



CITY OF SOUTH PASADENA  
CITY COUNCIL

A G E N D A

SPECIAL MEETING  
WEDNESDAY, NOVEMBER 2, 2022, AT 6:59 P.M.

AMEDEE O. "DICK" RICHARDS JR. COUNCIL CHAMBERS  
1424 MISSION STREET, SOUTH PASADENA, CA 91030

**South Pasadena City Council Statement of Civility**

*As your elected governing board, we will treat each other, members of the public, and City employees with patience, civility, and courtesy as a model of the same behavior we wish to reflect in South Pasadena for the conduct of all City business and community participation. The decisions made tonight will be for the benefit of the South Pasadena community and not for personal gain.*

**NOTICE ON PUBLIC PARTICIPATION & ACCESSIBILITY**

The South Pasadena City Council Meeting will be conducted in-person from the Amedee O. "Dick" Richards, Jr. Council Chambers, located at 1424 Mission Street, South Pasadena, CA 91030. Pursuant to Assembly Bill 361 Government Code Section 54953, subdivision (e)(3), the City Council may conduct its meetings remotely and may be held via video conference.

The Meeting will be available:

- In Person Hybrid – Council Chambers, 1424 Mission Street, South Pasadena, CA 91030
- Live Broadcast via the City website - [http://www.spectrumstream.com/streaming/south\\_pasadena/live.cfm](http://www.spectrumstream.com/streaming/south_pasadena/live.cfm)
- Via Zoom – **Webinar ID: 825 9999 2830**

To maximize public safety while still maintaining transparency and public access, members of the public can observe the meeting via Zoom in one of the three methods below.

1. Go to the Zoom website, <https://zoom.us/join> and enter the Zoom Meeting information; or
2. Click on the following unique Zoom meeting link: <https://us06web.zoom.us/j/82599992830> or
3. You may listen to the meeting by calling: +1-669-900-6833 and entering the Zoom Meeting ID.

**CALL TO ORDER:**

Mayor Michael Cacciotti

**ROLL CALL:**

Mayor	Michael Cacciotti
Mayor Pro Tem	Jon Primuth
Councilmember	Jack Donovan
Councilmember	Diana Mahmud
Councilmember	Evelyn G. Zneimer

**PUBLIC COMMENT GUIDELINES**

The City Council welcomes public input. Members of the public can comment on the agenda item only, you may participate **by one of the following options:**

## Option 1:

Participate in-person in the City Council Chambers located at 1424 Mission Street, South Pasadena, CA 91030

## Option 2:

Participate via Zoom.

Public Comment speakers are able to speak by going to the Zoom webinar controls and clicking on the "Raise Hand" icon. The Meeting Host will be notified that a hand has been raised and speakers will have their microphone un-muted by the Host during the appropriate Public Comment period.

PLEASE NOTE: The Mayor may exercise the Chair's discretion, subject to the approval of the majority of the City Council, to adjust public comment time limit to less than three minutes.

## Option 3:

Email Public Comment to [ccpubliccomment@southpasadenaca.gov](mailto:ccpubliccomment@southpasadenaca.gov).

Public Comments received in writing will not be read aloud at the meeting, but will be part of the meeting record. Written public comments will be uploaded to the City website for public viewing under Additional Documents. When submitting a public comment, please make sure to include the following:

- 1) Name (optional), and
- 2) Agenda item you are submitting public comment on.
- 3) Submit by no later than 12:00 p.m., on the day of the City Council meeting.

Pursuant to State law, the City Council may not discuss or take action on issues not on the meeting agenda, except that members of the City Council or staff may briefly respond to statements made or questions posed by persons exercising public testimony rights (Government Code Section 54954.2). Staff may be asked to follow up on such items.

**PUBLIC COMMENT**1. **PUBLIC COMMENT**

Public Comment will be limited to three minutes per speaker for the agenda item only.

**ACTION / DISCUSSION**2. **AUTHORIZE THE CITY MANAGER TO TERMINATE HOUSING ELEMENT CONTRACT WITH PLACEWORKS AND EXECUTE A CONTRACT AMENDMENT WITH MOBIUS PLANNING IN A NOT-TO-EXCEED AMOUNT OF \$125,000****Recommendation**

It is recommended that the City Council:

1. Authorize the City Manager to terminate the Housing Element contract with PlaceWorks; and
2. Execute a First Amendment with Mobius Planning Professional Services Agreement (PSA) to serve as the City's Consultant on the 6th Cycle 2021-2029 Housing Element increasing the current PSA by \$100,000 for a total not-to-exceed amount of \$125,000.

