

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: December 21, 2020  
Reviewed by: NA

**SUBJECT:** Consultant Services Contract with Barry Miller Associates for the 2023-2031 Housing Element Update

**REPORT BY:** Anne Hersch, AICP, Planning Manager  
Jeff Bond, Community Development Director

---

**SUMMARY**

The City of Albany is required to update the 2015-2023 Housing Element for the 2023-2031 cycle. This effort will commence in 2021 and is required to be completed in 2023.

**STAFF RECOMMENDATION**

That the Council adopt Resolution No. 2020-124, authorizing the City Manager to execute a consultant services contract with Barry Miller Associates for the preparation of the 2023-2031 Housing Element in an amount not to exceed \$80,000.

**BACKGROUND**

All cities in California must plan to meet the housing needs of everyone in their community by updating the Housing Element portion of its General Plan every eight (8) years. The timeline for updates is set by state statute, and for the San Francisco Bay Area, cities must complete the update to the housing element, and associated California Environmental Quality Act (CEQA) review, by January 2023.

Pursuant to state law, a Housing Element consists of the following key sections:

1. **Assessment of Housing Needs** – this is primarily an analytical analysis of population and employment trends and an estimate of the City’s housing needs for all income levels. This section also includes an analysis of household characteristics, including the ability to pay, condition of housing stock, and special housing needs.
2. **Site Inventory** - The purpose of the site inventory is to identify specific properties suitable for residential development. The City must demonstrate that the capacity of these properties is sufficient to accommodate its share of the region’s housing needs.

3. **Analysis of Constraints to Housing Production** – State law requires an analysis of constraints on development of housing, including zoning regulations and other land use controls, project review procedures, required fees, and conditions of approval. Non-governmental constraints also must be considered such as the cost of land and the adequacy of infrastructure.
4. **Goals, Policies and Action Program** – State law requires a detailed statement of goals, quantified objectives, and policies related to the maintenance, preservation, and development of housing.

The City’s current housing element is available on line at:  
<https://www.albanyca.org/home/showdocument?id=27308>

**DISCUSSION**

The California Department of Housing and Community Development (HCD) determines the Bay Area housing needs for an 8-year period, for this cycle, from 2023 to 2031. This total need number is divided into 4 income categories. Association of Bay Area Governments (ABAG) then develops a methodology for assigning a share of the housing need to each local government in the Bay Area. Each local government must then prepare a site inventory to show how it plans to accommodate its share of the Regional Housing Needs Allocation (RHNA).

There have been major changes to how HCD identifies the total housing need, which has led to a much higher number of housing units for the region. These changes are intended to ensure the number of housing units that the Bay Area plans for addresses existing housing needs as well as projected needs. As shown in the table below, HCD has concluded that the 2023-2031 regional housing need has more than doubled compared to the 2015-2023 determination.

<b>RHNA Cycle</b>	<b>Total Need</b>	<b>Permits Issued</b>	<b>% of Need Permitted</b>	<b>% Very Low Income Permitted</b>	<b>% Low Income Permitted</b>	<b>% Moderate Income Permitted</b>	<b>% Above Moderate Permitted</b>
1999-2006	230,743	213,024	<b>92%</b>	44%	79%	38%	153%
2007–2014	214,500	123,098	<b>57%</b>	29%	26%	28%	99%
2015-2023*	187,994	121,973	<b>65%</b>	15%	15%	25%	126%
2023-2031	441,176	--	--	--	--	--	--

## **ANALYSIS**

Staff worked with Barry Miller Associates for the 2007-2014 cycle and the 2015-2023 cycle and prepared both Housing Elements successfully. Additionally, the 2007-2014 Element was challenged in court and Mr. Miller collaborated with City staff and external legal counsel on the City's legal defense. Mr. Miller also prepared the City's 2035 General Plan and has extensive knowledge of City policies as well as familiarity with local geography and sites.

## **SOLE SOURCE CONTRACT**

The City's purchasing policy requires that the City Council award purchases of goods or services if the cost is in excess of \$25,000 (Resolution No. 2012-74 Section VIII (5)). Additionally, the Council action is required to authorize a waiver of formal bids.

The scope of work and cost estimate provided by Barry Miller Associates is quite reasonable for the work that is required. Staff has heard from other jurisdictions that cost estimates are around \$120,000-\$150,000 for the current update cycle. Due to Mr. Miller's prior efforts with City, he is able to charge the City less than other consultants as he is familiar with current policies, has previously completed analysis as well as related exhibits, and has priced the update accordingly.

## **CEQA**

California Environmental Quality Act Guidelines (CEQA) analysis will be required as part of the Housing Element update. Any CEQA analysis will be prepared by Rincon Consultants who is managed under a separate contract for on-call services. Mr. Miller and Rincon Consultants have a professional working relationship and have collaborated on other projects for jurisdictions within the Bay Area. Staff will manage the CEQA analysis effort.

## **SUSTAINABILITY CONSIDERATIONS**

The Housing Element currently contains policies related to housing conservation including housing reinvestment, reducing energy costs, and preservation of rental housing stock. These types of policies are expected to be included in the update.

## **SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS**

Housing Element law is a new requirement that individual housing elements must affirmatively further fair housing. The two basic principles of affirmatively furthering fair housing are:

- Overcoming historic patterns of segregation in urban development

- Fostering development of inclusive communities that provide access to opportunity for all people.

