



# AGENDA REPORT

## CITY OF SAN CLEMENTE

### City Council Meeting

910 Calle Negocio  
2nd Floor  
San Clemente, California  
www.san-clemente.org

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**Meeting Date:** 4/18/2023

**Agenda Item:** 6D

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**Department:** Community Development  
**Prepared By** Sara Toma, Senior Planner

**Subject:**

**APPROVAL OF A FIRST AMENDMENT TO THE PROFESSIONAL CONSULTANT SERVICES AGREEMENT WITH PRECISION CIVIL ENGINEERING, INC. FOR THE HOUSING ELEMENT REZONING PROGRAM**

**Summary:**

This is a request for the City Council to approve and authorize the City Manager to execute a first Amendment to Contract No. AC-1099, relating to planning services for the Housing Element Rezoning Program. This amendment increases the contract amount from \$50,000, not to exceed the amount of \$122,900, an increase of \$72,900.

**Background:**

In October 2022, the state certified the City's Housing Element Update. The update included 17 housing programs that requires the city to designate sufficient land at appropriate densities and in appropriate locations to accommodate the City's share of regional housing needs and to facilitate the production of high-quality affordable housing. The City is required to implement these programs in this housing cycle (2021-2029) to maintain certified status.

The Housing Element Rezoning Program is required for compliance with the City's' certified Housing Element. The rezoning program includes expanding the affordable housing overlay, zoning ordinance amendments, and development of objective design standards for multi-family projects.

**Discussion:**

The State's Department of Housing and Community Development (HCD) required all cities and counties to update their Housing Element by October 2022. To meet the deadline, staff needed planning consulting services to assist with this effort. This included, publishing a request for proposal, selecting a consultant, and beginning work immediately on the Housing Element rezoning program.

On July 6, 2022, staff published a Request for Proposal (RFP) for planning consultant services. Staff evaluated all proposals based on selection criteria including schedule, experience, cost, and approach to meeting the City's needs. After interviewing potential consultants, staff selected Precision Civil Engineering (PCE) to review, assess, and prepare the Housing Element Rezoning Program. PCE's proposed fees for service were \$104,000. PCE is an established, full-service firm, and has over 55 years of professional Planning, Landscape Architecture, and Civil Engineer, with extensive experience in housing programs implementation.

On October 3, 2022, the City Manager approved the Professional Consultant Services Agreement for the preliminary phase of work with Precision Civil Engineering, Inc. at \$50,000, the amount of the City

Manager’s authority, to begin work immediately in assisting staff with the Housing Element Rezoning Program (Attachment 2). The Agreement served to begin the work at the end of last year and meet state’s requirements. This amendment will capture the remaining scope of work, including a cost adjustment of \$18,900 to add consultant fees for time and travel to participate in multiple in-person meetings, which was not included in the original PCE cost proposal of \$104,000. This amendment increases the contract amount from \$50,000 to \$122,900, an increase of \$72,900, which is expected to fully fund the project. The project is funded from two different sources, the General Fund and a LEAP Grant, which exceed the costs of this contract. A supplemental budget appropriation is not required. The table below provides a breakdown of the budgeted cost for this project and funding sources.

HOUSING ELEMENT REZONING PROGRAM PROJECT FUNDING SOURCES			
Funding Source	Account Number	Project Name	Amount
General Fund	001-431-43890	Consultant Services to Develop Objective Design Standards	\$35,000
LEAP Grant	001-431-43890	Housing Element Rezoning Program	\$90,000
<b>Total Amount</b>			<b>\$125,000</b>
Project Cost			\$122,900

**Council Options:**

- Approve and authorize the City Manager to execute the First Amendment to the Professional Services Agreement with Contractor.
- Modify and authorize the City Manager to execute the First Amendment to the Professional Services Agreement with Contractor.
- Continue the Item with direction to provide additional information.
- Deny the request to Amend the Professional Services Agreement.

**Environmental Review/Compliance (CEQA)**

Not a project.

**Fiscal Impact:**

The project is funded from two different sources: \$35,000 from the General Fund and \$90,000 from the Local Early Action Planning (LEAP) Grant from the California Housing and Community Development (HCD) Department.

***Recommended Actions:***

Staff Recommendation

Approve and authorize the City Manager to execute the First Amendment to the Professional Services Agreement with Precision Civil Engineering for the Housing Element Rezoning Program

***Attachment:***

1. First Amendment to the Professional Consultant Services Agreement with PCE (Contract AC-1099)
2. Professional Consultant Services Agreement with PCE (Contract AC-1099)

***Notification:***

Notice not required.

**FIRST AMENDMENT TO  
PROFESSIONAL CONSULTANT SERVICES AGREEMENT  
FOR THE HOUSING ELEMENT REZONING PROGRAM**

This First Amendment to Professional Consultant Service Agreement for planning services (this "First Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **CITY OF SAN CLEMENTE**, a California municipal corporation ("City"), and **PRECISION CIVIL ENGINEERING, INC.** ("Consultant").

