

**AGREEMENT WITH DIANA R. ELROD CONSULTING
FOR PROFESSIONAL CONSULTANT SERVICES
FOR
HOUSING ELEMENT UPDATE**

This Agreement, made and entered into this day of _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California (“CITY”), and Diana R. Elrod Consulting, a sole proprietorship (“CONSULTANT”), whose address is 386 Franconia Street, San Francisco, CA 94110.

RECITALS:

A. CITY desires certain consulting services to prepare the Housing Element Update hereinafter described.

B. CITY desires to engage CONSULTANT to provide these consulting services by reason of its qualifications and experience for performing such services and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

The scope of services to be performed by CONSULTANT under this Agreement is as described in Exhibit A to this Agreement, attached and incorporated by reference.

SECTION 2 - DUTIES OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONSULTANT represents that it is qualified to furnish the services described under this Agreement.

CONSULTANT shall be responsible for employing or engaging all persons necessary to perform the services of CONSULTANT.

CONSULTANT agrees to comply with the City’s minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

SECTION 3 - DUTIES OF CITY

CITY shall provide pertinent information regarding its requirements for the project.

CITY shall examine documents submitted by CONSULTANT and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONSULTANT's work.

SECTION 4 - TERM

The services to be performed under this Agreement shall commence on August 17, 2020 and be completed on or about March 30, 2023.

SECTION 5 - PAYMENT

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONSULTANT a fee in an amount of \$ 129,820.00, pursuant to rates stated in Exhibit A to this Agreement, attached and incorporated by reference.

SECTION 6 - TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ten (10) days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement upon receipt of said written notice.

Upon termination and upon CITY's payment of the amount required to be paid, documents become the property of CITY, and CONSULTANT shall transfer them to CITY upon request without additional compensation.

SECTION 7 - OWNERSHIP OF DOCUMENTS

All documents prepared by CONSULTANT in the performance of this Agreement, although instruments of professional service, are and shall be the property of CITY, whether the project for which they are made is executed or not.

SECTION 8 - CONFIDENTIALITY

All reports and documents prepared by CONSULTANT in connection with the performance of this Agreement are confidential until released by CITY to the public. CONSULTANT shall not make any such documents or information available to any individual or organization not employed by CONSULTANT or CITY without the written consent of CITY before any such release.

SECTION 9 - INTEREST OF CONSULTANT

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 - CONSULTANT'S STATUS

It is expressly agreed that in the performance of the professional services required under this Agreement, CONSULTANT shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONSULTANT an agent or employee of CITY while providing services under this Agreement.

SECTION 11 - INDEMNITY

CONSULTANT agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONSULTANT's performance of this Agreement, except those claims arising out of CITY's sole negligence or willful misconduct. CONSULTANT agrees to defend City, its elected and appointed officials, employees, and agents against any such claims.

SECTION 12 - INSURANCE

CONSULTANT shall procure and maintain for the duration of the contract and three years thereafter (five years for building or major improvements) the insurance specified in Exhibit B to this Agreement.

SECTION 13 - NON-ASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONSULTANT and cannot be transferred, assigned, or subcontracted by CONSULTANT without the prior written consent of CITY.

SECTION 14 - RELIANCE UPON PROFESSIONAL SKILL OF CONSULTANT

It is mutually understood and agreed by and between the parties hereto that CONSULTANT is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement and that CITY relies upon the skill of CONSULTANT to do and perform the work in the most skillful manner, and CONSULTANT agrees to thus perform the work. The acceptance of CONSULTANT's work by CITY does not operate as a release of CONSULTANT from said obligation.

SECTION 15 - WAIVERS

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

SECTION 16 - SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

SECTION 17 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 18 - NON-DISCRIMINATION

CONSULTANT warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONSULTANT nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 19 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 20 - LITIGATION

CONSULTANT shall testify at CITY'S request if litigation is brought against CITY in connection with CONSULTANT's services under this Agreement. Unless the action is brought by CONSULTANT, or is based upon CONSULTANT's wrongdoing, CITY shall compensate CONSULTANT for preparation for testimony, testimony, and travel at CONSULTANT's standard hourly rates at the time of actual testimony.