As part of the Housing Element update, the City will establish goals, objectives, and policy actions to advance fair housing.

### **FINANCIAL CONSIDERATIONS**

The contract amount for the update is \$80,000. The funding for this effort will come from the Community Development Department's Administrative Services budget.

### **Attachments**

1. Resolution No. 2020-124
2. Contract No. C21-20
3. Scope of work submitted by Barry Miller Associates

1 **RESOLUTION NO. 2020-124**

2 **A RESOLUTION OF THE ALBANY CITY COUNCIL AUTHORIZING**  
3 **THE CITY MANAGER TO EXECUTE CONTRACT C21-20 FOR**  
4 **CONSULTANT SERVICES WITH BARRY MILLER ASSOCIATES TO**  
5 **PREPARE THE 2023-2031 HOUSING ELEMENT**

6 **WHEREAS**, The California Department of Housing and Community Development  
7 (HCD) determines the Bay Area housing needs for an 8-year period, for this cycle, from  
8 2023 to 2031; and

9 **WHEREAS**, Barry Miller Associates previously prepared the 2007-2014 Housing  
10 Element and the 2015-2023 Housing Element; and

11 **WHEREAS**, Barry Miller Associates has provided a detailed scope of work and  
12 budget for the preparation of the 2023-2031 Housing Element;

13 **WHEREAS**, the Housing Element update process will commence in early 2021  
14 and conclude by 2023;

15 **WHEREAS**, the City's purchasing policy requires that the Council award  
16 purchases of goods or services if the cost is in excess of \$25,000 (Resolution No. 2012-  
17 74 Section VIII (5)), and Council action is required to authorize a waiver of formal bids.

18 **NOW, THEREFORE, BE IT RESOLVED**, that the Albany City Council hereby:

- 19 1. Authorizes the waving of formal bids,  
20 2. Authorizes the City Manager to execute Contract C21-20 for consultant services  
21 with Barry Miller Associates for the preparation and completion of the 2023-  
22 2031 Housing Element.  
23  
24  
25  
26  
27  
28  
29

\_\_\_\_\_  
GE'NELL GARY, MAYOR

**CONTRACT #C21-20  
AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN  
THE CITY OF ALBANY  
AND  
BARRY MILLER CONSULTANTS  
  
FOR THE 2023-2031 HOUSING ELEMENT**

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_ by and among the City of Albany a California charter city ("CITY") and Barry Miller Associates [individual "CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**SECTION 1. TERM OF AGREEMENT.**

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of two and half years from the date of execution of this AGREEMENT, as first shown above. Such term may be reduced or extended upon written agreement of both parties to this AGREEMENT.

**SECTION 2. SCOPE OF SERVICES.**

CONSULTANT agrees to perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this AGREEMENT.

**SECTION 3. ADDITIONAL SERVICES.**

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless such additional services are authorized in advance and in writing by the City Council or City Manager of CITY. CONSULTANT shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

#### **SECTION 4. COMPENSATION AND METHOD OF PAYMENT.**

Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay CONSULTANT the amounts specified in EXHIBIT "B" "COMPENSATION" and made a part of this AGREEMENT. The total compensation, including reimbursement for actual expenses, shall not exceed \$80,000 unless additional compensation is approved in writing by the City Council or City Manager.

Each month CONSULTANT shall furnish to CITY an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. CITY shall independently review each invoice submitted by the CONSULTANT to determine whether the work performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth below. In the event any charges or expenses are disputed by CITY, the original invoice shall be returned by CITY to CONSULTANT for correction and resubmission.

Except as to any charges for work performed or expenses incurred by CONSULTANT which are disputed by CITY, CITY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT's invoice.

Payment to CONSULTANT for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONSULTANT.

#### **SECTION 5. INSPECTION AND FINAL ACCEPTANCE.**

CITY may inspect and accept or reject any of CONSULTANT's work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT's work within sixty (60) days after submitted to CITY. CITY shall reject work by a timely written explanation, otherwise CONSULTANT's work shall be deemed to have been accepted. CITY's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONSULTANT's work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, SECTIONS 15 and 16, pertaining to indemnification and insurance, respectively.

#### **SECTION 6. OWNERSHIP OF DOCUMENTS.**

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this

AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the CONSULTANT. Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

#### **SECTION 7. CONSULTANT'S BOOKS AND RECORDS.**

CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to the CITY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

#### **SECTION 8. STATUS OF CONSULTANT.**

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.



(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

## **SECTION 9. STANDARD OF PERFORMANCE.**

CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

## **SECTION 10. COMPLIANCE WITH APPLICABLE LAWS, PERMITS, AND LICENSES.**

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

CONSULTANT shall obtain and maintain in full force and effect during the term of this AGREEMENT a Business License from the CITY's Finance Department. Provide City of Albany Business License number and Expiration Date on Page 11 of this contract.

## **SECTION 11. NONDISCRIMINATION.**

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this AGREEMENT.