**RECITALS:**

- A. City and Contractor entered into a Professional Consultant Services Agreement for planning services (the "Agreement") on October 3, 2022.
- B. City and Contractor desire to amend the Agreement in the manner provided herein.

**COVENANTS:**

**Section 1:** Article 3.1 (Scope of Services and Term), section 3.1.2 of the Agreement is hereby amended to state that the contract will terminate when work is complete pursuant to the project adjusted schedule as referenced in Exhibit A.

**Section 2:** Article 3.3 (Fees and Payments), section 3.3.1 of the Agreement is hereby amended by increasing the total compensation amount from Fifty Thousand Dollars (\$50,000) to One Hundred Twenty two Thousand and Nine Hundred Dollars (\$122,900), an increase of Seventy Two Thousand and Nine Hundred Dollars (\$72,900).

**Section 3:** Exhibit "C" (Schedule of Services) to the Agreement is deleted and replaced in its entirety by Exhibit "C" to this First Amendment, which exhibit is attached hereto and incorporated herein fully by this reference.

**Section 4:** Exhibit "D" (Compensation) to the Agreement is deleted and replaced in its entirety by Exhibit "D" to this First Amendment, which exhibit is attached hereto and incorporated herein fully by this reference.

**Section 5:** Except as expressly amended by this First Amendment, the remaining portions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused this First Amendment to be duly executed on the respective dates set forth opposite of their signatures.

**CITY OF SAN CLEMENTE**

By: \_\_\_\_\_

Its: \_\_\_\_\_ CITY MANAGER \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

**ATTEST:**

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

**APPROVED AS TO FORM:**  
BURKE, WILLIAMS AND SORENSEN, LLP

\_\_\_\_\_  
Elizabeth A. Mitchell, City Attorney

**APPROVED AS TO AVAILABILITY  
OF FUNDING:**

\_\_\_\_\_  
Finance Authorization

\_\_\_\_\_  
("CONSULTANT")

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

There are no changes to the Scope of Work as part of this First Amendment, except for the Consultant to attend seven in-person (not virtual) meetings. In addition, the Schedule of Service and Compensation are amended as follows:

**Exhibit “B”**  
**Schedule of Services**

**Timeline**

<b>Month</b>	<b>Deliverable/Task</b>
<b>January 2022</b>	<ul style="list-style-type: none"> <li>• Property Owner Meeting Logistics</li> <li>Workshop Save-the-Date Final Flyer</li> <li>Draft Survey #2</li> <li>• Stakeholder interviews scheduling, property owner meeting, Provide Comments on draft Survey, Property Owner Meeting Invitation</li> <li>• Stakeholder interviews (January 23-February 9)</li> </ul>
<b>February</b>	<ul style="list-style-type: none"> <li>• Stakeholder interviews (January 23-February 9)</li> <li>• Community Workshop Logistics</li> <li>• Text Amendment/Rezone Approach and Outline</li> <li>• Site Analysis Summary</li> <li>• Open Public Survey (2/10/23-3/10/23)</li> </ul> <p><b>Community Workshop (In-Person) (2/23/23)</b></p>
<b>March</b>	<p><b>Community Workshop (Virtual) (3/1/23)</b></p> <ul style="list-style-type: none"> <li>• Close Public Survey (2/10/23-3/10/23)</li> <li>• Public Outreach Summary Memo</li> <li>• Study Session Discussion</li> <li>• Annotated Text Amendment/Rezone Approach and Outline</li> </ul>
<b>April</b>	<ul style="list-style-type: none"> <li>• 1st Draft Text Amendment</li> <li>• 1st Draft Rezoning Map</li> <li>• 2nd Draft Application Form/Checklist</li> </ul>
<b>May</b>	<b>Design Review Subcommittee Meeting #1 05/24/23</b>
<b>June</b>	<p><b>Design Review Subcommittee Meeting #2 06/14/23</b></p> <ul style="list-style-type: none"> <li>• 2nd Draft Text Amendment</li> <li>• 2nd Draft Rezoning Map</li> <li>• 2nd Draft Application Form/Checklist</li> <li>• Draft Hearing Documents &amp; Notices</li> </ul>
<b>July</b>	<p><b>PC Study Session Meeting #1 07/19/23</b></p> <ul style="list-style-type: none"> <li>• Drafting of Deliverables</li> <li>• City Routing &amp; Review</li> </ul>
<b>August-September</b>	<p><b>PC Study Session Meeting #2 08/16/23</b></p> <ul style="list-style-type: none"> <li>• Drafting of Deliverables</li> <li>• City Routing &amp; Review</li> </ul>
<b>October-November</b>	<b>PC Meeting 10/18 or 11/08 – Tentative</b>
<b>December</b>	<b>CC Meeting 12/05 or 12/19 – Tentative</b>

**EXHIBIT "D"**

**Compensation**

PCE's proposed budget is as follows:

**TASK 1. PROJECT MANAGEMENT**

Project Manager.....25 hours  
Senior Planner.....10 hours  
Senior Associate Planner.....30 hours  
Assistant Planner.....10 hours  
**TOTAL HOURS.....75 hours**  
**SUB-TOTAL.....\$13,000\***

\*Cost includes 21 check-in meetings

**TASK 2. PUBLIC OUTREACH**

Project Manager.....10 hours  
Senior Planner.....10 hours  
Senior Associate Planner.....20 hours  
Assistant Planner.....20 hours  
**TOTAL HOURS.....60 hours**  
**SUB-TOTAL.....\$11,500\***

\*Cost includes 1 community workshop, 1 property owner workshop, 1 community survey, and 4 interviews

**TASK 3. HOUSING ELEMENT REZONING PROGRAM**

Project Manager.....30 hours  
Senior Planner.....60 hours  
Senior Associate Planner.....60 hours  
Assistant Planner.....38 hours  
**TOTAL HOURS.....188 hours**  
**SUB-TOTAL.....\$29,000\***

\*Cost includes CEQA document for rezone

**TASK 4. OBJECTIVE DESIGN STANDARDS**

Project Manager.....30 hours  
Senior Planner.....60 hours  
Senior Associate Planner.....60 hours  
Assistant Planner.....30 hours  
**TOTAL HOURS.....180 hours**  
**SUB-TOTAL.....\$28,000\***

\*Cost includes CEQA document for text amendment

**TASK 5. MEETINGS AND HEARINGS**

Project Manager.....30 hours  
Senior Planner.....16 hours  
Senior Associate Planner.....16 hours  
Assistant Planner.....16 hours  
**TOTAL HOURS.....78 hours**  
**SUB-TOTAL.....\$14,000\***

\*Cost includes 2 Design Review Sub-Committee, 1 study session, 2 Planning Commission, 3 City Council; assumes virtual meetings with the exception of the first City Council hearing

**TASK 6. HEARING DRAFT AND FORM/PROCEDURAL CHANGES**

Project Manager.....5 hours  
Senior Planner.....5 hours  
Senior Associate Planner.....10 hours  
Assistant Planner.....10 hours  
**TOTAL HOURS.....30 hours**  
**SUB-TOTAL.....\$4,500**

**DIRECT COSTS**

Travel, Printing, etc.....\$4,000  
**SUB-TOTAL.....\$4,000**

**\*First Amendment to the Agreement to include In-Person 7 Meetings, Direct Cost of \$18,900.**

**TOTAL COST NOT TO EXCEED: \$104,000\***

\*Includes 10% built-in contingency

**\*First Amendment to the Agreement increases the total cost not to exceed \$122,900.**



## CITY OF SAN CLEMENTE

## PROFESSIONAL CONSULTANT SERVICES AGREEMENT

## 1. PARTIES AND DATE.

This Agreement is made and entered into this 3 day of October, 2022, by and between the City of San Clemente, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 910 Calle Negocio, San Clemente, California, 92673 ("City") and **PRECISION CIVIL ENGINEERING, INC.**, with its principal place of business at **1234 O Street, Fresno, CA 93721** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

## 2. RECITALS.

## 2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional **planning** consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **planning** consulting services to public clients, is licensed in the State of California, if applicable, and is familiar with the plans of City.

## 2.2 Project.

City desires to engage Consultant to render such professional **planning** consulting services for the **HOUSING ELEMENT REZONING PROGRAM** project ("Project") as set forth in this Agreement.

## 3. TERMS.

## 3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional planning consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **October 3, 2022** to **September 30, 2023**, unless earlier terminated as provided herein.

## 3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of

this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents 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 pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Endorsement on PS&E/ Other Data. Consultant shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by Consultant, and where appropriate will indicate Consultant's authorized signature and professional registration number.

3.2.4 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.5 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City.

3.2.6 City's Representative. The City hereby designates **Cecilia Gallardo-Daly, Community Development Director**, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.7 Consultant's Representative. Consultant hereby designates **Bonique Emerson, Project Manager**, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full

authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.8 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.9 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.10 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety

measures.

3.2.12 Insurance. Consultant agrees to procure and maintain, at Consultant's expense all insurance specified in Exhibit "C" attached hereto and by this reference incorporated herein. Consultant shall require all subconsultants to carry the same policies and limits of insurance that the Consultant is required to maintain, unless otherwise approved in writing by the City.

### 3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "D" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Fifty Thousand Dollars (\$50,000)** without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "D" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "D" may be adjusted each year at the time of renewal as set forth in Exhibit "D."

### 3.3.6 Labor Code Requirements.

3.3.6.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties

upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.6.2 Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code sections 1725.5 and 1771.1 shall not apply to Services performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code sections 1725.5 and 1771.1.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

### **3.5 General Provisions.**

#### **3.5.1 Termination of Agreement.**

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time, with or without cause, by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the

respective parties may provide in writing for this purpose:

Consultant:           PRECISION CIVIL ENGINEERING  
                          1234 O STREET  
                          FRESNO, CA 93721  
                          ATTN: Bonique Emerson, Project Manager

City:                   City of San Clemente  
                          910 Calle Negocio  
                          San Clemente, CA 92673  
                          ATTN: Cecilia Gallardo-Daly, Community Development  
                          Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public



Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification.