SECTION 21 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY: Sandra Council, Housing Manager
City of San Mateo
330 W. 20th Avenue
San Mateo, CA 94403

To CONSULTANT: Diana R. Elrod
386 Franconia Street
San Francisco, CA 94110

SECTION 22 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONSULTANT.

SECTION 23 - AUTHORITY TO ENTER INTO AGREEMENT

CONSULTANT has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

SECTION 24 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, CITY OF SAN MATEO and DIANA R. ELROD CONSULTING have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

CONSULTANT

Christina Horrisberger
Acting Community Development Director

Diana R. Elrod
Sole Proprietor

APPROVED AS TO FORM

Gabrielle Whelan
Assistant City Attorney

Attachments:

- Exhibit A: Scope of Services/Fee Rates
- Exhibit B: Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES



DIANA R. ELROD CONSULTING

Community Development • Land Use Implementation
Strategic Planning

c

Proposal and Scope of Work

Sites Inventory and Analysis, and Completion of the
Sixth Cycle Housing Element

REVISED
City of San Mateo

Prepared by
Diana R. Elrod Consulting
386 Franconia Street
San Francisco, CA 94110
415.214.2248
diananrelrod@gmail.com

PROJECT APPROACH

Inventory of Sites Analyses and Scenario Development

Spending time developing a solid sites inventory will be crucial to the success of the Housing Element. While it is not clear yet what the RHNA allocations will look like in the Bay Area, we do know to expect larger allocations than in previous cycles. The following table outlines the expected timeframe for the completion of the RHNA allocations and sixth cycle Housing Element:

REGIONAL HOUSING NEEDS ALLOCATION Association of Bay Area Governments

ABAG 2023-2031 RHNA and Plan Bay Area 2050 Key Milestones	Proposed Deadline
Housing Methodology Committee kick-off	October 2019
Subregions form ¹	February 2020
Plan Bay Area 2050 Regional Growth Forecast	April 2020
HCD Regional Housing Need Determination ²	Summer 2020
Plan Bay Area 2050 Draft Blueprint	July 2020
Proposed RHNA methodology, ³ draft subregion shares	Fall 2020
Plan Bay Area 2050 Final Blueprint	December 2020
Final subregion shares ⁴	December 2020
Draft RHNA methodology to HCD for review ⁵	Winter 2021
Final RHNA methodology, ⁶ draft allocation ⁷	Spring 2021
RHNA appeals ⁸	Summer 2021
Final Plan Bay Area 2050	September 2021
Final RHNA allocation ⁹	Winter 2021
Housing Element due date ¹⁰	January 2023

Dates are tentative and subject to change.

NOTE: The State recently allocated the bulk figure to ABAG, the total of which is about 441,000 units, or as much as 2.3 times the last allocation. The remainder of the timeline above is still in flux, but the statutory deadline for the completion of the Housing Element is January 2023.

The following are the anticipated steps needed to conduct a thorough analysis of the sites inventory and develop scenarios to test in terms of potential zoning changes.

1. Review last inventory and eliminate sites that have been developed (with housing or other uses).
2. Determine whether Housing Accountability Act rules apply to these changes (no net loss).
3. Eliminate sites that have been in the inventory for two cycles (however, if an argument can be made based on evidence of older sites being redeveloped, we might be able to continue using them).
4. Develop a series of scenarios in which the future allocation is the same as the last; is twice as much as the last; and is three times as much as the last.
5. Working with City staff, modify these scenarios based on the distribution by income category as was found in the last Housing Element; with a substantial increase in lower income numbers; and another scenario to be agreed upon.
6. Determine where the units could be located based on existing zoning and up zoned areas.
7. Determine what level environmental review would be required for each scenario.
8. Determine whether General Plan/ Specific Plans need amending; confirm GP build-out.
9. Develop presentation to bring to Planning Commission and City Council to bring them up to date.
10. Consider additional public meeting opportunities to engage the community in a conversation about the potential need to zoning changes, if any. I have allotted 50% of all community engagement hours to this task.