## **SECTION 12. UNAUTHORIZED ALIENS.**

CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et M., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

## **SECTION 13. CONFLICTS OF INTEREST.**

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT's performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that CONSULTANT is, or may be, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

## **SECTION 14. CONFIDENTIAL INFORMATION AND RELEASE OF INFORMATION.**

(a) All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to

persons or entities other than CITY without prior written authorization from the City Manager, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

## **SECTION 15. INDEMNIFICATION.**

(a) CITY and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the CONSULTANT's performance of or failure to perform any services under this AGREEMENT or by the negligent or *willful* acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under SECTION 16 shall ensure CONSULTANT's obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

(c) The provisions of this section do not apply to CLAIMS occurring as a result of the CITY's sole negligence or *willful* acts or omissions.

#### **SECTION 16. INSURANCE.**

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Administrator. CONSULTANT agrees to provide CITY with copies of required policies upon request.

#### **SECTION 17. ASSIGNMENT.**

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this AGREEMENT or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the CITY. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

#### **SECTION 18. CONTINUITY OF PERSONNEL.**

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT's

staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

#### **SECTION 19. TERMINATION OF AGREEMENT.**

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(b) CONSULTANT may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to CITY. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(c) If either CONSULTANT or CITY fail to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT, or CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT's possession shall be returned to CITY. CONSULTANT shall furnish to CITY a final invoice for work performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

#### **SECTION 20. DEFAULT.**

In the event that CONSULTANT is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONSULTANT.

#### **SECTION 21. EXCUSABLE DELAYS.**

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

**SECTION 22. COOPERATION BY CITY.**

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONSULTANT in every reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

**SECTION 23. NOTICES.**

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To CITY: Nicole Almaguer  
City Manager  
City of Albany  
1000 San Pablo Avenue  
Albany, CA 94706

To CONSULTANT: Barry J Miller  
2512 Ninth Street, Suite 8  
Berkeley, CA 94710

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

**SECTION 24. AUTHORITY TO EXECUTE.**

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

**SECTION 25. BINDING EFFECT.**

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**SECTION 26. MODIFICATION OF AGREEMENT.**

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONSULTANT and by the CITY. The parties

agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

#### **SECTION 27. WAIVER**

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

#### **SECTION 28. LAW TO GOVERN; VENUE.**

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in Alameda County. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

#### **SECTION 29. CLAIMS.**

All claims arising out of or related to this agreement must be presented not later than six (6) months after the accrual of the cause of action. Such claims shall be governed by the provisions of the Albany Municipal Code and such claims shall further be governed by the provisions of section 930.4 of the Government Code for the purposes of filing leave to present a later claim. It is further provided that subdivision (b) of section 911.4 sections 911.6 to 912.2, inclusive and section 946.6 are applicable to all such claims, and the time specified in this agreement shall be deemed the "time specified" in section 911.2 within the meaning of sections 911.6 and 946.6.

#### **SECTION 30. W-9 FORM**

Complete the attached EXHIBIT "D W-9 FORM" that will be removed from this contract and forwarded to our Finance Department for use during invoice processing.

#### **SECTION 31. ENTIRE AGREEMENT.**

This AGREEMENT, including the attached EXHIBITS "A" through "D", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No

amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

**SECTION 32. SEVERABILITY.**

If any term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

**IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

**CITY OF ALBANY:**

**CONSULTANT:**

By \_\_\_\_\_  
Nicole Almaguer, City Manager

By \_\_\_\_\_  
(Authorized Officer)

Name:

Date \_\_\_\_\_

Title:

By \_\_\_\_\_  
(Authorized Officer)

Name:

Title:

**APPROVED AS TO FORM  
(for Contract No. C21-20 ):**

City of Albany Business License

\_\_\_\_\_  
Malathy Subramanian, City Attorney

**BL #** \_\_\_\_\_

Expiration Date:

Date \_\_\_\_\_

\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Anne Hsu, City Clerk

Date \_\_\_\_\_



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

Barry Miller will update the Albany 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 (November 2020) Draft RHNA allocation of 1,155 units. Because the 2035 General Plan presumed a buildout of 815 units (including 175 units at Belmont Village), it is likely that General Plan Map and text amendments will be required to meet the RHNA.<sup>1</sup> It is also likely than an EIR will be required to evaluate the environmental impacts of allowing increased densities on designated housing opportunity sites. This scope of work presumes that the CEQA analysis will be separately contracted. However, it includes hours associated with General Plan and Zoning Amendments, as well as community engagement in site selection and rezoning. Supplemental consulting services may be required for visual simulations, development prototypes, pro formas and feasibility studies, parking analysis and other activities associated with zoning changes and increases in height limits on housing opportunity sites.

In the event the Draft RHNA is lowered to an amount similar to prior cycles (335 units in 2015-2023), a reduced scope of services will be provided. It is estimated that General Plan and Zoning amendments will be required for any RHNA that exceeds roughly 600 units.

### **Task    Description**

- 1      **Reconnaissance.**** Barry Miller will provide the following services:
  - A. Assist the City in communication and correspondence with ABAG/MTC regarding the RHNA (an appeal of the City's allocation is not envisioned).
  - B. Prepare and deliver orientation presentations to the Planning Commission and City Council on the RHNA process and the Housing Element Update, including an overview of new legislative requirements
  - C. Facilitate an initial meeting with City staff and HCD to discuss the project, review the impacts of legislative changes since the previous Element was submitted, and establish expectations for the revised element.
  - D. Convene a series of kickoff meetings with City staff to organize the City's approach to the Element, discuss housing-related issues, review potential opportunities to be created by the San Pablo Avenue Specific Plan, evaluate other potential housing opportunity sites, etc.

