



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: **COMMUNITY DEVELOPMENT**

Paul A. Jensen

Prepared by: **Paul A. Jensen**
Community Development Director

City Manager Approval: *JS*

TOPIC: HOUSING ELEMENT UPDATE

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE PROFESSIONAL SERVICES AGREEMENTS WITH: 1) BARRY J. MILLER FAICP, IN A NOT-TO-EXCEED AMOUNT OF \$124,745; AND 2) BAIRD + DRISKELL COMMUNITY PLANNING, IN A NOT-TO-EXCEED AMOUNT OF \$50,000, TO PREPARE THE HOUSING ELEMENT UPDATE (2023-2031); CASE NO. P21-006

RECOMMENDATION:

Adopt resolution.

BACKGROUND:

Every city/county in California is required to prepare, adopt, and maintain a comprehensive General Plan, which serves as the guide for the physical development of a community. The General Plan is to cover a projected, long-term period of planning, which is typically a forecast of 15-20 years. Per State Public Resources Code Section 65302, the General Plan must contain seven (7) mandatory elements, including a Housing Element. The Housing Element is the sole, mandatory General Plan Element that is required to be: a) updated every eight (8) years; and b) reviewed and certified by a state agency (State of CA Department of Housing and Community Development – HCD). The next eight-year cycle for update of the Housing Element covers 2023-2031. In fall 2020, the draft General Plan 2040 was completed and released. Consequently, as the Housing Element update schedule is administered by HCD, the draft General Plan 2040 does not include any changes to the current, adopted Housing Element 2015-2023.

The eight-year, Housing Element update process is initiated by HCD’s distribution of the Regional Housing Needs Allocation (RHNA) to each region within California. The RHNA is the total number of new homes a region needs to build, and how those homes meet the region’s housing needs of people at all income levels. The allocation is provided to the regional planning agencies (e.g., Association of Bay Area Governments/Metropolitan Transportation Commission [ABAG/MTC]). It is the job of the regional agencies to equitably distribute shares of the RHNA to the cities/counties throughout the region.

The requirements for preparation of the next Housing Element will be more demanding than in the past for several reasons. First, as previously reported, early this year, ABAG/MTC published the draft RHNA sub-regional shares for the Bay Area cities/counties. San Rafael’s RHNA share will triple for the next Housing Element update (from the 1,007 housing units under the current Housing Element to 3,220 housing units for this next cycle). Second, there have been many changes in housing legislation over

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

the past three to four years, which create a higher level of accountability for the local jurisdictions. Third, with the addition of a new Equity, Diversity & Inclusion Element in the draft General Plan 2040, housing goals, policies and programs in the Housing Element Update will require greater attention to and priorities addressing these topics. Consequently, this next Housing Element update will be more complicated, involved, and challenging compared to past updates. Lastly, we must adopt this update by mid-2023 so that it can be submitted and certified by HCD by fall 2023.

ANALYSIS:

It is expected that the new Housing Analyst (currently vacant and recruiting) will play a key role in overseeing and participating in the preparation of this update. However, it is imperative to have a lead project manager that is: a) familiar with San Rafael and the City's housing challenges; and b) experienced in Housing Element preparation. So, staff is recommending that we retain Barry J. Miller FAICP, the City's General Plan 2040 Project Manager, to lead this effort and have the Housing Analyst participate and assist. With his recent work on the General Plan 2040 and Downtown Precise Plan, Barry Miller's knowledge of our community and housing challenges is fresh.

Scope of Needed Planning Consultant Services

Barry Miller has prepared a scope of work to prepare and manage the Housing Element Update (Attachment 2). The scope of work through Housing Element adoption is proposed at a not-to-exceed cost of \$124,745. A draft Professional Services Agreement is attached, which includes Barry's letter of proposal for services. Noted in Barry's proposal are tasks that will require the services of other skilled professionals, which include the following:

1. Real estate and housing finance and economics. This service is expected to be limited and tapped as needed. It is recommended that the firm of Baird + Driskell Community Planning be retained as one of their Principals, Paul Peninger is well skilled in real estate and housing finance. A draft Professional Services Agreement has been prepared and is attached (Attachment 3). The Agreement is structured to authorize on-call, as needed services through the completion of the Housing Element with a not-to-exceed budget of \$50,000.
2. Spanish language outreach initiative. The Housing Element Update provides an opportunity for the City to demonstrate its commitment to an equitable, diverse, and inclusive planning process. Outreach to our lower income immigrant community will be critical to address their concerns and needs such as fair housing, housing preservation, and new workforce and affordable housing. At this time, no scope or budget has been developed for this initiative. The scope and budget will be developed, and consultant will be hired following the completion of the Housing Element Update work program.
3. CEQA/Environmental review. The Housing Element Update will be subject to CEQA/Environmental review. The last two Housing Element Updates relied on and tiered off the General Plan 2020 EIR. While our General Plan 2040 EIR document will be used as a base for completing environmental review, the identification of new housing opportunity sites to meet our RHNA share may require more extensive and technical review. At this time, no scope or budget has been developed for this task. The scope and budget will be developed following the completion of the Housing Element Update work program.

Next Steps

City staff has jump-started the initial steps in the Housing Element Update. Once a Project Manager is on-board, a work program will be developed to address the critical steps and tasks for completing this project. Given the complexity and challenge of this effort, it will be recommended that a "Housing Element Working Group" of stakeholders be established (7-8 members) to provide input in and guide the process.

Staff will return to the City Council at a future date with recommendations on assembling and selecting members of this working group.

Barry Miller has written and managed numerous Housing Elements for local jurisdictions in the Bay Area and beyond. With his recent work on the General Plan 2040 and Downtown Precise Plan, his knowledge of our community and housing challenges is fresh. In addition, through this work on the General Plan 2040, he has gained the respect of our community. Similarly, retaining Baird + Driskell Community Planning is recommended as this firm provides a service skilled in real estate and housing finance, which will be valuable when identifying and assessing housing opportunity sites for this update. Further, this consulting firm assisted the City on past Housing Element updates, making the firm familiar with San Rafael goals and policies related to housing priorities.

FISCAL IMPACT:

The full budget for the Housing Element Update is expected to be between \$225,000-250,000 (inclusive of #2 and #3 above). The revenue sources for this expenditure are as follows:

1. State Local Early Action Program (LEAP) to cover \$200,000.
2. MTC/ABAG Regional Early Action Program (REAP) to cover \$43,000.

The two above state and regional sources will cover most of the completion of the Housing Element Update. Expenditures not covered by these programs will be covered by General Plan Special Fund #218, which currently has a balance of \$1.46 million.

OPTIONS:

1. Adopt resolution as proposed by staff;
2. Adopt resolution with modifications to the Professional Services Agreements; or
3. Reject the resolution and direct staff to return with additional information.