Remainder of Housing Element Work

For the remainder work of the Housing Element, I will assess City's demographic, socioeconomic, and housing context. Using material developed by Baird + Driscoll, and other data I develop, I will create a detailed narrative of the community's population and household characteristics, housing problems, special needs groups, and housing stock characteristics based on a variety of sources, including geospatial and tabular data, as well as other data, maps, pictures, text, and tables. I will also analyze potential and actual constraints to the development and preservation of housing. This will include a scan of both governmental and non-governmental constraints and an accounting of resources available to support affordable housing development and preservation. It will also include a discussion regarding affirmatively furthering fair housing, consistent with AB 686.

I will also assist the City in reviewing its previous Housing Element to determine which actions to continue in the updated Housing Element, which to eliminate, and which to add. Following this review, I will draft an updated section addressing Goals, Policies, and Programs and assist the City in developing its next cycle of Quantified Objectives. This section will also outline whatever steps – zoning or otherwise – will need to be completed in order to accommodate the final RHNA allocation.

I propose a robust community engagement process to ensure the community fully understands the need for a Housing Element and what it is intended to accomplish. Given the ever-increasing constraints facing largely built-out communities, there is a need to ensure the community participates fully in the process. Between climate change, a worsening affordable housing crisis, and homelessness, participation and support from the local citizenry can be the key to successfully navigating these challenging times.

Based on the thorough community profile, review of the prior Housing Element, and community input, I will prepare policy recommendations to reduce barriers to development and encourage affordable housing production and rehabilitation. The following outlines all of the remaining steps required to complete the Housing Element.

Community Characteristics:

- In conjunction with data provided by Baird + Driscoll, develop a detailed profile of the community's population and household characteristics, housing problems, special needs groups, and housing stock characteristics.
- Data will include a variety of sources, including geospatial and tabular data.
- Narrative will be statutorily complete and based on the most recent data from all pertinent data sets, including GIS, ABAG, U.S. Census Bureau, and the California Department of Finance.
- Analyze topics such as housing conditions, housing costs, year-round and seasonal housing rental demand, homeownership demand, unmet housing needs, housing typologies and preferences, rental and vacancy rates, and other factors affecting access to housing across a variety of demographic characteristics.

Future Housing Needs:

- Develop a narrative describing future housing needs based on various relevant data points, especially the final RHNA.

Resources:

- The adequate sites inventory will feature a site-by-site analysis of existing RHNA sites, and potential future sites, along with calculations to demonstrate a realistic projection of development for each site.
- The inventory will comply with recent legislative changes to both the Housing Accountability Act and Housing Element law.

Constraints:

- The analysis of potential and actual constraints to the development and preservation of housing will include both governmental and non-governmental constraints.
- Formulate policy recommendations to reduce barriers to development and encourage affordable housing production and rehabilitation.
- With the adoption of AB 686 in 2018, the Housing Element must include programs that will, in addition to promoting fair housing, affirmatively further fair housing consistent with the federal law obligation.

Public Outreach and Involvement:

- Design and facilitate one or more public workshops, the nature and scope of which will be determined in collaboration with City staff. The approach to community engagement will include a variety of activities to ensure the active participation of attendees, including dot-voting exercises, table-top exercises, roundtable discussions, and other efforts. I also will provide multiple opportunities for residents to engage, including an online survey. I will work with the City to use social media platforms to reach out to historically underrepresented communities. I will support City staff in fielding questions from the public, state agencies, and/or the City Council in addition to providing strategic guidance for crafting and synthesizing responses.

Environmental Review:

- The budget in this line item is for me to assist PlaceWorks in the completion of the environmental review needed to address potential new zoning densities that may be necessary to accommodate a significantly larger RHNA allocation than in the last cycle.

Prepare Draft Housing Element:

- Analyze findings from community engagement and formulate draft goals, policies, programs, and objectives to meet the city's RHNA and to ensure code compliance.
- Review and update information in current Element based on site inventory and community profile.
- Assess progress toward and relevance of objectives laid out in current Element.
- Consider potential recommendations for improving format, layout, and/or flow of Housing Element document.