**ADJOURNMENT**

**FOR YOUR INFORMATION**

**FUTURE CITY COUNCIL MEETINGS**

November 2, 2022	Regular City Council Meeting	7:00 p.m.
November 9, 2022	Joint Special City Council and Planning Commission Meeting	6:30 p.m.
November 16, 2022	Regular City Council Meeting	7:00 p.m.

**PUBLIC ACCESS TO AGENDA DOCUMENTS AND BROADCASTING OF MEETINGS**

City Council meeting agenda packets, any agenda related documents, and additional documents are available online for public inspection on the City’s website:

[www.southpasadenaca.gov/CityCouncilMeetings2022](http://www.southpasadenaca.gov/CityCouncilMeetings2022)

**ACCOMMODATIONS**



The City of South Pasadena wishes to make all of its public meetings accessible to the public. If special assistance is needed to participate in this meeting, please contact the City Clerk's Division at (626) 403-7230 or [CityClerk@southpasadenaca.gov](mailto:CityClerk@southpasadenaca.gov). Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities. Notification at least 48 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting (28 CFR 35.102-35.104 ADA Title II).

**CERTIFICATION OF POSTING**

*I declare under penalty of perjury that I posted this notice of agenda for the meeting to be held on **November 2, 2022**, on the bulletin board in the courtyard of City Hall located at 1414 Mission Street, South Pasadena, CA 91030, and on the City website as required by law, on the date listed below.*

11/01/2022

/s/

Date

Desiree Jimenez, CMC, Chief City Clerk



# City Council Agenda Report

ITEM NO.   2  

**DATE:** November 2, 2022

**FROM:** Arminé Chaparyan, City Manager *Ac*

**PREPARED BY:** Angelica Frausto-Lupo, Community Development Director

**SUBJECT:** **Authorize the City Manager to Terminate Housing Element Contract with PlaceWorks and Execute a Contract Amendment with Mobius Planning in a not-to-exceed amount of \$125,000**

---

## Recommendation

It is recommended that the City Council:

1. Authorize the City Manager to terminate the Housing Element contract with PlaceWorks; and
2. Execute a First Amendment with Mobius Planning Professional Services Agreement (PSA) to serve as the City's Consultant on the 6<sup>th</sup> Cycle 2021-2029 Housing Element increasing the current PSA by \$100,000 for a total not-to-exceed amount of \$125,000.

## Background

On March 4, 2020, the City Council authorized the City Manager to execute a contract with PlaceWorks to develop the 2021-2029 Housing Element in the amount of \$267,598 with a contract termination date of December 31, 2021.

On October 22, 2021, the first draft of the 2021-2029 Housing Element was submitted to the State Department of Housing and Community Development (HCD) for a 60-day review period.

On December 15, 2021, the City Council authorized the City Manager to execute the First Amendment to the Housing Element contract to extend the project term to completion of the existing scope of work.

On December 21, 2021, HCD provided the City with a response letter outlining the necessary changes to bring the City's Draft Housing Element into compliance. The comments were extensive, but consistent with standard comments that had been sent to

most Southern California jurisdictions; the letter included requests for more explanation of items for which HCD received public comments among other findings.

On April 20, 2022, the City Council authorized the City Manager to execute a Second Amendment with PlaceWorks to facilitate additional analysis and community outreach associated with the comments received from HCD on the First Draft submittal. On May 10, 2022, the Second Draft was submitted to HCD.

On June 22, 2022, staff met with HCD representatives to discuss the 2<sup>nd</sup> draft and on June 29, 2022, in order to address HCD's preliminary comments, the City sent a letter with changes and clarifying information to the draft. On July 8, 2022, HCD provided a response letter. While HCD accepted several revisions as fully responsive, they had additional requested revisions and noted that several areas still required additional information and analysis in order to obtain certification.

In order to provide new perspectives, ideas, and strategies on the Housing Element, the City entered into a professional services agreement with Mobius Planning (Grant Henninger) on July 26, 2022 to serve as a project manager on the City's 6<sup>th</sup> Cycle Housing Element. Since July, Mobius Planning has been overseeing the Housing Element including the community outreach efforts, reviewing the sites analysis, and release of the 3<sup>rd</sup> draft on submitted to HCD on September 15, 2022.

On October 28, 2022, the City received a response letter requiring additional analysis on the sites inventory and submittal of a 4<sup>th</sup> Draft, attached.