RECOMMENDED ACTION:

Adopt the Resolution approving Professional Services Agreements with Barry Miller and with Baird + Driskell Community Planning

ATTACHMENTS:

1. Resolution
2. Professional Services Agreement with Barry Miller, Planning Consultant
3. Professional Services Agreement with Baird + Driskell Community Planning

ATTACHMENT 1

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS (2) FOR PROFESSIONAL SERVICES WITH BARRY J. MILLER FAICP, IN A NOT-TO-EXCEED AMOUNT OF \$124,745; AND BAIRD + DRISKELL COMMUNITY PLANNING, IN A NOT-TO-EXCEED AMOUNT OF \$50,000, TO PREPARE THE HOUSING ELEMENT UPDATE (2023-2031)

WHEREAS, the City of San Rafael is required by State law to adopt and maintain a legally adequate General Plan to address long-term planning and growth for the community. The General Plan is required to include State mandatory elements, including a Housing Element; and

WHEREAS, per State law, Housing Elements are updated in eight-year cycles. The State of California Department of Housing and Community Development (HCD) has initiated the next update cycle for 2023 through 2031. The City must prepare and adopt the next updated to the Housing Element by mid-2023; and

WHEREAS, per state law, the draft sub-regional share of the Regional Housing Needs Allocation (RHNA) has been released for the Bay Area cities/counties, so it is timely to initiate the City's update of the Housing Element for the 2023-2031 cycle; and

WHEREAS, the City seeks to hire a Project Manager to oversee the preparation of the Housing Element Update. As detailed in the staff report for this resolution, Barry J. Miller FAICP provides the skills and experience needed to fill this role; and

WHEREAS, the City seeks to hire a consultant skilled in real estate and housing finance to assist in certain technical tasks needed in the preparation of the Housing Element Update. As detailed in the staff report for this resolution, the firm of Baird + Driskell Community Planning provides the skills needed to fill this role; and

WHEREAS, sufficient funds have been appropriated through State and regional grants and the City's Special General Plan Fund 218 to support these contracts. The Special General Plan Fund 218 is funded by fees collected as a surcharge on all building permit fees and its purpose is to fund, among others on-going maintenance and updates of the Housing Element; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Rafael does hereby approve and authorize the City Manager to execute Agreements for Professional Services in the form included with the staff report for this resolution, subject to final approval as to form by the City Attorney, with:

- 1) Barry J. Miller FAICP, in a not-to-exceed amount of \$124,745; and
- 2) Baird + Driskell Community Planning, in a not-to-exceed amount of \$50,000.

I, LINDSAY LARA, Clerk of the City of San Rafael hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 19th of April 2021, by the following vote to wit:

ATTACHMENT 1

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, CITY CLERK

Exhibit #1: Professional Services Agreement with Barry J. Miller FAICP

Exhibit #2: Professional Services Agreement with Baird + Driskell Community Planning

ATTACHMENT #2

**PROFESSIONAL SERVICES AGREEMENT WITH
BARRY J. MILLER, FAICP**

AGREEMENT FOR PROFESSIONAL PLANNING SERVICES

This Agreement is made and entered into this _____ day of _____, 2021, by and between the CITY OF SAN RAFAEL (hereinafter "CITY"), and Barry J. Miller, FAICP (hereinafter "CONSULTANT").

RECITALS

WHEREAS, by State law, the CITY is required to adopt, maintain, and implement a Housing Element, a required element of the citywide General Plan. The Housing Element is updated every eight (8) years and must address the CITY's share of the Regional Housing Needs Allocation (RHNA). The planning for the next Housing Element Update cycle (2023-2031) has commenced and the CITY has received a draft RHNA share of 3,220 housing units; and

WHEREAS, the CITY will assign the Community Development Department Housing Analyst to oversee and assist in the preparation and adoption of the Housing Element Update. However, given the complexity of this next Housing Element Update, it is necessary for the CITY to hire a planning consultant that is experienced in Housing Element authorship and management, as well as the State laws that are critical to completing this task. Further, it is imperative that the planning consultant selected to provide this service be familiar with CITY housing policies and the community at large; and

WHEREAS, Barry J. Miller, FAICP (CONSULTANT) offers the services and skills needed to assist the CITY in preparing and adopting the Housing Element Update 2023-2031. Further, with CONSULTANT'S recent work authoring and managing the General Plan 2040 and Downtown Precise Plan, it is logical and practical to hire CONSULTANT to provide this service to the CITY.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **CITY'S Project Manager.** The Community Development Director is hereby designated the PROJECT MANAGER for the CITY and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement. During the preparation of the Housing Element Update 2023-2031, PROJECT MANAGER may choose to assign or delegate this supervisory role to the Housing Element Project Manager.

B. **CONSULTANT'S Project Director.** CONSULTANT shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for CONSULTANT. Barry J. Miller, FAICP is hereby designated as the PROJECT DIRECTOR for CONSULTANT. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR, for any reason, the CONSULTANT shall notify the CITY within ten (10) business days of the substitution.

2. DUTIES OF CONSULTANT.

CONSULTANT, as Project Manager shall perform the duties and/or provide services needed to author and complete the Housing Update for adoption by the **CITY** as specified in the scope of services ("Scope of Work") presented in Exhibit A, attached herein.

3. DUTIES OF CITY.

CITY shall pay the hourly billing rate compensation as provided in Paragraph 4 of this Agreement. **CITY** shall provide a workspace for **CONSULTANT**, background information, oversight direction, network and computer access and other materials necessary for **CONSULTANT** to perform the required duties.

4. COMPENSATION.

For performance of the services pursuant to this Agreement, **CONSULTANT** shall bill for services on a time and material basis, as work is completed. **CONSULTANT's** billing rate shall be \$135.00 per hour, and any reimbursable expenses shall be billed at cost, with not administrative mark up. As presented in Exhibit A, attached herein, the Agreement authorizes a not-to-exceed budget of \$124,745.00.

Payment will be made monthly upon receipt by PROJECT MANAGER of itemized invoices submitted by **CONSULTANT**.

5. TERM OF AGREEMENT.

The term of this Agreement shall be for two (2) years commencing on April 20, 2021 and ending on April 20, 2023. Upon mutual agreement of the parties, and subject to the approval of the City Manager the term of this Agreement may be extended for an additional period of up to one (1) year.

6. TERMINATION.

A. **Discretionary.** Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.

B. **Cause.** Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) daytime period.

C. **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.

D. **Return of Documents.** Upon termination, any and all **CITY** documents or materials

provided to **CONSULTANT** and any and all of **CONSULTANT's** documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to **CITY** as soon as possible, but not later than thirty (30) days after termination.

7. OWNERSHIP OF DOCUMENTS.

The written documents and materials prepared by the **CONSULTANT** in connection with the performance of its duties under this Agreement, shall be the sole property of **CITY**. **CITY** may use said property for any purpose, including projects not contemplated by this Agreement.

8. INSPECTION AND AUDIT.

Upon reasonable notice, **CONSULTANT** shall make available to **CITY**, or its agent, for inspection and audit, all documents and materials maintained by **CONSULTANT** in connection with its performance of its duties under this Agreement. **CONSULTANT** shall fully cooperate with **CITY** or its agent in any such audit or inspection.

9. ASSIGNABILITY.

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

10. INSURANCE.

A. **Scope of Coverage.** During the term of this Agreement, **CONSULTANT** shall maintain, at no expense to **CITY**, the following insurance policies:

1. A commercial general liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, for death, bodily injury, personal injury, or property damage.

2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million dollars (\$1,000,000) dollars per occurrence.

~~3. If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, to cover any claims arising out of the **CONSULTANT's** performance of services under this Agreement. Where **CONSULTANT** is a professional not required to have a professional license, **CITY** reserves the right to require **CONSULTANT** to provide professional liability insurance pursuant to this section.~~

4.5. If it employs any person, **CONSULTANT** shall maintain worker's compensation insurance, as required by the State of California, with statutory limits, and

employer's liability insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease. **CONSULTANT's** worker's compensation insurance shall be specifically endorsed to waive any right of subrogation against **CITY**.

B. Other Insurance Requirements. The insurance coverage required of the **CONSULTANT** in subparagraph A of this section above shall also meet the following requirements:

1. Except for ~~professional liability insurance or~~ worker's compensation insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additional insureds (for both ongoing and completed operations) under the policies.

2. The additional insured coverage under **CONSULTANT'S** insurance policies shall be "primary and noncontributory" with respect to any insurance or coverage maintained by **CITY** and shall not call upon **CITY's** insurance or self-insurance coverage for any contribution. The "primary and noncontributory" coverage in **CONSULTANT'S** policies shall be at least as broad as ISO form CG20 01 04 13.

3. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.

4. By execution of this Agreement, **CONSULTANT** hereby grants to **CITY** a waiver of any right to subrogation which any insurer of **CONSULTANT** may acquire against **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 **CITY** has received a waiver of subrogation endorsement from the insurer.

5. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years.

6. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this Agreement.

7. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of **CITY** (if agreed to in a written contract or agreement) before **CITY'S** own insurance or self-insurance shall be called upon to protect it as a named insured.

8. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to **CITY** or any other additional insured party. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds

available to the named insured; whichever is greater. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the **CONSULTANT** under this agreement.

C. **Deductibles and SIR's.** Any deductibles or self-insured retentions in **CONSULTANT's** insurance policies must be declared to and approved by the **PROJECT MANAGER** and City Attorney and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or **CITY** or other additional insured party. At **CITY's** option, the deductibles, or self-insured retentions with respect to **CITY** shall be reduced or eliminated to **CITY's** satisfaction, or **CONSULTANT** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees, and defense expenses.

D. **Proof of Insurance.** **CONSULTANT** shall provide to the **PROJECT MANAGER** or **CITY'S** City Attorney all of the following: (1) Certificates of Insurance evidencing the insurance coverage required in this Agreement; (2) a copy of the policy declaration page and/or endorsement page listing all policy endorsements for the commercial general liability policy, and (3) excerpts of policy language or specific endorsements evidencing the other insurance requirements set forth in this Agreement. **CITY** reserves the right to obtain a full certified copy of any insurance policy and endorsements from **CONSULTANT**. Failure to exercise this right shall not constitute a waiver of the right to exercise it later. The insurance shall be approved as to form and sufficiency by **PROJECT MANAGER** and the City Attorney.

11. INDEMNIFICATION.

A. Except as otherwise provided in Paragraph B., **CONSULTANT** shall, to the fullest extent permitted by law, indemnify, release, defend with counsel approved by **CITY**, and hold harmless **CITY**, its officers, agents, employees and volunteers (collectively, the "**City Indemnitees**"), from and against any claim, demand, suit, judgment, loss, liability or expense of any kind, including but not limited to attorney's fees, expert fees and all other costs and fees of litigation, (collectively "**CLAIMS**"), caused by **CONSULTANT'S** performance of its obligations or conduct of its operations under this Agreement. The **CONSULTANT's** obligations apply regardless of whether or not a liability is caused or contributed to by the active or passive negligence of the **City Indemnitees**. However, to the extent that liability is caused by the active negligence or willful misconduct of the **City Indemnitees**, the **CONSULTANT's** indemnification obligation shall be reduced in proportion to the **City Indemnitees'** share of liability for the active negligence or willful misconduct. In addition, the acceptance or approval of the **CONSULTANT's** work or work product by the **CITY** or any of its directors, officers or employees shall not relieve or reduce the **CONSULTANT's** indemnification obligations. In the event the **City Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding caused by **CONSULTANT'S** performance of or operations under this Agreement, **CONSULTANT** shall provide a defense to the **City Indemnitees** or at **CITY'S** option reimburse the **City Indemnitees** their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

B. Where the services to be provided by **CONSULTANT** under this Agreement are

design professional services to be performed by a design professional as that term is defined under Civil Code Section 2782.8, then, to the extent permitted by law including without limitation, Civil Code sections 2782, 2782.6 and 2782.8, **CONSULTANT** shall indemnify and hold harmless the **CITY** and its officers, officials, and employees (collectively **City Indemnitees**) from and against damages, liabilities or costs (including incidental damages, Court costs, reasonable attorney's fees as may be determined by the Court, litigation expenses and fees of expert witnesses incurred in connection therewith and costs of investigation) to the extent they are caused by the negligence, recklessness, or willful misconduct of **CONSULTANT**, or any subconsultants, or subcontractor or anyone directly or indirectly employed by them, or anyone for whom they are legally liable (collectively **Liabilities**). Such obligation to hold harmless and indemnify any indemnity shall not apply to the extent that such **Liabilities** are caused in part by the negligence or willful misconduct of such **City Indemnitee**.

C. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement, and shall survive the termination or completion of this Agreement for the full period of time allowed by law.

12. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

13. COMPLIANCE WITH ALL LAWS.

CONSULTANT shall observe and comply with all applicable federal, state, and local laws, ordinances, codes, and regulations, in the performance of its duties and obligations under this Agreement. **CONSULTANT** shall perform all services under this Agreement in accordance with these laws, ordinances, codes, and regulations. **CONSULTANT** shall release, defend, indemnify, and hold harmless **CITY**, its officers, agents, and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

14. NO THIRD-PARTY BENEFICIARIES.

CITY and **CONSULTANT** do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

15. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the

date of deposit with the United States Postal Service. Notice shall be given as follows:

TO CITY's Project Manager:	Alicia Giudice City of San Rafael 1400 5 th Avenue, 3 rd floor San Rafael, CA 94901
TO CONSULTANT's Project Director:	Barry J. Miller, FAICP 817 Alvarado Road Berkeley, CA 94705

16. INDEPENDENT CONTRACTOR.

For the purposes, and for the duration, of this Agreement, **CONSULTANT**, its officers, agents, and employees shall act in the capacity of an Independent Contractor, and not as employees of the **CITY**. **CONSULTANT** and **CITY** expressly intend and agree that the status of **CONSULTANT**, its officers, agents, and employees be that of an Independent Contractor and not that of an employee of **CITY**.

17. ENTIRE AGREEMENT -- AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the **CONSULTANT** and the **CITY**.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the **CONSULTANT** and the **CITY**.

E. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

18. SET-OFF AGAINST DEBTS.

CONSULTANT agrees that **CITY** may deduct from any payment due to **CONSULTANT** under this Agreement, any monies which **CONSULTANT** owes **CITY** under any ordinance, agreement, contract or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks, or other amounts.

19. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement, or of any ordinance, law, or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law, or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law, or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance, or regulation.

20. COSTS AND ATTORNEY'S FEES.

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, may recover its reasonable costs (including claims administration) and attorney's fees expended in connection with such action.

21. CITY BUSINESS LICENSE / OTHER TAXES.

CONSULTANT shall obtain and maintain during the duration of this Agreement, a **CITY** business license as required by the San Rafael Municipal Code **CONSULTANT** shall pay any and all state and federal taxes and any other applicable taxes. **CITY** shall not be required to pay for any work performed under this Agreement, until **CONSULTANT** has provided **CITY** with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

22. SURVIVAL OF TERMS.

Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled and shall apply to both Parties' respective successors and assigns.

23. APPLICABLE LAW.

The laws of the State of California shall govern this Agreement.

24. COUNTERPARTS AND ELECTRONIC SIGNATURE.

This Agreement may be executed by electronic signature and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Counterpart signature pages may be delivered by telecopier, email or other means of electronic transmission.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

CITY OF SAN RAFAEL

CONSULTANT

JIM SCHUTZ, City Manager

By: _____

Name: _____

Title: _____

ATTEST:

[If CONSULTANT is a corporation, add signature of second corporate officer]

LINDSAY LARA, City Clerk

By: _____

APPROVED AS TO FORM:

Name: _____

Title: _____

ROBERT F. EPSTEIN, City Attorney

Exhibit A: Proposal for Services on San Rafael Housing Element; letter to City of San Rafael from Barry J. Miller FAICP, March 16, 2021



March 16, 2021

Paul Jensen, Community Development Director
Alicia Giudice, Planning Manager
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

Re: Proposal for Services on San Rafael Housing Element

Dear Paul and Ali-

I am pleased to submit this proposal for services on the San Rafael 2023-2031 Housing Element. My familiarity with San Rafael, recent work on General Plan 2040 and the Downtown Precise Plan, and experience preparing Housing Elements for other Bay Area cities will ensure that the project is completed efficiently and cost-effectively. Attached to this letter is a Scope of Work that can be appended to a Professional Services Agreement. I would be happy to modify the scope and budget based on your feedback.