3.5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.



3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter 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 bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### **3.6 Subcontracting.**

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite of their signatures.

CITY OF SAN CLEMENTE

By: Sean Lopez

Its: Interim City Manager

Dated: October 4, 2022

ATTEST:

Paula Ang / Legislative Administrator  
CITY CLERK of the City of San Clemente, California

APPROVED AS TO FORM:  
BEST BEST & KRIEGER

[Signature]  
City Attorney

APPROVED AS TO AVAILABILITY  
OF FUNDING:

[Signature]  
Finance Authorization

Prasanna Civil Engineering, Inc.  
("CONSULTANT")

By: [Signature]

Its: PRESIDENT

Dated: SEPTEMBER 30 2022

**EXHIBIT "A"**  
**SCOPE OF WORK**

**TASK 1. PROJECT MANAGEMENT AND MEETINGS**

**TASK 1.1. Kick-off Meeting (1).** The PCE Project Team will coordinate a kick-off meeting with City staff to identify project milestones, refine the scope of work, confirm timeline, clarify specific roles and responsibilities, and identify project resources. PCE will prepare a Final Work Program to include items discussed during the kick-off meeting.

**Task 1.2. Project Schedule.** PCE will prepare a revised project schedule according to the discussions during the kick-off meeting. PCE will also communicate with City staff on any modifications on the schedule throughout the project and provide monthly schedule updates.

**Task 1.3. Check-In Meetings (21).** PCE will coordinate 30-60-minute, check-in calls with the Project Team throughout the duration of the project to share progress, ask and answer questions, and discuss updates, as appropriate. PCE recommends weekly meetings from the start of the project through the end of public outreach efforts scheduled to conclude in January 2023 (approximately 15 meetings). Following the conclusion of public outreach efforts, PCE recommends monthly meetings from February to July 2023 (approximately 6 meetings).

**Task 1. Deliverables:**

- *Draft Work Program and Final Work Program*
- *Draft Schedule and Final Schedule*
- *Meeting Agendas and Action Items*

**TASK 2. PUBLIC OUTREACH**

**Task 2.1. Outreach Events.** PCE will coordinate with City staff to plan and facilitate two (2) public outreach efforts, including one (1) community survey for input on Objective Design Standards/Development Standards and one (1) stakeholder workshop. PCE recommends one (1) stakeholder workshop for both the Housing Element Rezoning Program and the Objective Design Standards/Development Standards to present the interrelatedness of the two projects and to accommodate the RHNA allocation timeline. PCE will coordinate an outreach plan with the City to identify a list of stakeholders and appropriate outreach methods for each stakeholder group. PCE will prepare a summary memo following the conclusion of public outreach efforts with key findings.

- **Community Survey for Objective Design Standards/Development Standards:** PCE will coordinate with City staff to produce a community survey for broad public input on the Objective Design Standards/Development Standards in the early stages of the project. PCE will provide images, preference studies, questions, and related information, as needed, for the development of the survey. PCE will host the survey through an online platform (e.g., Survey Monkey or Google Forms) in English and Spanish. PCE will produce a Word version of the survey to be available as hard copies at City Hall. The City will be responsible for printing costs.
- **Stakeholder Workshop (1) for Housing Element Rezoning Program and Objective Design Standards/Development Standards:** PCE will coordinate with City staff to facilitate one (1) stakeholder workshop for the Housing Element Rezoning Program and Objective Design Standards/Development Standards. PCE will prepare a PowerPoint

presentation that provides an introduction to the Housing Element Rezoning Program and Objective Design Standards/Development Standards. PCE will present the PowerPoint and assist the City with facilitating Q&A. The meeting can be Virtual, In-Person, or Hybrid, depending on the City's preferences.

- **Property Owner Workshop (1):** PCE to coordinate with City to send out property owner interest letters and hold a virtual meeting to answer questions from property owners related to the benefits of rezoning their property to add the Housing Overlay District.
- **Stakeholder Interviews (4) for Objective Design Standards/Development Standards:** PCE will conduct up to four (4) stakeholder interviews by phone or Zoom/video conference for input on the Objective Design Standards/Development Standards. The interviews will be informal, consist of 5-7 questions, and take approximately 30 minutes. Feedback will be incorporated into the Draft Objective Design Standards/Development Standards.