---

<sup>1</sup> The General Plan EIR assumed the following growth increments in Albany between 2016 and 2035: Belmont Village (175 dwelling units [DU]), University Village (100 DU), San Pablo Av corridor (300 DU), Solano Av corridor (50 DU), Pierce St/ west side Albany Hill (100 DU), Multi-family infill north of Brighton Av near El Cerrito Plaza (30 DU), scattered infill and ADUs (60 DU)

**2 Develop and Implement Community Engagement Program.** Barry Miller will develop and implement a community engagement program for the Housing Element. The specific elements of the engagement strategy will be determined collaboratively with staff but would include:

- A Housing Element webpage, including information on the project, housing conditions and needs in Albany, links to draft reports, and opportunities for residents to weigh in on housing issues
- Approximately six (6) topical study sessions with the Planning and Zoning Commission (needs assessment, evaluation of constraints, opportunity sites, etc.)—these study sessions would be scheduled at key points in the project and exclude those associated with formal public review and adoption once the Draft Element is published (note—the budget for these study sessions is included under the tasks listed below rather than Task 2)
- Stakeholder meetings and focus groups with local housing advocates, non-profits, service providers, developers, realtors, neighborhood leaders, and others with an interest in housing issues
- Briefings to the City Council; the Parks, Rec, and Open Space Commission; the Social and Economic Justice Commission; and other City boards and commissions as needed
- An on-line survey about housing issues, advertised through social media, the City’s website, Nextdoor, and other channels
- A community workshop or open house on the Housing Element in general
- A community workshop or open house on Housing Opportunity sites and potential General Plan Map amendments (budgeted under Task 5)

Barry will also participate in or facilitate community engagement activities that could be provided by third parties (not covered in the budget or this scope), including:

- Translation of materials into other languages
- Visual simulation exercises (to guide public understanding of proposed zoning changes)
- Facilitated community conversations about fair housing, equity issues, and homelessness

**3 Evaluate 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. The effectiveness of each policy and action program will be evaluated, and the progress made in implementation will be assessed. Recommendations will be made for improving the existing element and adding new policies to respond to recent legislation and new issues.

A Planning Commission study session will be convened to discuss the findings of the evaluation and solicit public comment.

- 4 Prepare Needs Assessment.** The 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.

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. It will also review residential energy conservation measures, particularly efforts to reduce energy costs for lower income households. Consistent with recent state law, the Element will summarize the City's efforts to affirmatively further fair housing practices.

A Planning Commission study session will be convened to discuss the findings of the evaluation and solicit public comment.

- 5 Prepare Inventory of Adequate Sites.** Barry Miller will complete the state-mandated housing sites analysis. This will include housing projects entitled before June 30, 2022 that have not yet been built, housing 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 uses or other activities where housing is allowed.

The starting point for this analysis will be the 2015-2023 inventory. Each of the listed sites 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
- 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 is required

The product of this task will be an Excel data base that lists all sites. Documented attributes for 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, primarily based on building permit data and trends over the last five years.

These requirements, compounded with the significant anticipated increase in the RHNA, suggest that it will be harder to identify suitable sites. Without knowing the final RHNA it is difficult to know whether rezoning will be required, or whether zoning amendments (for instance, to permit more projects by right) will be needed.

As noted in the introduction to this work scope, it is presumed that the analysis described above will find that the City's development capacity falls short of the RHNA. The net difference between existing capacity and the RHNA (i.e., the "shortfall") will be quantified. Strategies to close the shortfall will be identified and discussed—these include increased ADU production, increasing the allowable densities (and heights) on existing housing opportunity sites, and identifying new sites, most of which would require rezoning and/or General Plan Amendments.

It will be particularly important to solicit community input on the different options for reaching the RHNA and soliciting input from HCD on the acceptability of the City's proposed approaches. Thus, this task includes a Planning Commission study session on the options, a community workshop or open house (potentially a "virtual" open house) on the options, and one or more meetings with HCD. This task could also engage the services of one or more third party consultants to provide visual simulations or economic analyses of different options to facilitate public understanding of what is being considered and help shape the outcomes.

The General Plan and zoning amendments themselves are included in Task 13. Task 5 includes a written summary of the analysis, findings, and recommendations, suitable for inclusion in the Housing Element.

- 6 Evaluate Constraints to Housing Development.** 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. Changes resulting from the Task 5 analysis (such as increased height limits or reduced parking standards) will be noted and discussed.

This task will also look at the building and permitting process in Albany, 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 the availability of infrastructure, traffic congestion, school capacity, and environmental constraints. Financial constraints also will be considered. This includes land and construction costs, and issues surrounding financing and mortgage lending practices. As required by new Housing Element laws, this section also will examine constraints associated with NIMBYism and labor shortages.

A Planning Commission study session on this topic will be convened at its conclusion. This will also provide an opportunity for public comment.

**7 Prepare Goals, Policies, and Quantified Objectives.** Barry Miller will prepare the goals, objectives, and policies for the revised Housing Element. The 2015-2023 objectives will need to be replaced with new numerical targets, and the action programs will need to be updated to cover the 2023-2031 period. Existing policies will be carried forward to the greatest extent possible. Where feasible and appropriate, new policies will be added to address emerging housing issues and new state requirements.