There are two ways to proceed with this project: (1) a continuation of my current work arrangement on the General Plan, in which I serve as an extension of staff and run the project from the City side; and (2) a more traditional consultant contract in which I serve as the prime consultant, retain (and pay) subcontractors to perform specific tasks, and report to a City-designated staff member who serves as your "project manager." My preference is to go with the first option, which has worked well for General Plan 2040. I would serve as the City's project manager *and* as the author of the Element, retaining my City email and phone line, and serving as the City's contract (in-house) project manager. This option presumes that any other contractors retained for the project are paid through separate Professional Services Agreements directly with the City rather than as my subcontractors.

If the City wishes to pursue the second option (or another approach), please let me know and I can revise the scope and budget. The cost would be higher, as this would involve different billing rates and administrative costs associated with billing, payment, and direct management of subcontractors. Under the second option, I would assemble the full team now, and submit a proposal to the City as Barry Miller Consulting covering all services associated with the project.

I have the capacity to perform most—but not all---of the work necessary to complete the Housing Element. Supplemental consulting assistance will be needed for CEQA review, Spanish language outreach and engagement, and housing finance/ real estate economics. The City may also wish to engage an urban design/ visual simulation firm to illustrate housing possibilities on various sites, which can help the public visualize what is being proposed. The attached Scope of Services indicates the specific

services that would be needed to cover these gaps and could provide the basis for solicitations from qualified consultants.

Please note that the work scope assumes a small 6-8 member "Working Group" that would be convened roughly six times over the course of the project. It does not include a large Steering Committee similar to the committee convened for General Plan 2040. Additional input from stakeholder groups would be solicited through interviews, focus group meetings, and direct outreach to community organizations. The scope also includes regular meetings with the Planning Commission and City Council, at least one community meeting, and a citywide electronic survey.

I am excited about the opportunity to continue my professional relationship with the City of San Rafael and can begin work on this project around May 1, once revisions to the General Plan 2040 have been completed. I am confident we can build on the momentum created by General Plan 2040 and the Downtown Precise Plan to produce a Housing Element that will be certified by the Department of Housing and Community Development and produces positive outcomes for San Rafael.

Please let me know if I can clarify or modify any part of the attached scope and budget.

Sincerely

A handwritten signature in cursive script that reads "Barry Miller".

Barry Miller, FAICP
Principal

EXHIBIT A: DRAFT SCOPE OF WORK: 2023 -2031 HOUSING ELEMENT

Barry Miller will update the San Rafael Housing Element to meet the City's 2023-2031 Regional Housing Needs Allocation (RHNA). The specific tasks required to complete the Housing Element are listed below. The scope of work is based on the current (February 2021) Draft RHNA allocation of 3,220 units, including 857 very low-income units, 492 low-income units, 521 moderate-income units, and 1,350 above moderate-income units.

This scope of work includes project management, liaison with HCD and stakeholders throughout the project, community engagement and Commission/ Council meetings, collecting and analyzing data, developing policies and programs, drafting the Housing Element, and facilitating Plan adoption. Services to be provided by other consultants are noted in the work scope in general terms and are in *italicized font*. Budgets for these "third party" services are not included, as they would be separately contracted.

TASK 1: PROJECT MANAGEMENT AND ADMINISTRATION

Barry Miller will provide project management services, including regular meetings with staff, management of project timelines and budgets, correspondence and email, and retention/ management of the other consultants who may participate in the process. This task also includes miscellaneous tasks related to "close-out" of General Plan 2040 that are beyond the amount budgeted in Barry's current contract.

TASK 2: HOUSING ELEMENT KICK-OFF

Barry Miller will provide the following services to start the Housing Element process:

- A. Kick-Off Meetings with City Staff.** Barry will organize and conduct a series of meetings with City staff to initiate the project, including a discussion of City housing programs, key issues (such as homelessness, ADUs, new inclusionary standards, status of efforts to develop affordable units, and progress on housing production).
- B. Development of a Housing Element Update Webpage.** The webpage will provide an overview of the project and timeline, FAQs on the Housing Element, relevant background documents and links, announcements of upcoming meetings, and opportunities for the public to provide feedback.
- C. Initial Outreach to HCD.** Barry and City staff will virtually meet with the HCD staff member assigned to the project to discuss expectations, new Housing Element requirements, schedule, and protocol for HCD's engagement in the process.
- D. Initial Presentations to Planning Commission and City Council.** Barry will provide a staff report and PowerPoint presentation for the Planning Commission and City Council introducing them to

the project, the RHNA, and new State laws impacting housing elements. This will also provide an opportunity for feedback on key issues to be addressed during the project.

- E. **Identification of Data Sources and Key Stakeholders.** Barry will work with City staff to collect local data, identify key stakeholders and interest groups to consult, and gather documents and plans related to Housing, including past Annual Progress Reports.
- F. **Set up Project Directories.** Barry will set up project mailing lists and file directories.

TASK 3: IMPLEMENT COMMUNITY ENGAGEMENT PROGRAM

Sub-Task 3.1: Basic Engagement Program

- A. **Maintain Project Website.** As noted in Task 2, a project website will be created. Barry will maintain the website for the duration of the project, posting relevant content and managing any feedback that is submitted by the public.
- B. **Housing Element Working Group.** Barry Miller will assist the City in assembling a Housing Element “Working Group” comprised of 7-8 members. The Working Group would include a diverse group of members, potentially including (a) a developer/builder, (b) realtor/broker, (c) neighborhood (Federation) representative, (d) housing advocate, (e) social service organization, and (f) Latino community advocate, and (g) a Planning Commissioner, among others. Once members have been identified, Barry will convene up to six (6) meetings of the Working Group over a period of 10-12 months. The initial meetings would focus on issues, data, housing needs, and opportunities. The later meetings would focus on policy and program development.

For budgeting purposes, the Working Group is presumed to be an ad hoc group that is more informally structured than the General Plan Steering Committee. It is presumed that this Group would not be formally appointed and subject to Brown Act requirements. It is further presumed the meetings will occur using Zoom and that meetings would end with completion of the HCD Review Draft and the beginning of the public review process.

- C. **Interviews with Individual Stakeholders.** Barry will meet with up to 12 individual housing stakeholders to identify and discuss housing issues, opportunities, constraints, and potential new policies and programs. These would likely be phone/ Zoom meetings. Some of these meetings could occur with small groups (3-5 persons) with similar interests, such as non-profit developers, neighborhood groups, environmental advocates, and social service providers.
- D. **Planning Commission Study Sessions.** Two meetings with the Planning Commission will be scheduled over the course of the project, *before* the HCD Review Draft is completed. This would provide an opportunity to brief the Commission on the project, consider points in the project. Each study session would include an opportunity for public comment and Commission discussion.

- E. **City Council Progress Reports.** In addition to the kickoff meeting identified in Task 2, there would be two progress reports to the City Council delivered over the course of the project—likely in Fall 2021 and Winter 2021-22. These would be similar to the progress reports that have been provided throughout the General Plan Update.
- F. **Community Survey.** Barry Miller will design and implement an electronic survey on housing issues in San Rafael. The survey would be administered using the SurveyMonkey web application and would be advertised and promoted by the City in collaboration with various neighborhood and community groups. The purpose of the survey would be to measure public opinion on the City’s housing needs and priorities, strategies for meeting those needs, ideas for housing sites, and potential funding sources for increasing the supply of affordable units. A Spanish-language option would be provided. Barry will evaluate survey findings and prepare a survey summary report.
- G. **Community Workshops.** At least two community workshops will be convened over the course of the project. Meetings would be recorded and could be streamed via YouTube for those unable to attend. The initial workshop would be held using a virtual (Zoom webinar) format and would include real-time electronic polling (and potentially break-out groups on different topics). The format for the second workshop would depend on public health protocols in effect at that time (likely early 2022—this could potentially be an in-person meeting).
- H. **Pop-Up Workshops.** At least two “pop-up” events will be planned, potentially at the Farmers Market or other City events that can engage passers-by in real-time conversations about housing issues.
- I. **Attendance at Neighborhood, Community, and Stakeholder Group Meetings.** As with General Plan 2040, Barry would be available to attend the regularly scheduled meetings of community groups, business groups, and advocacy groups to discuss the Housing Element. Barry has an established rapport with these groups through his work on the General Plan and is already familiar with their meeting formats. This could also include attendance at meetings of the Citizens Advisory Committee for Affordable Housing and Economic Development, in the event those meetings resume.
- J. **Other Outreach Measures.** As time and budget allow, Barry Miller will develop and implement other outreach measures. This could include a continuation of the City’s partnership with Youth-In-Arts to engage San Rafael students in the design of the built environment, and potential partnerships with San Rafael City Schools to engage high school students in housing discussions. It could also include webinars (similar to those done for the PDAs and Historic Preservation Survey), “pinnable” on-line maps that enable the public to suggest housing sites, and short videos or video interviews.