### **Task 2. Deliverables:**

- *Outreach Plan with Stakeholder List and Methods*
- *Annotated Survey Outline with Sample Questions*
- *Administrative Draft Survey in English/Spanish (with up to two (2) rounds of revisions)*
- *Public Draft Survey in English/Spanish (Online & Word)*
- *Workshop Save the Date Graphic/Flyer (English/Spanish)*
- *Administrative Draft PowerPoint (with up to two (2) rounds of revisions)*
- *Final Draft PowerPoint*
- *Draft Stakeholder Interview Questions*
- *Public Outreach Summary Memo with Findings*

### **TASK 3. HOUSING ELEMENT REZONING PROGRAM**

This task is associated with Program 1: Provide Adequate Sites and Monitoring for No Net Loss, Program 2A: By-Right Approval for Projects with 20 Percent Affordable Units, and Program 5: Affordable Housing Overlay as identified in the 2021-29 San Clemente Housing Element.

**Task 3.1a. Create Housing Overlay District (Zoning Ordinance Text Amendment).** PCE will assist City staff in amending the Zoning Ordinance, including the existing Affordable Housing Overlay, and creating the new Housing Overlay District as follows:

- Within the overlay, allow by-right/ministerial approval of project if 20 percent of the units are set aside for lower income (very low and low) households;
- Within the overlay, establish minimum levels of affordability, to be consistent with streamlining provisions permitted by State law;
- Remove Conditional Use Permit Requirements for 5+ units for projects that meet certain objective standards;
- Amend the Affordable Housing Overlay District allowing by-right developments approval for projects with 20 percent affordable units;
- Amend the existing Affordable Housing Overlay to reduce the requirement for 51 percent affordable housing at very low and low-income levels;
- Within in the overlay, establish objective design standards.

This task will result in a Zoning Ordinance Text Amendment for the new Housing Overlay District. The Zoning Ordinance Text Amendment will need to go before the Planning Commission and City Council (two readings/hearings) and 30 days will need to pass upon approval before the rezoning

(Task 3.1.b) can occur.

**Task 3.1.b. Apply Housing Overlay District (Rezone).** PCE will assist City staff in applying the new Housing Overlay District to the sites identified in Table 4-4: Residential Sites Inventory and Table 4-6: Candidate Sites for Rezoning. In total, there will be three groups of sites within the new Housing Overlay District: all properties currently within the Affordable Housing Overlay District, all properties identified in Table 4-4 without the Affordable Housing Overlay District, and sufficient properties to be rezoned as identified in Table 4-6 to accommodate the City's 6<sup>th</sup> Cycle RHNA allocation (PCE will prepare a calculation to determine minimum acreage required). This task will result in a Rezoning Map with corresponding GIS layer.

**Task 3.1c. Update Applicable Development Standards for Multi-Family Housing (various districts).** PCE will conduct a site analysis of up to five (5) identified sites to determine constraints to development. Depending on PCE's findings, PCE will prepare text amendments to the City zoning ordinance to modify multi-family development standards (such as height limits, number of stories, lot coverage, and parking requirements) to ensure that development projects have the ability to achieve the allowable densities. This task will result in a Zoning Ordinance Text Amendment for the modified Development Standards.

**Task 3. Deliverables:**

- *Annotated Ordinance Outline for Text Amendment(s)*
- *Conceptual Site Plans (5)*
- *1<sup>st</sup> Draft Text Amendment(s) & Rezoning Map*
- *2<sup>nd</sup> Draft Text Amendment(s) & Rezoning Map*
- *Final Draft Text Amendment(s) & Rezoning Map*

**TASK 4. OBJECTIVE DESIGN STANDARDS**

PCE understands that the City intends to facilitate development on the rezoned sites (Task 3) by establishing objective development standards including height limit, number of stories, lot coverage, and parking that would allow development projects to achieve the allowable densities. Specifically, the City will allow development potential to be calculated for the entire site based on gross density, while allowing the residential units/mixed use components to be clustered on portions of the site. This task is associated with "Program 1: Provide Adequate Sites and Monitoring for No Net Loss", Program 2A, and Program 5as identified in the 2021-29 San Clemente Housing Element.

**Task 4.1. Develop Objective Design Standards.** PCE will develop and draft objective design standards for new housing developments and potentially redevelopment and/or adaptive reuse of existing buildings as feasible. These standards would include building design (massing and articulation, roof design, character defining features, building details, optional architectural elements, etc.) and possibly objective site elements (landscaping, parking location and design, outdoor lighting, and building equipment and service areas, etc.). PCE will provide drafts of the standards in word for the City to review and provide comment. This task will result in a Zoning Ordinance Text Amendment for the Objective Design Standards.

**Task 4.2. Application and Checklist Process.** PCE will coordinate with City staff to develop a streamlined ministerial approval process for affordable housing development projects. This includes a Planning Application Form and an Objective Design Standards Checklist. The

Application Form would detail instructions for submittal and provide a list of documents required for submittal. The Standards Checklist will list the objective design standards for a streamlined plan check review. This task will result in the Application Form and Checklist.