**8 Prepare Action Program.** Implementing actions and programs will be developed to achieve the goals and objectives identified in Task 7. Again, many of these actions and programs are expected to be carried forward from the prior Element. For each action, a priority will be assigned, responsible parties will be identified, and an estimated timetable for implementation will be provided. Programs to incentivize ADUs and affirmatively further fair housing goals will be included.

Tasks 7 and 8 will be completed concurrently. The City will reach out to HCD as policies and action programs are developed to ensure that the proposed language meets statutory requirements.

**9 Produce Administrative Draft for Staff and HCD Review.** An Administrative Draft Housing Element will be compiled, with chapters roughly corresponding to the subtasks listed above. The Administrative Draft will be circulated for internal review and comment by staff. Revisions will be made as needed. The revised Administrative Draft will then be submitted to the State Department of Housing and Community Development for a first-round review. Following the receipt of comments from HCD, a meeting or conference call with the state reviewers will take place to discuss their comments and the necessary revisions to be deemed compliant.

**10 Liaison with HCD and Response to HCD Comments.** Barry Miller will prepare an official “response to comments” document to the HCD comments, identifying text changes, edits, additional data, and other explanations necessary to respond to the HCD letter. As feasible, drafts of revised language will be circulated to HCD for “informal” review, comment, and further revision. This task includes liaison with HCD staff, including in-person meetings as needed to ensure effective communication and response. The task

concludes when staff has reasonable assurance that the proposed revisions will result in an HCD compliance determination

- 11 Produce Public Review Draft Housing Element.** Barry Miller will incorporate the responses to comments on the Administrative Draft, including staff and HCD comments, and produce the Public Review Draft Housing Element. Photographs and other graphics will be added, and maps will be inserted. A copy of the revised public review draft will be resubmitted to HCD.
  
- 12 Adoption and Final Plan Production.** Barry Miller will participate in public hearings to adopt the Housing Element. The budget assumes a total of four hearings (two Planning Commission and two City Council). Barry Miller will prepare staff reports and presentations, respond to public comment (and Commission/ Council comment), and prepare addenda and redlined documents as needed to show changes between the Public Review Draft and the final version ready for adoption. Following adoption of the Housing Element, Barry Miller will prepare the final version inclusive of all changes. He will provide liaison to HCD in their review of the Element and the certification process.
  
- 13 Zoning and General Plan Amendments.** Barry Miller will prepare General Plan Map and text amendments as needed to reflect the findings of Task 5 and incorporate any other changes that ensure internal consistency with the Housing Element. Although this is numbered as Task “13,” it would actually occur concurrently with Tasks 7-12. In other words, General Plan and zoning changes would be adopted concurrently with the Housing Element.

The most likely element requiring amendment is Land Use. However, depending on the magnitude of land use changes and findings of the EIR, it is possible that amendments also may be required to Transportation, Community Services and Facilities, Conservation and Sustainability, and Parks, Recreation, and Open Space. Amendments to the Waterfront Element and the Environmental Hazards Element are unlikely.

Albany is not currently identified as a “disadvantaged community” per SB 535. As such, it may not be subject to SB 1000, which requires the addition of environmental justice (EJ) policies (or an EJ Element) upon the next update of the General Plan. Nonetheless, there may be merit in adding such policies to reinforce the Housing Element, particularly given the Housing Element’s focus on social equity and inclusion issues. If added, EJ policies would be developed through a public process that engaged the City Council, Planning and Zoning Commission, and other City boards and commissions, as well as advocacy groups and the community at large.

Draft amendments to the General Plan would be considered at public hearings concurrently with Housing Element adoption. At least two Planning and Zoning Commission hearings and two City Council hearings are presumed. Plan amendments would be

covered in the same staff reports used for Housing Element adoption, under a separate heading.

Zoning map and text amendments also would be included in this task. These could include rezoning of individual sites (or groups of sites) from one zone to another, as well as global 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 the Housing Element Action Program would occur in the future as part of Plan implementation.

- 14 CEQA Compliance.** While CEQA compliance is outside the scope of this Agreement, Barry Miller will provide technical support and assistance to the Contractor retained to provide these services. This would likely include drafting the Project Description and reviewing all sections of the EIR for internal consistency and accuracy. It would also include participation in meetings, consultation on potential impacts on certain CEQA topic areas (e.g., land use, population and housing, parks and recreation, etc.). Barry would also participate in the development and analysis of project alternatives. Finally, Barry would draft staff reports, memoranda, and other documents as needed to address CEQA issues and findings as they relate to Housing Element adoption and related General Plan Amendments.

## EXHIBIT B – SCHEDULE AND BUDGET

The project schedule and budget is presented below:

<b>Task</b>	<b>Timing</b>	<b>Hours</b>
<b>1</b> Reconnaissance	Jan - Apr 2021	32
<b>2</b> Community Engagement Program	Apr 2021- Jul 2022	72
<b>3</b> Evaluate Previous Element	May - June 2021	20
<b>4</b> Prepare Needs Assessment	July - Aug 2021	25
<b>5</b> Prepare Inventory of Adequate Sites	July - Dec 2021	80
<b>6</b> Evaluate Constraints to Housing Development	Aug - Sept 2021	25
<b>7</b> Prepare Goals, Policies, and Quantified Objectives	Jan - Feb 2022	20
<b>8</b> Prepare Action Program	Feb - Mar 2022	25
<b>9</b> Prepare Admin Draft for Staff/ HCD Review	April 2022	32
<b>10</b> Liaison with HCD/ Response to HCD Comments	May - June 2022	20
<b>11</b> Prepare Public Review Draft Housing Element	July 2022	16
<b>12</b> Adoption and Final Plan Production	Aug - Dec 2022	64
<b>13</b> Zoning and General Plan Amendments	Jan – Jul 2022	144
<b>14</b> CEQA Compliance	Nov 2021-Jul 2022	16
<b>TOTAL</b>	Jan 2021-Dec 2022	591