Sub-Task 3.2: Spanish Language Housing Outreach Initiative

This task is not included in Barry Miller’s scope, but it is recommended for inclusion in the overall work scope.

The Housing Element Update provides an opportunity for the City to demonstrate its commitment to an equitable, diverse, and inclusive planning process. State law requires the City to engage “all economic

segments of the community” in its Housing Element and to “affirmatively further fair housing.” The City’s new General Plan EDI Element strongly advocates for programs that engage non-English speaking residents. This requires more than simply providing translation services at meetings or translating materials into Spanish—it requires culturally competent strategies that may be best implemented in tandem with community organizations and advocates. As demonstrated by the General Plan 2040 process, a partnership with a local organization such as Canal Alliance can leverage community connections to generate more authentic and meaningful input.

Barry Miller will serve as the City’s point of contact for this process and as a subject matter expert, but additional expertise and funding will be needed to complete this task. Fluency in Spanish, familiarity with local issues, and credibility within the community are important. Elements of the Spanish-language outreach program could include interviews, surveys, focus groups, workshops, and similar methods to solicit input. Options for doing this work might include a City contract with the Canal Alliance, Communities in Collaboration, Baird + Driskell (whose staff includes bilingual employees), relying on bilingual City staff, or retaining a bilingual facilitator.

TASK 4: EVALUATION OF PREVIOUS (2015-2023) HOUSING ELEMENT

Pursuant to statutory requirements, Barry Miller will complete a review of the current (2015-2023) Housing Element. This will include a comparison of planned objectives with actual achievements, as well as documentation of housing production between 2015 and 2021 by income type using the Annual Progress Report as a source. The effectiveness of each policy and action program will be evaluated and barriers to implementation will be identified. Recommendations will be made to improve the existing Element and add new policies addressing recent legislation. A summary of new housing legislation will be included. The work product will be a Memorandum, suitable for conversion into a Chapter of the 2023-2031 Housing Element.

TASK 5: PREPARE HOUSING NEEDS ASSESSMENT

The Housing Needs Assessment will provide the reader with a basic understanding of the major demographic and housing characteristics in the city. Trends in population, age, ethnicity, income, household type and size, tenure, total numbers of units, and housing affordability will be documented. Overpayment and overcrowding will be analyzed. The report will also cover the characteristics of persons with special housing needs, including the elderly, disabled, homeless, farmworkers, extremely low income, and single parent households.

ABAG has already packaged much of this data for each city in the Bay Area. Their technical assistance package will be used as the starting point but will be supplemented by additional data from the Census, local business and real estate sources, and interviews. Where feasible, data will be mapped at the Census Tract or block group level to illustrate spatial patterns and areas of concentrated need. This task will also assess the City’s efforts to conserve any subsidized housing at risk of converting to market rate, and the level of risk associated with expiring subsidies during the planning period.

The work product will be a Memorandum, suitable for conversion into a Chapter of the 2023-2031 Housing Element.

TASK 6: HOUSING OPPORTUNITIES

Sub-Task 6.1: Prepare Inventory of Adequate Sites

Barry Miller will complete the state-mandated housing sites analysis. This will include projects that are entitled but not yet built, projects proposed but not yet entitled, and vacant and underutilized sites. The vacant and underutilized sites include those zoned exclusively for housing as well as those zoned for commercial and mixed uses or other activities where housing is allowed. Sites within the Downtown Precise Plan area will be separately tracked, and capacity estimates will be made using the Form Based Code and market data on typical unit size.

The starting point for this analysis will be the 2015-2023 Housing Sites Inventory. Because very few changes were made to the Land Use Map when General Plan 2040 was prepared, most of this information is still accurate. However, the 2015 sites inventory identified capacity for 2,415 units, which is 805 units below the 2023-2031 RHNA. Moreover, the City must plan for a capacity “buffer” so that it does not experience a net loss of housing capacity for low and very low income households during the planning period. Practically speaking, the City will likely need to identify capacity for approximately 4,000 units. This is within the 4,400 unit “cap” modeled by the General Plan EIR but rezoning or changes in allowable heights and densities may still be required. Some of the sites identified in the 2015 Element may not be eligible to be carried forward based on new State requirements for opportunity sites.

Each of the sites listed in the existing inventory will be field-checked to determine its current status, and if it meets HCD’s current criteria for site adequacy. Key changes to the requirements since 2015 are as follows:

- For non-vacant sites, any existing leases or contracts for current uses must be disclosed, and the City’s experience with using previously developed sites for housing must be documented. Under new laws, the City may also need such evidence as letters of interest from property owners when adding sites.
- Sites smaller than 0.5 acres (21,780 SF) are not considered suitable for lower income housing unless the City can demonstrate a track record of building affordable units on sites that size. A number of potential Downtown housing sites are impacted by this threshold.
- Sites listed in the last element (or the last two elements for vacant sites) cannot be recounted unless they are zoned for by-right development for a project in which at least 20% of the units are affordable.
- More detail on site constraints will be required.

The product of this task will be an Excel data base that lists all sites, along with a summary report suitable for inclusion as a Chapter of the Housing Element. Documented attributes of each site will include street address, Assessor Parcel Number, General Plan and Zoning designations, existing use, maximum (and realistic) potential units per acre, total number of potential units, availability of utilities,

existing site commitments, owner interest in development, and any issues or constraints associated with reuse. The data base will factor in potential future production of accessory dwelling units (ADUs), based on building permit data and trends over the last five years. ADU potential will also be estimated by income category based on data on prevailing rents.

As in the previous Housing Element, data on housing sites will be organized by site type. Major categories would include projects under construction or entitled, proposed projects, residential projects on vacant land, residential projects on underutilized land, mixed use projects on vacant land, mixed use projects on underutilized land, and ADUs/ Junior ADUs. An additional category may be created for projects that would require rezoning, including sites with light industrial/ office zoning that could support live-work development (e.g., through rezoning to Commercial districts or a zoning district comparable to Lindero Mixed Use).

An estimate of residential potential by income category will be developed. As needed, the City will consult with HCD to verify that all sites in the inventory may be counted, and that sites identified as appropriate for low and/or very low income housing are acceptable.

Sub-Task 6.2: Opportunities for Office/Retail Conversion to Housing (Optional Task)

This task is not included in Barry Miller's scope although he will facilitate the work if the City includes it in the project.

The COVID-19 pandemic has led to higher retail and office vacancy rates in San Rafael, as well as greater interest in converting vacant and/or underutilized commercial space to housing. Changes to the retail market started before the pandemic and have accelerated with the shift to on-line shopping. Some neighborhood shopping centers and big box stores may have a hard time attracting or retaining tenants in the future. The long-term impacts of the pandemic on the office market are unknown, but a continued trend toward telework is expected. Some office buildings may no longer be profitable for their owners, leading to proposals for residential conversions. The City has already received a proposal to convert an empty office building to "micro units" on Mitchell Boulevard, and will likely receive similar proposals in the future. Some of these proposals will be in zoning districts where housing is allowed, and some will be in Light Industrial/ Office or General Industrial districts where housing is not permitted.