### **Analysis**

It has been two and a half years since the City first entered into an agreement with PlaceWorks to prepare the 6<sup>th</sup> Cycle Housing Element. While the 6<sup>th</sup> Cycle Housing Element update appears to be a different process than previous cycles due to various state laws enacted during the planning period, the City has relied on PlaceWorks as the expert to obtain certification. Considering the City must now submit a 4<sup>th</sup> Draft, staff recommends terminating the contract with PlaceWorks and shifting efforts to Mobius for carry through; as previously mentioned, Mobius Planning has been assisting the City as a project manager.

The Mobius Planning contract has a budget of \$25,000. Staff had submitted a contract amendment for a total not-to-exceed amount of \$50,000 to continue to serve as Project Manager on the November 2, 2022 City Council Regular Meeting (Item Number 13), assuming that the City would receive conditional approval by HCD. However, since the City must now submit another draft within 45 days, staff recommends a contract amendment with Mobius Planning to replace PlaceWorks as the Consultant to complete the Housing Element. In order to incorporate the required revisions by HCD and to meet the court ordered deadlines, staff is requesting a budget increase of \$100,000 for a total not to exceed amount of \$125,000.

**Fiscal Impact**

The amendment to Mobius Planning PSA includes a request for an additional \$100,000, for a total not-to-exceed amount of \$125,000. Funding for the contract amendment is available in the FY 2022-2023 Community Development Department Contract Services budget Account No. 101-7010-7011-8170-000.

Attachments:

1. HCD Response Letter, October 28, 2022
2. Agreement with Mobius Planning (PSA)
3. Proposed Mobius Planning PSA with 1<sup>st</sup> Amendment

**ATTACHMENT 1**  
HCD Response Letter, October 28, 2022

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500

Sacramento, CA 95833

(916) 263-2911 / FAX (916) 263-7453

[www.hcd.ca.gov](http://www.hcd.ca.gov)

October 28th, 2022

Angelica Frausto-Lupo, Director  
Community Development Department  
City of South Pasadena  
1414 Mission Street  
South Pasadena, CA 91030

Dear Angelica Frausto-Lupo:

**RE: South Pasadena's 6<sup>th</sup> Cycle (2021-2029) Revised Draft Housing Element**

Thank you for submitting the City of South Pasadena's (City) revised draft housing element received for review on September 15, 2022. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. HCD considered comments from Active San Gabriel Valley, Californians for Homeownership, Victor Tang and Josh Albrekston pursuant to Government Code section 65585, subdivision (c).

The revised draft element addresses many statutory requirements described in HCD's July 8, 2022 review; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code), as follows:

1. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

*Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning... (Gov. Code, § 65583, subd. (c)(1).)*

**Suitability of Nonvacant Sites:** As found in the previous reviews, the element must include additional discussion of recent experience in redevelopment and either remove sites or include additional analysis of the extent existing uses impeded additional development. In response, the



element removed and added several sites and added additional discussion of sites but must still demonstrate the existing uses and circumstances do not impede additional development, as follows:

- *Site 5 (Liquor Store Site)*: The element notes the age of the structure but should discuss other factors demonstrating the potential for redevelopment or remove the site. Other factors include existing versus allowable floor area and indicators the uses will likely discontinue such as lack of investment, past vacancy or turnover in use. The element should further discuss why the developer polling (Appendix B) deemed the site only somewhat likely to develop in the planning period.
- *Site 9 (Meridian Site)*: The element should discuss how the proposed regulatory framework encourages redevelopment, especially given height limits of three stories. The element could utilize input from the developer panel to assist in this analysis.
- *Site 16 (Pavillions Parking Lot)*: Although there is owner interest and it was polled highly by the development community, the element should discuss the impacts of parking for the existing use on the feasibility of development, including plans for replacement parking and parking needs during construction.
- *Site 17 (Office Building and Parking Lot)*: The element notes there is an existing lease on the property but should discuss the length of that lease and whether that impedes additional development in the planning period. The element could utilize input from the developer panel to assist in this analysis.

In addition, because the housing element relies upon nonvacant sites to accommodate more than 50 percent of the regional housing needs allocation (RHNA) for lower-income households, it must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings as part of the adoption resolution based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

City-Owned Sites: While the element now includes information on compliance with the Surplus Land Act, it should still discuss whether existing uses impede additional development and any known conditions that preclude development in the planning period. For Site 8 (Public Works Yard), the element should discuss the impacts of the underground gasoline tank and filing station and soil contamination on the timing and cost of development in the planning period. For Site 13 (City-Owned Parking Lot), the element should discuss the timing of the short-term lease and impacts on the timing of development in the planning period.

Environmental Constraints: While the element now removes several sites, it should still discuss whether there are any other known constraints (e.g., shape, access) that impede development on identified sites in the planning period.