**Task 4. Deliverables:**

- *Annotated Ordinance Outline for Text Amendment*
- *1<sup>st</sup> Draft Text Amendment*
- *2<sup>nd</sup> Draft Text Amendment*
- *Final Draft Text Amendment*
- *Draft & Final Application and Checklist Process*

**TASK 5. MEETINGS AND HEARINGS**

For scheduling and budgeting purposes, PCE assumes the following meetings:

Kick-off Meeting (1). Included in Task 1.

Check-Ins (21). Included in Task 1.

Public Outreach Efforts (3). Included in Task 2.

Design Review Subcommittee (2). PCE will hold two (2) design review subcommittee meetings to collect input and incorporate any comments from the subcommittee.

Planning Commission Study Session (1). PCE will coordinate a study session with planning commission to present drafts of the zoning text amendment and objective design standards to incorporate any comments in the final draft version to bring forward to planning commission and city council.

Planning Commission (1). PCE will attend two (2) planning commission meetings.

City Council (1). PCE will attend two (2) city council meetings and be available for a third as needed.

PCE will prepare all public hearing staff reports, resolutions, ordinances, and posting of all public notices.

**TASK 6. HEARING DRAFT AND FORM/PROCEDURAL CHANGES**

**Task 6.1. Draft Documents.** PCE will provide one (1) word document and one (1) pdf document of the final "hearing" draft text amendment(s) to City staff. PCE will also provide documents for environmental clearance for the project. PCE recommends adopting a "No Possibility" Exemption for the zoning text amendments and objective design standards under Section 15061(b)(3) of the CEQA Guidelines, which exempts projects where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment. For the rezoning piece, PCE recommends a memo containing evidence and an analysis demonstrating that, pursuant Section 15168(c)(2) of CEQA Guidelines, the project is within the scope of the project covered by the PEIR, and no new CEQA analysis is required.

**Task 6.2. GIS Data and Map Deliverable Parameters.** PCE will prepare one (1) pdf and one (1) shapefile of the final updated Overlay District map. PCE will also provide maps and rezone exhibits as needed.

**Task 6. Deliverables:**

- *Final Hearing Draft Text Amendment(s)*
- *Final Hearing Draft Rezoning Map*
- *CEQA Exemptions*

**Exhibit "B"**  
**Schedule of Services**

**Tentative Timeline**

The following timeline assumes a start date of **October 3, 2022**, pending City approval of the Scope of Work and Budget. PCE anticipates the final hearing to occur on **July 18, 2023**.

<b>Month</b>	<b>Week</b>	<b>Deliverable/Task</b>
October 2022	10/3/22 – 10/7/22	<ul style="list-style-type: none"> <li>Project Kick-Off Meeting (10/3/22)</li> </ul>
	10/10/22 – 10/14/22	<ul style="list-style-type: none"> <li>Check-In Meeting (10/10/22)</li> <li>Draft Outreach Plan</li> </ul>
	10/17/22 – 10/21/22	<ul style="list-style-type: none"> <li>Check-In Meeting (10/17/22)</li> <li>Final Outreach Plan</li> <li>Survey Outline with Sample Questions</li> </ul>
	10/24/22 – 10/28/22	<ul style="list-style-type: none"> <li>Check-In Meeting (10/24/22)</li> <li>Draft Stakeholder Interview Guide</li> <li>Draft Property Owner Letter</li> </ul>
	10/31/22 – 11/4/22	<ul style="list-style-type: none"> <li>Check-In Meeting (10/31/22)</li> <li>Final Stakeholder Interview Guide</li> <li>Final Property Owner Letter</li> <li>Interview Invitations &amp; Scheduling</li> </ul>
November 2022	11/7/22 – 11/11/22	<ul style="list-style-type: none"> <li>Check-In Meeting (11/7/22)</li> <li>Draft Survey</li> <li>Interview Invitations &amp; Scheduling</li> <li>Property Owner Workshop Invitation</li> </ul>
	11/14/22 – 11/18/22	<ul style="list-style-type: none"> <li>Check-In Meeting (11/14/22)</li> <li>Hold Interviews</li> </ul>
	11/21/22 – 11/25/22	<ul style="list-style-type: none"> <li>Check-In Meeting (11/21/22)</li> <li>Final Survey</li> </ul>
	11/28/22 – 12/2/22	<ul style="list-style-type: none"> <li>Check-In Meeting (11/28/22)</li> <li>Survey Run-through &amp; Publish</li> <li>Hold Interviews</li> <li>Workshop Save the Date Graphic</li> </ul>
December 2022	12/5/22 – 12/9/22	<ul style="list-style-type: none"> <li>Check-In Meeting (12/5/22)</li> <li>Interview Summary</li> <li>Site Analysis</li> <li>Property Owner Workshop (TBD)</li> </ul>
	12/12/22 – 12/16/22	<ul style="list-style-type: none"> <li>Check-In Meeting (12/12/22)</li> <li>Workshop PowerPoint Outline</li> <li>Annotated Outline – Standards</li> <li>Attend Design Review Subcommittee Meeting (12/13/22)</li> <li>Property Owner Workshop (TBD)</li> </ul>
	12/19/22 – 12/23/22	<i>No Meetings/Tasks (Holidays)</i>
	12/26/22 – 12/30/22	<i>No Meetings/Tasks (Holidays)</i>



