the stormwater program mission statement and develop a conceptual plan and strategy for the public awareness, education, and involvement process for successful stormwater utility procurement, including groups that should be involved

The goal is to create a successful stormwater utility that will stand up to known legal challenges and can be implemented as soon as possible, in order to create revenue sufficient to operate a significant portion of the City's stormwater maintenance, operation, capital, environmental management, and public education and outreach needs.

Items that are not intended to be a part of the future RFP include the following:

- Public Relations and Education
- “Going live” with the Stormwater utility.

3. PROPOSAL REQUIREMENTS

Proposals shall consist of responses to the questions below. Please clearly label answers to all questions. The questions must be completely addressed in the body of the proposal and be presented in the order indicated. The submittals are subject to a page limitation of twenty (20) pages in twelve-point font. You are also requested to enclose certain information as exhibits, which will not count against the page limit. The City makes no assurances that any non-requested information in exhibits will be reviewed.

Proposers must have a minimum of five (5) years of professional experience in preparing municipal rate studies. They shall have completed a minimum of two (2) projects for public water utilities; shall have demonstrated experience of similar scope projects; and have experience working with public institutions. Experience in developing a municipal stormwater utility is highly valued.

Questions:

1. Name of proposer and principal contact person, including home office location, address, telephone number, fax numbers, and email address.
2. Brief description and history of the firm and experience of the principal contact and key team members with the firm.
3. Description of the team assigned to handle the proposed assignments, including the role of each member, percentage of total work each member is expected to contribute, office location of each member and specific relevant work experience.
4. Describe the services and activities as they relate to the proposed scope of work that your firm proposes to provide to the City for this project. Consultant shall demonstrate an understanding of the City’s needs and requirements and describe the approach and work plan for completing the items specified in the Scope of Work.
5. Enclosed for your review as Attachment A is a copy of the City’s standard Professional Services Agreement, which includes insurance requirements. Please confirm your firm can accept the terms of the Agreement and has the required insurance, or can acquire insurance, that meets the minimum standards.
6. Please provide three (3) professional references. Only use public agencies that your firm or its principals have provided services within the past seven (7) years.
7. Please provide the proposed fee and billing rate schedule for the firm and subcontractors. Cost proposals shall be prepared to follow the order and format of the items of work listed in “Scope of Work” section. Cost proposals shall, as a minimum, show all anticipated Prime and Subconsultant costs by Task and Subtask, including personnel by classification, hours, and hourly rates. Other Direct Costs shall be summarized at the Project level, rather than by Task.

4. PROCEDURES FOR SUBMITTAL

Please submit by email or submit via flash drive one (1) Adobe Acrobat pdf file containing the entire proposal (including the fee and billing rate schedule) and three (3) bound copies of your proposal (including the fee and billing rate schedule) to the address below by 4:00 PM Pacific Time on Tuesday, July 31, 2018. Proposals must be entitled "RFP: Sanitary Sewer/Stormwater Program Nexus, Inspection Fee, and Stormwater Utility Feasibility Studies" and submitted in a sealed envelope; all submittals must be signed by an authorized representative with the authority to bind the selected firm to make such commitments to the City set forth in the Response.

Heidi Niggemeyer, NPDES Program Manager
City of Salinas Public Works Dept.
200 Lincoln Ave
Salinas, CA 93901
(831) 758-7988
heidin@ci.salinas.ca.us

SUBMITTALS WILL NOT BE ACCEPTED AFTER THIS DEADLINE. SUBMITTALS TRANSMITTED BY FAX WILL NOT BE ACCEPTED UNDER ANY CIRCUMSTANCES.