The hourly rate for this project is \$135; thus the total estimated labor cost is \$79,785 for the 24-month project duration. A \$215 budget for reimbursable expenses (incidental printing, etc.) is suggested to round the total project budget to \$80,000. Work will be billed monthly on a time and materials basis, not to exceed the budgeted amount. If a lower RHNA is assigned to Albany, the scope of Tasks 5 and 13 will be reduced accordingly.



## CITY OF ALBANY EXHIBIT C INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract such insurance, in the forms and amounts specified by CITY, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, his/her agents, representatives, employees or subcontractors.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE.** CONSULTANT shall maintain minimum limits of Insurance as follows:

1. **General Liability:** \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. **Workers Compensation and Employers Liability:** Workers Compensation limits as required by the Labor Code of the State of California.
4. **Professional Liability Insurance:** \$1,000,000 of Professional Liability Insurance (Errors and Omissions). The policy shall provide 30 days advance written notice to CITY for cancellation or reduction in coverage.

B. **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, consultants and volunteers; or the CONSULTANT shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. **OTHER INSURANCE PROVISIONS.** **The general liability and automobile policies are to contain, or be endorsed to contain, the following provisions:**

1. The CITY, its officers, officials, employees, consultants, and volunteers are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and 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 operation. General liability coverage can be proved in the form of an endorsement to the CONSULTANT'S insurance or as a separate owners policy.

2. For any claims related to this project, the contractor's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
  3. Each insurance policy required by this clause **shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to the CITY.**
- D. ACCEPTABILITY OF INSURERS. Insurance is to be placed with a current A.M. Best's rating of no less than A:II.
- E. VERIFICATION OF COVERAGE. CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the CITY or on other than the entity's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies including endorsements affecting the coverage required by these specifications at any time.
- F. SUBCONTRACTORS. CONSULTANT shall include all subcontractors as insureds under its policies or each subcontractor shall furnish separate certificates and endorsements. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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

Barry Miller will update the Albany 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 (November 2020) Draft RHNA allocation of 1,155 units. Because the 2035 General Plan presumed a buildout of 815 units (including 175 units at Belmont Village), it is likely that General Plan Map and text amendments will be required to meet the RHNA.<sup>1</sup> It is also likely than an EIR will be required to evaluate the environmental impacts of allowing increased densities on designated housing opportunity sites. This scope of work presumes that the CEQA analysis will be separately contracted. However, it includes hours associated with General Plan and Zoning Amendments, as well as community engagement in site selection and rezoning. Supplemental consulting services may be required for visual simulations, development prototypes, pro formas and feasibility studies, parking analysis and other activities associated with zoning changes and increases in height limits on housing opportunity sites.

In the event the Draft RHNA is lowered to an amount similar to prior cycles (335 units in 2015-2023), a reduced scope of services will be provided. It is estimated that General Plan and Zoning amendments will be required for any RHNA that exceeds roughly 600 units.

<b><u>Task</u></b>	<b><u>Description</u></b>
--------------------	---------------------------

- |          |   |
|----------|---|
| <b>1</b> | <b>Reconnaissance.</b> Barry Miller will provide the following services: <ul style="list-style-type: none"><li>A. Assist the City in communication and correspondence with ABAG/MTC regarding the RHNA (an appeal of the City's allocation is not envisioned).</li><li>B. Prepare and deliver orientation presentations to the Planning Commission and City Council on the RHNA process and the Housing Element Update, including an overview of new legislative requirements</li><li>C. Facilitate an initial meeting with City staff and HCD to discuss the project, review the impacts of legislative changes since the previous Element was submitted, and establish expectations for the revised element.</li><li>D. Convene a series of kickoff meetings with City staff to organize the City's approach to the Element, discuss housing-related issues, review potential opportunities to be created by the San Pablo Avenue Specific Plan, evaluate other potential housing opportunity sites, etc.</li></ul> |
|----------|---|

---

<sup>1</sup> The General Plan EIR assumed the following growth increments in Albany between 2016 and 2035: Belmont Village (175 dwelling units [DU]), University Village (100 DU), San Pablo Av corridor (300 DU), Solano Av corridor (50 DU), Pierce St/ west side Albany Hill (100 DU), Multi-family infill north of Brighton Av near El Cerrito Plaza (30 DU), scattered infill and ADUs (60 DU)

**2 Develop and Implement Community Engagement Program.** Barry Miller will develop and implement a community engagement program for the Housing Element. The specific elements of the engagement strategy will be determined collaboratively with staff but would include:

- A Housing Element webpage, including information on the project, housing conditions and needs in Albany, links to draft reports, and opportunities for residents to weigh in on housing issues
- Approximately six (6) topical study sessions with the Planning and Zoning Commission (needs assessment, evaluation of constraints, opportunity sites, etc.)—these study sessions would be scheduled at key points in the project and exclude those associated with formal public review and adoption once the Draft Element is published (note—the budget for these study sessions is included under the tasks listed below rather than Task 2)
- Stakeholder meetings and focus groups with local housing advocates, non-profits, service providers, developers, realtors, neighborhood leaders, and others with an interest in housing issues
- Briefings to the City Council; the Parks, Rec, and Open Space Commission; the Social and Economic Justice Commission; and other City boards and commissions as needed
- An on-line survey about housing issues, advertised through social media, the City’s website, Nextdoor, and other channels
- A community workshop or open house on the Housing Element in general
- A community workshop or open house on Housing Opportunity sites and potential General Plan Map amendments (budgeted under Task 5)

Barry will also participate in or facilitate community engagement activities that could be provided by third parties (not covered in the budget or this scope), including:

- Translation of materials into other languages
- Visual simulation exercises (to guide public understanding of proposed zoning changes)
- Facilitated community conversations about fair housing, equity issues, and homelessness

**3 Evaluate 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. The effectiveness of each policy and action program will be evaluated, and the progress made in implementation will be assessed. Recommendations will be made for improving the existing element and adding new policies to respond to recent legislation and new issues.

A Planning Commission study session will be convened to discuss the findings of the evaluation and solicit public comment.

- 4 Prepare Needs Assessment.** The 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.

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. It will also review residential energy conservation measures, particularly efforts to reduce energy costs for lower income households. Consistent with recent state law, the Element will summarize the City's efforts to affirmatively further fair housing practices.

A Planning Commission study session will be convened to discuss the findings of the evaluation and solicit public comment.

- 5 Prepare Inventory of Adequate Sites.** Barry Miller will complete the state-mandated housing sites analysis. This will include housing projects entitled before June 30, 2022 that have not yet been built, housing 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 uses or other activities where housing is allowed.

The starting point for this analysis will be the 2015-2023 inventory. Each of the listed sites 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
- 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 is required

The product of this task will be an Excel data base that lists all sites. Documented attributes for 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, primarily based on building permit data and trends over the last five years.

These requirements, compounded with the significant anticipated increase in the RHNA, suggest that it will be harder to identify suitable sites. Without knowing the final RHNA it is difficult to know whether rezoning will be required, or whether zoning amendments (for instance, to permit more projects by right) will be needed.

As noted in the introduction to this work scope, it is presumed that the analysis described above will find that the City's development capacity falls short of the RHNA. The net difference between existing capacity and the RHNA (i.e., the "shortfall") will be quantified. Strategies to close the shortfall will be identified and discussed—these include increased ADU production, increasing the allowable densities (and heights) on existing housing opportunity sites, and identifying new sites, most of which would require rezoning and/or General Plan Amendments.

It will be particularly important to solicit community input on the different options for reaching the RHNA and soliciting input from HCD on the acceptability of the City's proposed approaches. Thus, this task includes a Planning Commission study session on the options, a community workshop or open house (potentially a "virtual" open house) on the options, and one or more meetings with HCD. This task could also engage the services of one or more third party consultants to provide visual simulations or economic analyses of different options to facilitate public understanding of what is being considered and help shape the outcomes.

The General Plan and zoning amendments themselves are included in Task 13. Task 5 includes a written summary of the analysis, findings, and recommendations, suitable for inclusion in the Housing Element.

- 6 Evaluate Constraints to Housing Development.** 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. Changes resulting from the Task 5 analysis (such as increased height limits or reduced parking standards) will be noted and discussed.

This task will also look at the building and permitting process in Albany, 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 the availability of infrastructure, traffic congestion, school capacity, and environmental constraints. Financial constraints also will be considered. This includes land and construction costs, and issues surrounding financing and mortgage lending practices. As required by new Housing Element laws, this section also will examine constraints associated with NIMBYism and labor shortages.

A Planning Commission study session on this topic will be convened at its conclusion. This will also provide an opportunity for public comment.

**7 Prepare Goals, Policies, and Quantified Objectives.** Barry Miller will prepare the goals, objectives, and policies for the revised Housing Element. The 2015-2023 objectives will need to be replaced with new numerical targets, and the action programs will need to be updated to cover the 2023-2031 period. Existing policies will be carried forward to the greatest extent possible. Where feasible and appropriate, new policies will be added to address emerging housing issues and new state requirements.

**8 Prepare Action Program.** Implementing actions and programs will be developed to achieve the goals and objectives identified in Task 7. Again, many of these actions and programs are expected to be carried forward from the prior Element. For each action, a priority will be assigned, responsible parties will be identified, and an estimated timetable for implementation will be provided. Programs to incentivize ADUs and affirmatively further fair housing goals will be included.

Tasks 7 and 8 will be completed concurrently. The City will reach out to HCD as policies and action programs are developed to ensure that the proposed language meets statutory requirements.

**9 Produce Administrative Draft for Staff and HCD Review.** An Administrative Draft Housing Element will be compiled, with chapters roughly corresponding to the subtasks listed above. The Administrative Draft will be circulated for internal review and comment by staff. Revisions will be made as needed. The revised Administrative Draft will then be submitted to the State Department of Housing and Community Development for a first-round review. Following the receipt of comments from HCD, a meeting or conference call with the state reviewers will take place to discuss their comments and the necessary revisions to be deemed compliant.