January 2023	1/2/22 – 1/6/23	<i>No Meetings/Tasks (Holidays)</i>
	1/9/23 – 1/13/23	<ul style="list-style-type: none"> <li>• Check-In Meeting (1/9/22)</li> <li>• Workshop PowerPoint Draft</li> </ul>
	1/16/23 – 1/20/23	<ul style="list-style-type: none"> <li>• Check-In Meeting (1/17/22*)</li> <li>• Workshop Logistics/Run-through</li> <li>• Workshop – 1/18/23 or 1/19/23</li> </ul>
	1/23/23 – 1/27/23	<ul style="list-style-type: none"> <li>• Check-In Meeting (1/23/23)</li> <li>• Workshop Debrief</li> <li>• Close Survey (1/27/23)</li> </ul>
	1/30/23 – 2/3/23	<ul style="list-style-type: none"> <li>• Check-In Meeting (1/30/23)</li> <li>• Public Outreach Summary Memo</li> </ul>
February 2023	2/6/23 – 2/10/23	<i>No Meetings/Tasks – PCE drafting text amendment, rezoning map</i>
	2/13/23 – 2/17/23	<ul style="list-style-type: none"> <li>• 1<sup>st</sup> Draft Text Amendment (Overlay, Standards)</li> <li>• 1<sup>st</sup> Draft Rezoning Map</li> <li>• 1<sup>st</sup> Draft Application Form/Checklist</li> <li>• Attend Design Review Subcommittee Meeting (2/15/23)</li> <li>• <b>Recommendation: Joint CC/PC Study Session between 1<sup>st</sup> and 2<sup>nd</sup> Draft (Date TBD)</b></li> </ul>
	2/20/23 – 2/24/23	<i>No Meetings/Tasks – City reviewing draft text amendment, &amp; map</i>
	2/27/23 – 3/3/23	<ul style="list-style-type: none"> <li>• Check-In Meeting (2/27/23)</li> </ul>
March 2023	3/6/23 – 3/10/23	<i>No Meetings/Tasks – PCE drafting text amendment, rezoning map</i>
	3/13/23 – 3/17/23	<ul style="list-style-type: none"> <li>• 2<sup>nd</sup> Draft Text Amendment (Overlay, Standards)</li> <li>• 2<sup>nd</sup> Draft Rezoning Map</li> <li>• 2<sup>nd</sup> Draft Application Form/Checklist</li> <li>• Draft Hearing Documents &amp; Notices</li> </ul>
	3/20/23 – 3/24/23	<i>No Meetings/Tasks – City reviewing draft text amendment &amp; map</i>
	3/27/23 – 3/31/23	<ul style="list-style-type: none"> <li>• Check-In Meeting (3/27/23)</li> </ul>
April 2023	4/3/23 – 4/7/23	<i>No Meetings/Tasks – PCE drafting text amendment, map, hearing documents, and notices</i>
	4/10/23 – 4/14/23	<ul style="list-style-type: none"> <li>• Final Text Amendment</li> <li>• Final Rezoning Map</li> <li>• Final Application Form/Checklist</li> <li>• Final Hearing Documents &amp; Notices</li> <li>• PC Hearing Notice to Paper (4/14/23) for Text Amendments &amp; Rezoning</li> </ul>
	4/17/23 – 4/21/23	<ul style="list-style-type: none"> <li>• PC Hearing Notice Published (4/21/23) for Text Amendments &amp; Rezoning</li> </ul>
	4/24/23 – 4/28/23	<ul style="list-style-type: none"> <li>• Check-In Meeting (4/24/23)</li> <li>• PC Hearing Agenda Posted (4/28/23)</li> <li>• CC Hearing #1 Notice to Paper (4/28/23) for Text Amendments</li> </ul>
May 2023	5/1/23 – 5/5/23	<ul style="list-style-type: none"> <li>• <b>PC Hearing for Text Amendments &amp; Rezoning (5/3/23)</b></li> </ul>