All material submitted with this RFP becomes the property of the City and will not be returned. If you have any questions regarding this RFP, please contact Heidi Niggemeyer via email at heidin@ci.salinas.ca.us. Questions will be accepted up to five (5) days prior to RFP submittal deadline. *Hearing impaired or TTY/TDD text telephone users may contact the City by dialing 711 for the California Relay Service (CRS) or by telephoning any other service providers' CRS telephone number.*

5. RFP REVIEW AND AWARD SCHEDULE:

The proposed consultant selection schedule is as follows:

Release RFP	June 27, 2018
Proposals Due	July 31, 2018
Interview Select Proposers	Week of August 13, 2018
Project Award	August 31, 2018

6. EVALUATION AND RATING CRITERIA

An evaluation committee will evaluate the proposals for completeness and content. Each proposal will be evaluated according to the relevant experience of the consultant. The evaluation committee will review and rank the proposals and may conduct interviews, if necessary. The City reserves the right to select a consultant team directly from the proposals. Generally, the committee is composed of City staff with technical expertise in specific areas of interest for the

RFP. The committee will be responsible for ranking the finalists and selection of a firm for award of contract subject to approval by the Public Works Director. The criteria used in reviewing and evaluating the proposals is as follows:

- **Project Team (30 points max):** Do the qualifications of key personnel to be assigned to the project coincide with the tasks listed in the anticipated Scope of Work? Does the team have past experience in similar work and what is the performance history for cost control, quality of work, and meeting scheduled milestone dates?
- **Firm Profile (25 points max):** Does the firm offer the breadth and qualified number of staff to expedite the work and quality of services required to perform the tasks required in the Scope of Work? Does the firm show financial and operational stability?
- **Delivery Schedule and Fee Schedule (20 points max)**
- **Presentation and Clarity of Project Understanding (15 points max):** Is the organization familiar with applicable practices and procedures for the work involved? Does the proposal conform with the specified RFP format? What is the quality of the organization, presentation, and content of the proposal?
- **Familiarity with Locality (10 points max):** Is the firm familiar with water regulations applicable to the City of Salinas? Will the location of the firm's offices facilitate meetings with City staff? Is the firm familiar with the demographics of the City of Salinas? Has the firm performed stormwater work in the Central Coast region?

No firm will be allowed to modify the content of their proposal at any time after the submittal deadline, except in direct response to a request from the City for clarification or for an oral interview, provided that no such modification will result in a substantive amendment to the proposal.

The City of Salinas conducts a local business preference program and strongly encourages all local businesses to participate by responding to this RFP. Businesses are required to submit a Local Business Enterprise form to the City's Finance Department on an annual basis and shall notify of the Finance Director if circumstances change the business' eligibility for local preference consideration. In the event the business has not submitted the form, there is one provided in Attachment B. It must be completed and submitted with the RFP proposal to be considered a Local Business.

If as described in Municipal Code Section 12-28.020 the six criteria are met, the Proposal will receive local preference points equal to 10% of the total possible points pursuant to the provisions of Municipal Code Section 12-28.040: "Where competitive bidding is used for services, the local preference for best qualified and responsive bidder, who qualifies as a local business, will receive ten percent of the total points."

The procurement of these consultant services will be in accordance with the City's and other applicable federal, state and local laws, regulations and procedures. The City reserves the right to award the contract to the firm who presents the proposal which in the judgment of the City best

accomplishes the desired results and shall include, but not limited to, a consideration of the professional service fee. Firms are discouraged from submitting lengthy proposals - the City requires that Proposals be concise and clearly written containing only essential information on the proposed team and team members. All costs and expenses of responding to this RFP shall be borne by the individual parties preparing and/or submitting proposals.

City reserves the right to reject any and all proposals received, and to re-advertise/reissue this request for proposals. Additionally, the City may, for any reason, decide not to award an agreement as a result of this RFP or cancel the RFP process. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by the submittal of the proposal. The City reserves the right to negotiate project deliverables and associated costs.

In conformance with Government Code Section 4529.12, the services requested by this RFP shall be procured pursuant to a fair, competitive process. The City is not required to award the contract for based on fee but will consider price in addition to the proposal's conformance to the requirements of the RFP, the consultant team's experience and qualifications, the references provided, and any other relevant factors.

Note: Pursuant to Government Code Section 4529.12, City employees are prohibited from participating in the selection process when they have a financial or business relationship with any private entity seeking to enter into a contract with the City, and the City requires compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.