The intent of this task is to engage the City's contract housing economist (Baird + Driskell) and an urban designer (ideally a sole practitioner or small firm) in a series of pro forma/ design exercises to test the feasibility of various residential types and densities on retail and office sites. This could include both conversions, and demolition and replacement scenarios. Housing types such as live-work and co-housing could also be explored in these scenarios.

Community input would be an important part of this task as it could eventually lead to zoning revisions, new design and development standards, and new housing opportunities on sites not previously envisioned for housing. Input could be solicited through a workshop or open house, and through on-line forums and exercises. Input from the Planning Commission, DRB, and City Council would also be solicited.

TASK 7: EVALUATE CONSTRAINTS TO HOUSING DEVELOPMENT AND ENERGY PROGRAMS

Barry Miller will complete the state-mandated constraints analysis. Attributes of zoning, such as minimum lot size standards, maximum densities, lot coverage requirements, parking standards, and use permit requirements, will be addressed, just as they were in the 2015-23 Element. Consistent with State law, the analysis will also address constraints to particular housing types, including accessory dwelling units, emergency shelters, SROs, and transitional housing. This task will also look at the building and permitting process in San Rafael, including factors such as processing times, locally unique building code standards, fees (compared to other cities), and site improvement requirements. Design review and subdivision standards also will be reviewed.

Non-governmental constraints will be assessed as part of this task. These include traffic congestion, the availability of infrastructure, school capacity, and environmental constraints. As required by new Housing Element laws, this section also will examine constraints associated with NIMBYism and labor shortages.

Barry Miller will also provide the State-required evaluation of energy conservation and efficiency, including green building standards and Title 24 requirements, opportunities for renewable energy and conservation assistance, weatherization programs, and reduced energy rates for lower income households.

TASK 8: ECONOMIC AND FINANCIAL RESOURCES, CONSTRAINTS/ AFFIRMATIVELY FURTHERING FAIR HOUSING

This task is not included in Barry Miller's budget, but it is recommended for inclusion in the overall work scope. It is presumed this work will be done by Baird + Driskell, in their capacity as the City's on-call housing consultant. Barry Miller will coordinate the work and provide quality control and assurance for all work products. Ultimately, Barry will integrate the contents into the City's Housing Element.

The Constraints Analysis includes an evaluation of financial and economic constraints to development. This includes land and construction costs, and issues surrounding financing and mortgage lending practices. The economic/financial consultant would provide this analysis.

The same consultant would also provide an analysis of financial and administrative resources, including State and federal housing programs, tax credits, non-profit development, and various City and County programs. The consultant also would provide the state-mandated analysis of fair housing in San Rafael, utilizing data from the 2020 Marin County Impediments to Fair Housing Report and other local data.

The findings of Task 8 will be summarized in a working paper. Components of the working paper will be incorporated into the appropriate chapters of the Housing Element when the document is assembled.

TASK 9: PREPARE GOALS, POLICIES, QUANTIFIED OBJECTIVES, AND ACTION PROGRAM

Barry Miller will prepare the goals, objectives, and policies for the revised Housing Element. The quantified objectives in 2015-2023 Element (for housing production, rehabilitation, and conservation by income group) will be updated. Existing goals will be updated as needed. The policies will be updated to address newly identified needs, issues, constraints, and state laws, as well as housing issues raised during the General Plan Update. The housing programs will be updated, and new programs will be added based on the findings of Tasks 2-8. A responsible party, timeframe, and funding source will be identified for each program.

TASK 10: PRODUCE HCD REVIEW DRAFT HOUSING ELEMENT

The Housing Element requires two rounds of public review. Round One involves an “HCD Review Draft” and Round Two involves a “Public Review Draft” that has been revised in response to HCD’s initial comments. Both rounds require public hearings before the Planning Commission and City Council, including opportunities for public comment.

The “HCD Review Draft” will be compiled by June 2022. This document will include an Introduction; an Evaluation of the past Housing Element; a Needs Assessment; a Sites Inventory; a Constraints Analysis; a Housing Resources Summary; Goals, Policies, and Programs; and a Summary of Public Participation. The Draft will first be circulated for internal review and comment by staff. Revisions will be made as needed. The revised Draft will be considered by the Planning Commission and City Council during Summer 2022, with edits made as needed in response to their comments. The Council will not be asked to adopt the document at this point, but merely to approve its submittal to the State for review.

TASK 11: LIAISON WITH HCD, RESPONSES TO COMMENTS, AND ADOPTION DRAFT

The HCD Review Draft will be submitted to the State. Following receipt of HCD comments, Barry Miller will meet with State reviewers to discuss their feedback. He will then prepare a redlined version of the Draft with appropriate edits, and a summary memo annotating all revisions. As feasible, drafts of revised language will be circulated to HCD for “informal” review prior to completion of this memo. The task concludes when staff has reasonable assurance that the proposed revisions will result in an HCD compliance determination. At that point, Barry Miller will incorporate final edits and produce a clean copy of the Public Review Draft Housing Element.

TASK 12: ADOPTION AND FINAL PLAN PRODUCTION

Barry Miller will participate in public hearings to adopt the Housing Element in November/December 2022. The budget assumes two hearings (one Planning Commission and one City Council). Barry Miller will prepare staff reports and presentations, respond to public comments (and Commission/ Council comments), and prepare addenda and redlined documents as needed to show changes between the HCD Draft and the final version ready for adoption. Following adoption of the Housing Element, Barry Miller will prepare the final version.

The document will be submitted to HCD no later than January 31, 2023. Barry will provide liaison to HCD in their review of the Element and the certification process.

TASK 13: CONCURRENT REZONING AND/OR GENERAL PLAN AMENDMENTS

Barry Miller will prepare any General Plan Land Use Map and text amendments needed to reflect the sites inventory/ HCD comments and incorporate any other changes necessary to maintain an internally consistent General Plan. Although this work is numbered as Task “13,” it would actually occur concurrently with Tasks 9-12. In other words, General Plan and zoning changes would be adopted concurrently with the Housing Element.

Zoning map and text amendments are included in this task. These could include rezoning of individual sites (or groups of sites) from one zone to another, as well as changes to development standards for existing zones. The zoning amendments would only cover those necessary to increase housing capacity related to the RHNA requirements; additional changes identified in Housing Element Action Programs would occur after the Plan is adopted.

The extent of map amendments is unknown at this time. A budget of 100 hours has been earmarked for this purpose, but the budget appears as a “contingency” item because it may be possible to meet the RHNA without map amendments. Approval of the Community Development Director would be required prior to accessing this budget.

TASK 14: CEQA COMPLIANCE

This task includes an allocation of 24 hours for Barry Miller. A separate contract with an environmental consultant would be required to prepare CEQA compliance documents. Barry’s budget for this task covers project management, assistance in drafting the Project Description, reviewing and editing CEQA documents, developing staff reports and memos, and coordinating the public review process. Barry will also provide technical support and assistance to the CEQA Contractor.

The scope of work for a CEQA contractor would be determined later in the process, when the City has a better sense of the level of review required. The Housing Element would likely require an Initial Study-Negative Declaration (if there are no map changes), or a Supplemental EIR or EIR Addendum (if there are map changes). A full EIR should not be required.

TASK 15: ON-GOING ASSISTANCE WITH LONG-RANGE PLANNING WORK

The contingency budget includes an allowance of 80 hours for on-call assistance on long-range planning work unrelated to the Housing Element. This could include various tasks related to implementation of the General Plan and Downtown Precise Plan, zoning revisions, preparation of ordinances or staff reports, preparing correspondence, researching best practices on particular issues, attending meetings on the City’s behalf, and similar tasks. Use of this budget would require Community Development Director authorization and approval.