**10 Liaison with HCD and Response to HCD Comments.** Barry Miller will prepare an official “response to comments” document to the HCD comments, identifying text changes, edits, additional data, and other explanations necessary to respond to the HCD letter. As feasible, drafts of revised language will be circulated to HCD for “informal” review, comment, and further revision. This task includes liaison with HCD staff, including in-person meetings as needed to ensure effective communication and response. The task

concludes when staff has reasonable assurance that the proposed revisions will result in an HCD compliance determination

- 11 Produce Public Review Draft Housing Element.** Barry Miller will incorporate the responses to comments on the Administrative Draft, including staff and HCD comments, and produce the Public Review Draft Housing Element. Photographs and other graphics will be added, and maps will be inserted. A copy of the revised public review draft will be resubmitted to HCD.
  
- 12 Adoption and Final Plan Production.** Barry Miller will participate in public hearings to adopt the Housing Element. The budget assumes a total of four hearings (two Planning Commission and two City Council). Barry Miller will prepare staff reports and presentations, respond to public comment (and Commission/ Council comment), and prepare addenda and redlined documents as needed to show changes between the Public Review Draft and the final version ready for adoption. Following adoption of the Housing Element, Barry Miller will prepare the final version inclusive of all changes. He will provide liaison to HCD in their review of the Element and the certification process.
  
- 13 Zoning and General Plan Amendments.** Barry Miller will prepare General Plan Map and text amendments as needed to reflect the findings of Task 5 and incorporate any other changes that ensure internal consistency with the Housing Element. Although this is numbered as Task “13,” it would actually occur concurrently with Tasks 7-12. In other words, General Plan and zoning changes would be adopted concurrently with the Housing Element.

The most likely element requiring amendment is Land Use. However, depending on the magnitude of land use changes and findings of the EIR, it is possible that amendments also may be required to Transportation, Community Services and Facilities, Conservation and Sustainability, and Parks, Recreation, and Open Space. Amendments to the Waterfront Element and the Environmental Hazards Element are unlikely.

Albany is not currently identified as a “disadvantaged community” per SB 535. As such, it may not be subject to SB 1000, which requires the addition of environmental justice (EJ) policies (or an EJ Element) upon the next update of the General Plan. Nonetheless, there may be merit in adding such policies to reinforce the Housing Element, particularly given the Housing Element’s focus on social equity and inclusion issues. If added, EJ policies would be developed through a public process that engaged the City Council, Planning and Zoning Commission, and other City boards and commissions, as well as advocacy groups and the community at large.

Draft amendments to the General Plan would be considered at public hearings concurrently with Housing Element adoption. At least two Planning and Zoning Commission hearings and two City Council hearings are presumed. Plan amendments would be



covered in the same staff reports used for Housing Element adoption, under a separate heading.

Zoning map and text amendments also would be included in this task. These could include rezoning of individual sites (or groups of sites) from one zone to another, as well as global 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 the Housing Element Action Program would occur in the future as part of Plan implementation.

- 14 CEQA Compliance.** While CEQA compliance is outside the scope of this Agreement, Barry Miller will provide technical support and assistance to the Contractor retained to provide these services. This would likely include drafting the Project Description and reviewing all sections of the EIR for internal consistency and accuracy. It would also include participation in meetings, consultation on potential impacts on certain CEQA topic areas (e.g., land use, population and housing, parks and recreation, etc.). Barry would also participate in the development and analysis of project alternatives. Finally, Barry would draft staff reports, memoranda, and other documents as needed to address CEQA issues and findings as they relate to Housing Element adoption and related General Plan Amendments.

## EXHIBIT B – SCHEDULE AND BUDGET

The project schedule and budget is presented below:

<b>Task</b>	<b>Timing</b>	<b>Hours</b>
<b>1</b> Reconnaissance	Jan - Apr 2021	32
<b>2</b> Community Engagement Program	Apr 2021- Jul 2022	72
<b>3</b> Evaluate Previous Element	May - June 2021	20
<b>4</b> Prepare Needs Assessment	July - Aug 2021	25
<b>5</b> Prepare Inventory of Adequate Sites	July - Dec 2021	80
<b>6</b> Evaluate Constraints to Housing Development	Aug - Sept 2021	25
<b>7</b> Prepare Goals, Policies, and Quantified Objectives	Jan - Feb 2022	20
<b>8</b> Prepare Action Program	Feb - Mar 2022	25
<b>9</b> Prepare Admin Draft for Staff/ HCD Review	April 2022	32
<b>10</b> Liaison with HCD/ Response to HCD Comments	May - June 2022	20
<b>11</b> Prepare Public Review Draft Housing Element	July 2022	16
<b>12</b> Adoption and Final Plan Production	Aug - Dec 2022	64
<b>13</b> Zoning and General Plan Amendments	Jan – Jul 2022	144
<b>14</b> CEQA Compliance	Nov 2021-Jul 2022	16
<b>TOTAL</b>	Jan 2021-Dec 2022	591

The hourly rate for this project is \$135; thus the total estimated labor cost is \$79,785 for the 24-month project duration. A \$215 budget for reimbursable expenses (incidental printing, etc.) is suggested to round the total project budget to \$80,000. Work will be billed monthly on a time and materials basis, not to exceed the budgeted amount. If a lower RHNA is assigned to Albany, the scope of Tasks 5 and 13 will be reduced accordingly.