7. PROFESSIONAL CONSULTING SERVICES AGREEMENT

The selected firm must enter into a written agreement for the services using the City's standard *Professional Services Agreement* (the "Agreement"), a copy of which accompanies this RFP.

PROPOSAL DEADLINE

All proposals, consisting of three (3) hard copies and one (1) electronic copy, must be received by mail, recognized carrier or hand delivered no later than 4:00 p.m. on Tuesday, July 31, 2018. Late proposals will not be opened or considered. Proposals shall be submitted to the Public Works Department, Attn: Heidi Niggemeyer, 200 Lincoln Avenue, Salinas, CA 93901.

Responses must be signed by an authorized representative with the authority to bind the selected firm to make such commitments to the City set forth in the Response.

Attachments: A - City of Salinas Standard Professional Services Agreement
B - City of Salinas Local Business Declaration form

Attachment A

CONTRACT
FOR SERVICES BETWEEN
THE CITY OF SALINAS AND XXX



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AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF SALINAS AND XXX

This Agreement for Professional Services (the "Agreement" and/or "Contract") is made and entered into this ____ day of _____, 201_, by and between the **CITY OF SALINAS**, a California Charter city and municipal corporation (hereinafter "City"), and **XXX**, a [California corporation/limited liability company/dba/etc.], (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that 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 set forth in **Exhibit B**. The total amount of compensation to be paid under this Agreement shall not exceed [**XXX dollars (\$X,000)**].

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. 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.

6. 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.

7. 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) Ray E. Corpuz, 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.

8. **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.

9. **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.

10. **Insurance.**

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

11. **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.

12. **Assignment.** 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.

13. **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. Rate of compensation shall be based upon the Consultant's rates shown in **Exhibit B** of this Agreement. 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.

14. 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.

15. Termination.

(A) City shall have the authority to terminate this Agreement, upon 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**, 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.

16. 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.

17. 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 and 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.

18. 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.

19. Integration and 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.

20. 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.

21. 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.

22. 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:

[Insert Notice Contact Information]

(C) The execution of any such notices by the City Manager of the City 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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

Ray E. Corpuz, Jr.
City Manager

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

CONSULTANT

By:
Its:

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.

Attachment B



CITY OF SALINAS
DECLARATION OF LOCAL BUSINESS ENTERPRISE

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

Business Name: _____

Business Address: _____

Local Business Office Address: _____, Salinas, California _____

City of Salinas Business License Number: _____

No. of Employees: _____ No. of Full-Time Employees in Salinas _____

Current on all City of Salinas taxes, fees, assessments, and fines? ☐ Yes ☐ No

Currently subject to enforcement action by the City or in litigation with the City? ☐ Yes ☐ No

Year began doing business within the city of Salinas: _____

Newly established business (doing business within the city of Salinas less than one year): is the newly established business owned by an individual(s) formerly employed by a local business enterprise? ☐ Yes ☐ No If Yes, for what years? _____

Any person claiming to be a local business enterprise as defined in Article III-A of Chapter 12 of the Salinas Municipal Code shall so certify in writing under penalty of perjury that they meet all the criteria listed in Salinas Municipal Code section 12-28.020, subsection (d). A local business enterprise shall be required to submit such declaration on an annual basis and shall immediately notify the City's Purchasing Officer if there is any change in circumstances which would disqualify it from application of the preference. The City shall not be responsible or required to verify the accuracy of any such certifications and shall have sole discretion to determine if a person meets the definition of "local business enterprise."

CERTIFICATION

I declare that I am 18 years of age or older and the information contained in the foregoing application is true and correct to the best of my knowledge. Under penalties of perjury, I certify that all the information provided herein is correct and that the business enterprise I am representing meets all of the criteria set forth in Salinas Municipal Code section 12-28.020, subsection (d) for a "local business enterprise." I declare that I am authorized to submit this Declaration for and on behalf of myself and the organization described above.

Signature _____ Date _____

Printed Name: _____