		<ul style="list-style-type: none"> <li>• CC Hearing #1 Notice Published (5/5/23) for Text Amendments</li> </ul>
	5/8/23 – 5/12/23	<ul style="list-style-type: none"> <li>• Check-In Meeting (5/8/23)</li> <li>• CC Hearing Agenda Posted (5/12/23)</li> </ul>
	5/15/23 – 5/19/23	<ul style="list-style-type: none"> <li>• <b>CC Hearing #1 for Text Amendments (5/16/23)</b></li> <li>• CC Hearing #2 Notice to Paper (5/19/23) for Text Amendments</li> </ul>
	5/22/23 – 5/26/23	<ul style="list-style-type: none"> <li>• CC Hearing #2 Notice Published (5/26/23) for Text Amendments</li> </ul>
	5/29/23 – 6/2/23	<ul style="list-style-type: none"> <li>• Check-In Meeting (5/30/23)*</li> <li>• CC Hearing Agenda Posted (6/2/23)</li> </ul>
June 2023	6/5/23 – 6/9/23	<ul style="list-style-type: none"> <li>• <b>CC Hearing #2 for Text Amendments (6/6/23)</b></li> </ul>
	6/12/23 – 6/16/23	<i>No Meetings/Tasks</i>
	6/19/23 – 6/23/23	<i>No Meetings/Tasks</i>
	6/26/23 – 6/30/23	<ul style="list-style-type: none"> <li>• CC Hearing Notice to Paper (6/30/23) for Rezoning</li> </ul>
July 2023	7/3/23 – 7/7/23**	<ul style="list-style-type: none"> <li>• CC Hearing Notice Published (7/7/23) for Rezoning</li> </ul>
	7/10/23 – 7/14/23	<ul style="list-style-type: none"> <li>• Check-In Meeting (7/10/23)</li> <li>• CC Hearing Agenda Posted (7/14/23)</li> </ul>
	7/17/23 – 7/21/23	<ul style="list-style-type: none"> <li>• <b>CC Hearing for Rezoning (7/18/23)</b></li> </ul>

\*Meeting held Tuesday because of Holiday

\*\*30 Days Post-CC Hearing #2 (7/6/23)

**EXHIBIT "C"**  
**INSURANCE REQUIREMENTS**

3.2.12 Insurance.

3.2.12.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.12.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); or (3) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

3.2.12.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.4 Professional Liability (Errors & Omissions):

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

3.2.12.5 Workers' Compensation:

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.12.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability insurance shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City, its officials, officers, employees, agents, and volunteers, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.2.12.8 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention greater than \$5,000 must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.12.9 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.12.10 Failure to Maintain Coverage. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement effective upon notice.

3.2.12.11 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A- VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.12.12 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.2.12.13 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Appendix are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.2.12.14 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and

volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

**EXHIBIT "D"**

**Compensation**

PCE's proposed budget is as follows:

**TASK 1. PROJECT MANAGEMENT**  
Project Manager.....25 hours  
Senior Planner.....10 hours  
Senior Associate Planner.....30 hours  
Assistant Planner.....10 hours  
**TOTAL HOURS.....75 hours**  
**SUB-TOTAL.....\$13,000\***

\*Cost includes 21 check-in meetings

**TASK 2. PUBLIC OUTREACH**  
Project Manager.....10 hours  
Senior Planner.....10 hours  
Senior Associate Planner.....20 hours  
Assistant Planner.....20 hours  
**TOTAL HOURS.....60 hours**  
**SUB-TOTAL.....\$11,500\***

\*Cost includes 1 community workshop, 1 property owner workshop, 1 community survey, and 4 interviews

**TASK 3. HOUSING ELEMENT REZONING PROGRAM**  
Project Manager.....30 hours  
Senior Planner.....60 hours  
Senior Associate Planner.....60 hours  
Assistant Planner.....38 hours  
**TOTAL HOURS.....188 hours**  
**SUB-TOTAL.....\$29,000\***

\*Cost includes CEQA document for rezone

**TASK 4. OBJECTIVE DESIGN STANDARDS**  
Project Manager.....30 hours  
Senior Planner.....60 hours  
Senior Associate Planner.....60 hours  
Assistant Planner.....30 hours  
**TOTAL HOURS.....180 hours**  
**SUB-TOTAL.....\$28,000\***

\*Cost includes CEQA document for text amendment

**TASK 5. MEETINGS AND HEARINGS**  
Project Manager.....30 hours  
Senior Planner.....16 hours  
Senior Associate Planner.....16 hours  
Assistant Planner.....16 hours  
**TOTAL HOURS.....78 hours**  
**SUB-TOTAL.....\$14,000\***

\*Cost includes 2 Design Review Sub-Committee, 1 study session, 2 Planning Commission, 3 City Council; assumes virtual meetings with the exception of the first City Council hearing

**TASK 6. HEARING DRAFT AND FORM/PROCEDURAL CHANGES**  
Project Manager.....5 hours  
Senior Planner.....5 hours  
Senior Associate Planner.....10 hours  
Assistant Planner.....10 hours  
**TOTAL HOURS.....30 hours**  
**SUB-TOTAL.....\$4,500**

**DIRECT COSTS**  
Travel, Printing, etc.....\$4,000  
**SUB-TOTAL.....\$4,000**

**TOTAL COST NOT TO EXCEED: \$104,000\***

\*Includes 10% built-in contingency

WORKER'S COMPENSATION INSURANCE CERTIFICATION

**WORKERS' COMPENSATION DECLARATION**

I hereby affirm under penalty of perjury one of the following declarations:

**(ONE OF THE BOXES BELOW MUST BE CHECKED)**

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier Hanover American dns. Co

Policy Number WZFJ09725800

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

**WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.**