SCHEDULE AND BUDGET

The project schedule and budget is presented below:

Task	Timing	Hours
1 Project Management and Administration	May 2021 – Jan 2023	40
2 Project Kickoff	May - Jun 2021	40
3 (3.1) Community Engagement Program	June 2021 - Dec 2022	125
(3.2) Spanish Language Outreach	June 2021 – Dec 2022	8 (*)
4 Evaluation of Previous Element	July - Aug 2021	32
5 Housing Needs Assessment	Aug - Oct 2021	60
6 (6.1) Prepare Inventory of Adequate Sites	Sept - Nov 2021	80
(6.2) CONTINGENCY: Office/Retail Conversion Scenarios	Sept - Dec 2021	20 (*)
7 Evaluate Constraints to Housing Development	Nov – Dec 2021	50
8 Economic/Financial/ Fair Housing	Sept 2021 - Mar 2022	8 (*)
9 Prepare Goals, Policies, and Quantified Objectives	Feb-Mar 2022	60
10 Prepare HCD Review Draft	April - May 2022	40
11 Liaison with HCD/ Revisions/ Public Review Draft	May – Oct 2022	60
12 Adoption and Final Plan Production	Oct - Dec 2022	60
13 CONTINGENCY: Zoning and General Plan Amendments	Nov 2021 – Dec 2022	100
14 CEQA Compliance	Jan – Dec 2022	24 (*)
15 CONTINGENCY: On-Call Long Range Planning	Jun 2021 – Jan 2023	80
SUMMARY		
Core Housing Element Services	May 2021 - Jan 2023	687
Contingency Housing Element Services	May 2021 – Jan 2023	200
TOTAL		887

() Additional work to be provided by third party consultant*

The hourly rate for this project is \$135. Thus, the total estimated labor cost is \$92,745 for the non-contingency tasks and \$27,000 for the contingency tasks, for a total of \$119,745. An additional \$5,000 is recommended for contract graphics/GIS/map services and other material costs, for a total of \$124,745. This cost excludes the Spanish language outreach program, the housing finance/ fair housing analysis, the optional urban design/ visual simulation consultant, and the CEQA consultant. Barry Miller would assist the City in retaining these consultants as part of Task 1.

Work will be billed monthly on a time and materials basis, not to exceed \$124,745 over the 21-month period from May 1, 2021 to January 31, 2023. A Professional Services Agreement could cover the entire 21-month period or could be structured to allot \$80,000 for the first 12 months, with a renewal on May 1, 2022 allotting \$44,745 for the last nine months.

ATTACHMENT #3

**PROFESSIONAL SERVICES AGREEMENT WITH
BAIRD + DRISKELL COMMUNITY PLANNING**

AGREEMENT FOR HOUSING POLICY, HOUSING FINANCE & ECONOMIC CONSULTING SERVICES

This Agreement is made and entered into this 1st day of April , 2021, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and BAIRD + DRISKELL COMMUNITY PLANNING (hereinafter "**CONSULTANT**").

RECITALS

WHEREAS one of the **CITY**'s top priorities is to remove barriers to the approval and construction of needed housing, and to accommodate the **CITY**'s regional housing needs. To address this priority, the **CITY** has pursued and has implemented changes in a number of housing policies and practices. As part of this effort the **CITY** has carefully analyzed financing tools to support strong policy and promote housing construction; and

WHEREAS, at present, the **CITY** does not employ staff that have extensive skills in housing policy and housing finance. These specialized skills are generally met and accommodated, on an as needed basis, through individual contractual service agreements; and

WHEREAS, with the increased focus on all facets of housing from the protection of existing housing stock to forward planning for future housing, there is a heightened need for on-call housing policy, housing finance, and economic consulting services. These services will be particularly critical as the **CITY** proceeds with preparing for the next Housing Element update. **CONSULTANT** services will support **CITY** staff on finance and economic elements critical to the Housing Element update and the implementation of housing policies and regulations; and

WHEREAS the firm of Baird + Driskell Community Planning (**CONSULTANT**) offers the services and skills needed to assist the **CITY** on technical and complex housing policy and financing. Further, **CONSULTANT** has a long and extensive history of providing housing policy services to the **CITY**.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **CITY'S Project Manager.** The Community Development Director is hereby designated the PROJECT MANAGER for the **CITY** and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement. During the preparation of the Housing Element update, PROJECT MANAGER may choose to assign or delegate this supervisory role to the Housing Element Project Manager.

B. **CONSULTANT'S Project Director.** **CONSULTANT** shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for **CONSULTANT**. Paul Peninger is hereby designated as the PROJECT DIRECTOR

for **CONSULTANT**. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute **PROJECT DIRECTOR**, for any reason, the **CONSULTANT** shall notify the **CITY** within ten (10) business days of the substitution.

2. DUTIES OF CONSULTANT.

CONSULTANT shall perform the duties and/or provide services on an as needed, on-call basis that include the preparation of reports, technical analyses, and economic data specific to housing finance and economics to support recommended housing policies. Sample services are provided in Exhibit A, attached herein. The specific scope and purpose of the service will be defined when **CONSULTANT** is called upon to complete the needed service. Prior to assignment of the service by the **CITY**, **CONSULTANT** will be required to prepare a written proposal that outlines the requested service, the budget, and time frame for completing the service. Individual written proposals for service submitted by **CONSULTANT** can be authorized by letter agreement signed by both **CITY** and **CONSULTANT**.

3. DUTIES OF CITY.

CITY shall pay the compensation as provided in Paragraph 4.

4. COMPENSATION.

For performance of the future services requested and commissioned by the **CITY**, **CITY** shall pay **CONSULTANT** the budget amount scoped for the service and authorized by letter agreement required in Paragraph 2, above. The budget amount for as needed, on call services shall be based on the hourly rate schedule provided in Exhibit A, attached herein. The maximum budget allocated for on call services is \$50,000.00.

Payment will be made monthly upon receipt by **PROJECT MANAGER** of itemized invoices submitted by **CONSULTANT**.

5. TERM OF AGREEMENT.

The term of this Agreement shall be for two (2) years commencing on April 15, 2021 and ending on April 15, 2023. Upon mutual agreement of the parties, and subject to the approval of the City Manager the term of this Agreement may be extended for an additional period of up to one (1) year.

6. TERMINATION.

A. **Discretionary.** Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.

B. **Cause.** Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice,

within such fifteen (15) day time period.

C. **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.

D. **Return of Documents.** Upon termination, any and all CITY documents or materials provided to CONSULTANT and any and all of CONSULTANT's documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to CITY as soon as possible, but not later than thirty (30) days after termination.

7. OWNERSHIP OF DOCUMENTS.

The written documents and materials prepared by the CONSULTANT in connection with the performance of its duties under this Agreement, shall be the sole property of CITY. CITY may use said property for any purpose, including projects not contemplated by this Agreement.

8. INSPECTION AND AUDIT.

Upon reasonable notice, CONSULTANT shall make available to CITY, or its agent, for inspection and audit, all documents and materials maintained by CONSULTANT in connection with its performance of its duties under this Agreement. CONSULTANT shall fully cooperate with CITY or its agent in any such audit or inspection.

9. ASSIGNABILITY.

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

10. INSURANCE.

A. **Scope of Coverage.** During the term of this Agreement, CONSULTANT shall maintain, at no expense to CITY, the following insurance policies:

1. A commercial general liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, for death, bodily injury, personal injury, or property damage.

2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million dollars (\$1,000,000) dollars per occurrence.

3. If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, to cover

any claims arising out of the **CONSULTANT's** performance of services under this Agreement. Where **CONSULTANT** is a professional not required to have a professional license, **CITY** reserves the right to require **CONSULTANT** to provide professional liability insurance pursuant to this section.