Coordinate with HCD and Liaise with City:

- Ensure that the Draft Housing Element is prepared in accordance with State regulations so that the City may transmit it to HCD for review.
- Support the City to finalize the plan based on HCD feedback and support final submittal.
- Make final amendments to the Housing Element prior to final submittal to HCD for certification.
- Any additional communication with HCD.

Review and Preparation of Documents:

- Incorporate feedback from staff, HCD, and other layers of internal review into the following successive drafts:
 - o Administrative Draft Housing Element;
 - o Final Draft Housing Element;
 - o Final Housing Element;
 - o Adopted Housing Element; and
 - o Updates to General Plan reflecting adopted version of Housing Element.
- Prepare and distribute digital and hard copies as requested.

COSTS AND COMMON EFFORTS

The cost to complete these efforts is as follows:

	DIRECT TOTAL	DIRECT HOURS
Housing Needs and Services	\$12,000	75
Adequate Sites	\$43,880	274
Evaluation of Existing Element	\$3,200	20
Constraints and Preservation	\$5,120	32
Quantified Objectives	\$3,840	24
Environmental Review	\$5,120	32
Preparation of Eight-Year Plan	\$9,600	60
Public Participation	\$32,000	200
State Reviews and Follow up	\$3,840	24
TOTAL	\$118,600	741

With travel and ancillary expenses, the breakdown is as follows:

	COST	HOURS	RATE
Direct Costs	\$118,600	741	\$160
Travel Time	\$8,820	98	\$90
Ancillary Expenses (to 2%)	\$2,400		
	\$129,820	839	

COMMON EFFORTS

Coordination – I will meet with the key players early in the process to map out precisely what information needs to be provided, who needs to provide it, and in what time frame. I will provide a ‘master list’ of component pieces to the relevant Element with contact information to ensure that all components can be tracked efficiently. See Scoping Session, below.

Timelines and Responsibilities – Attached to this proposal is an outline that includes each component of the Housing Element as described above and the suggested timeline for completion. For the purposes of this proposal, it is assumed that the City will be required to submit the adopted Housing Element by December 2022; this presumes that the draft document has met the submission deadlines beforehand.

Staffing -- As sole proprietor and Principal of D.R. Elrod and Associates, I am responsible for all aspects of the completion of these reports. My résumé is included as an attachment. No additional staff or consultants are proposed.

Scoping Session -- I will meet with staff to review the proposed work tasks and discuss how they can most efficiently, and cost effectively be implemented.

- Review the proposed timeline for completion of each task and establish a schedule for the assembly of information and the preparation of draft documents.

- Determine how each work task can best be accomplished and allocate responsibilities among staff and consultant to assure the timely and efficient completion of each step.
- Establish a meeting schedule with staff representatives and others as needed to expedite data gathering and the development of housing policies.
- Assemble and review existing data. As described in this proposal, our approach will maximize the use of existing data.
- Determine how coordination and task management is best accomplished. Designate a point person from the staff who will help assemble materials, schedule meetings and gather comments on all written drafts.

OtherMeetings – I have tried to be generous in including a significant number of hours for a wide variety of public meetings as well as staff-level meetings. **In total there are almost 250 hours of meeting time, to be used as the City feels is appropriate.** This can include public hearings, study sessions, community outreach meetings, and staff review sessions, depending on what City staff require. In addition, I propose to take advantage of email, fax and other methods of data communication as is required.

Insurance – I currently have and will provide evidence of the required insurance when selected as the consultant for this project. Please note that, as the sole employee of the company, I do not have Worker’s Compensation Insurance, nor will any employees be added to the company during the life of this project that would require such insurance.

EXHIBIT B

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the CONSULTANT’s profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate

If the CONSULTANT maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and 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, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents 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 after thirty (30) days' prior written notice** (10 days for non-payment) has been given 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 effect 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.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the CONSULTANT to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

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.

Verification of Coverage

CONSULTANT shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the 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.