4. If it employs any person, **CONSULTANT** shall maintain worker's compensation insurance, as required by the State of California, with statutory limits, and employer's liability insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease. **CONSULTANT's** worker's compensation insurance shall be specifically endorsed to waive any right of subrogation against **CITY**.

B. Other Insurance Requirements. The insurance coverage required of the **CONSULTANT** in subparagraph A of this section above shall also meet the following requirements:

1. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additional insureds (for both ongoing and completed operations) under the policies.

2. The additional insured coverage under **CONSULTANT'S** insurance policies shall be "primary and noncontributory" with respect to any insurance or coverage maintained by **CITY** and shall not call upon **CITY's** insurance or self-insurance coverage for any contribution. The "primary and noncontributory" coverage in **CONSULTANT'S** policies shall be at least as broad as ISO form CG20 01 04 13.

3. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.

4. By execution of this Agreement, **CONSULTANT** hereby grants to **CITY** a waiver of any right to subrogation which any insurer of **CONSULTANT** may acquire against **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 **CITY** has received a waiver of subrogation endorsement from the insurer.

5. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years.

6. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this Agreement.

7. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of **CITY** (if agreed to in a written contract or agreement) before

CITY'S own insurance or self-insurance shall be called upon to protect it as a named insured.

8. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to **CITY** or any other additional insured party. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the **CONSULTANT** under this agreement.

C. **Deductibles and SIR's.** Any deductibles or self-insured retentions in **CONSULTANT's** insurance policies must be declared to and approved by the **PROJECT MANAGER** and City Attorney and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or **CITY** or other additional insured party. At **CITY's** option, the deductibles or self-insured retentions with respect to **CITY** shall be reduced or eliminated to **CITY's** satisfaction, or **CONSULTANT** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

D. **Proof of Insurance.** **CONSULTANT** shall provide to the **PROJECT MANAGER** or **CITY'S** City Attorney all of the following: (1) Certificates of Insurance evidencing the insurance coverage required in this Agreement; (2) a copy of the policy declaration page and/or endorsement page listing all policy endorsements for the commercial general liability policy, and (3) excerpts of policy language or specific endorsements evidencing the other insurance requirements set forth in this Agreement. **CITY** reserves the right to obtain a full certified copy of any insurance policy and endorsements from **CONSULTANT**. Failure to exercise this right shall not constitute a waiver of the right to exercise it later. The insurance shall be approved as to form and sufficiency by **PROJECT MANAGER** and the City Attorney.

11. INDEMNIFICATION.

A. Except as otherwise provided in Paragraph B., **CONSULTANT** shall, to the fullest extent permitted by law, indemnify, release, defend with counsel approved by **CITY**, and hold harmless **CITY**, its officers, agents, employees and volunteers (collectively, the "**City Indemnitees**"), from and against any claim, demand, suit, judgment, loss, liability or expense of any kind, including but not limited to attorney's fees, expert fees and all other costs and fees of litigation, (collectively "**CLAIMS**"), caused by **CONSULTANT'S** performance of its obligations or conduct of its operations under this Agreement. The **CONSULTANT's** obligations apply regardless of whether or not a liability is caused or contributed to by the active or passive negligence of the **City Indemnitees**. However, to the extent that liability is caused by the active negligence or willful misconduct of the **City Indemnitees**, the **CONSULTANT's** indemnification obligation shall be reduced in proportion to the **City Indemnitees'** share of liability for the active negligence or willful misconduct. In addition, the acceptance or approval of the **CONSULTANT'S** work or work product by the **CITY** or any of its directors, officers or employees shall not relieve or reduce the **CONSULTANT'S** indemnification obligations. In the

event the **City Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding caused by **CONSULTANT'S** performance of or operations under this Agreement, **CONSULTANT** shall provide a defense to the **City Indemnitees** or at **CITY'S** option reimburse the **City Indemnitees** their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

B. Where the services to be provided by **CONSULTANT** under this Agreement are design professional services to be performed by a design professional as that term is defined under Civil Code Section 2782.8, then, to the extent permitted by law including without limitation, Civil Code sections 2782, 2782.6 and 2782.8, **CONSULTANT** shall indemnify and hold harmless the **CITY** and its officers, officials, and employees (collectively **City Indemnitees**) from and against damages, liabilities or costs (including incidental damages, Court costs, reasonable attorney's fees as may be determined by the Court, litigation expenses and fees of expert witnesses incurred in connection therewith and costs of investigation) to the extent they are caused by the negligence, recklessness, or willful misconduct of **CONSULTANT**, or any subconsultants, or subcontractor or anyone directly or indirectly employed by them, or anyone for whom they are legally liable (collectively **Liabilities**). Such obligation to hold harmless and indemnify any indemnity shall not apply to the extent that such **Liabilities** are caused in part by the negligence or willful misconduct of such **City Indemnitee**.

C. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement, and shall survive the termination or completion of this Agreement for the full period of time allowed by law.

12. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

13. COMPLIANCE WITH ALL LAWS.

CONSULTANT shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. **CONSULTANT** shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. **CONSULTANT** shall release, defend, indemnify and hold harmless **CITY**, its officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

14. NO THIRD-PARTY BENEFICIARIES.

CITY and **CONSULTANT** do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

15. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO CITY's Project Manager:

Alicia Giudice
City of San Rafael
1400 5th Avenue, 3rd floor
San Rafael, CA 94901

TO CONSULTANT's Project Director:

Paul Peninger
Baird + Driskell Community Planning
2635 Benvenue Avenue
Berkeley, CA 94704

16. INDEPENDENT CONTRACTOR.

For the purposes, and for the duration, of this Agreement, **CONSULTANT**, its officers, agents and employees shall act in the capacity of an Independent Contractor, and not as employees of the **CITY**. **CONSULTANT** and **CITY** expressly intend and agree that the status of **CONSULTANT**, its officers, agents and employees be that of an Independent Contractor and not that of an employee of **CITY**.

17. ENTIRE AGREEMENT -- AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the **CONSULTANT** and the **CITY**.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the **CONSULTANT** and the **CITY**.

E. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

18. SET-OFF AGAINST DEBTS.

CONSULTANT agrees that **CITY** may deduct from any payment due to **CONSULTANT** under this Agreement, any monies which **CONSULTANT** owes **CITY** under any ordinance, agreement, contract or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks or other amounts.

19. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

20. COSTS AND ATTORNEY'S FEES.

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, may recover its reasonable costs (including claims administration) and attorney's fees expended in connection with such action.

21. CITY BUSINESS LICENSE / OTHER TAXES.

CONSULTANT shall obtain and maintain during the duration of this Agreement, a **CITY** business license as required by the San Rafael Municipal Code **CONSULTANT** shall pay any and all state and federal taxes and any other applicable taxes. **CITY** shall not be required to pay for any work performed under this Agreement, until **CONSULTANT** has provided **CITY** with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

22. SURVIVAL OF TERMS.

Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled and shall apply to both Parties' respective successors and assigns.

23. APPLICABLE LAW.

The laws of the State of California shall govern this Agreement.

24. COUNTERPARTS AND ELECTRONIC SIGNATURE.

This Agreement may be executed by electronic signature and in any number of counterparts,

EXHIBIT A

BAIRD + DRISKELL COMMUNITY PLANNING List of Sample Services & Hourly Rate Schedule

Housing Finance & Economic Services

- Technical support for Housing Element Update
- Real estate development financial feasibility analyses
- Affordable housing financial and economic studies
- Proforma preparation and analysis
- Private and public land assessments for housing opportunity
- Fiscal impact and market analyses
- Assessment of housing policies for economic impacts
- Equity and inclusion studies relative to housing economics and finance
- Economic development strategies

Hourly Rate Schedule

- Principal \$185.00 / hour
- Senior Associate \$160.00 / hour
- Associate \$145.00 / hour