Programs: As noted above, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised, as follows:

- *Program 3.b (Mixed Use Development)*: The Program should be revised based on the outcomes of a complete analysis. In addition, while the element includes actions to engage with property owners and developers, it should include specific commitment to go beyond “consider reducing” parking requirements and also establish incentives (beyond state density bonus law) by a specified date such as increased density, relaxation of development standards, fee reductions and expedited permit processing.
  - *Program 3.0 (No Net Loss)*: The Program should commit to evaluate the effectiveness of identified sites at least once in the planning period (e.g., 2024) and make adjustment as necessary such as increasing densities, modifying development standards, removing sites and rezoning additional sites.
2. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities... (Gov. Code, § 65583, subd. (c)(3).)*

While the element now includes potentially meaningful programs to address governmental constraints, programs should be revised as follows:

- *Program 2.m (Update Inclusionary Housing Regulations)*: The Program should commit to engage and incorporate comments from the development community (including smaller developers and property owners) as part of the feasibility analysis and make adjustments as appropriate. In addition, while the element includes Program 2.i (Inclusionary Housing Regulations) to monitor affordability from the inclusionary requirement, Programs 2.i or 2.m should commit to a mid-term evaluation of inclusionary regulations in terms of constraints on development and make adjustments as necessary by a specified date.
- *Program 2.n (Citywide Height Limit Ballot Initiative)*: The Program should be revised with specific commitment to actual outcomes with a beneficial impact in the planning period. For example, the

Program should go beyond working to facilitate densities higher than 45 feet and should make a commitment to target at least a minimum height and number of stories to address constraints and encourage maximum densities. In addition, the Program should go beyond evaluating options for exceptions and establish exception processes by a specified date. Finally, the Program should make a specific commitment to establish alternative actions toward outcomes by a specified date (e.g., rezone additional sites by October 2024) and consider dates earlier in the planning period.

- *Program 3.n (Zoning Changes)*: The Program notes the types of standards that need revising (e.g., heights, open space, parking and design review findings) but should specifically commit to revise and reduce or modify the development standards and approval findings and ensure the changes will not constrain development. For example, the Program should specifically commit to remove subjective approval findings or limit the findings to objective design and development standards that promote approval certainty and do not constrain development.

3. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

While the element modifies several programs to affirmatively further fair housing (AFFH), it should include specific commitment and additional actions to improve housing mobility and increase new housing choices and affordability in higher resource or income areas (not limited to the RHNA) throughout the City. For example, the element could add programs for affirmative marketing and utilization of regional rental registries, homesharing, accessory dwelling units (ADUs) or conversion of existing space beyond ADU law. Also, the element should modify Program 3.m (Implement SB 9 and SB 10) to go beyond exploring SB 10 and adopting “feasible” amendments and instead commit to amendments that affirmatively implement (without constraints) and go beyond the statutory requirements such as commitment to allowing missing middle housing types in residential zones.

4. *Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b) (1 & 2).)*

Previous reviews found the element could consider conservation objectives beyond 5 units in the planning period. In response, the City adjusted its target to 20 units and did not increase objectives in this most recent revised draft. HCD encourages the City to target a higher impact for the eight year planning period. For example, the element could include

anticipated outcomes from Program 1.b (Convert CalTrans Homes to Affordable Housing).

The element will meet the statutory requirements of State Housing Element Law once it has been revised and adopted to comply with the above requirements pursuant to Government Code section 65585.

As a reminder, the City's 6th cycle housing element was due October 15, 2021. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the RHNA, including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, since the City failed to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c) (1) (A) and Government Code section 65583.2, subdivision (c) are completed.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. This is especially important for determining sites that have been utilized in multiple planning periods and are subject to by-right provisions. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov) for technical assistance.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

HCD appreciates the hard work and dedication you and the rest of the City's housing element team provided during the review. We are committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need assistance, please contact Connor Finney at [Connor.Finney@hcd.ca.gov](mailto:Connor.Finney@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall  
Senior Program Manager

**ATTACHMENT 2**  
Agreement with Mobius Planning (PSA)

**PROFESSIONAL SERVICES AGREEMENT  
FOR CONSULTANT SERVICES**

**(City of South Pasadena / Mobius Planning)**

**1. IDENTIFICATION**

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of South Pasadena, a California municipal corporation ("City"), and Mobius Planning ("Consultant").

**2. RECITALS**

- 2.1. City has determined that it requires the following professional services from a consultant: assist the City of South Pasadena in the preparation, adoption, and certification of the City's 6th Cycle Housing Element.
- 2.2. Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.
- 2.3. Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

**3. DEFINITIONS**

- 3.1. "Scope of Services": Consultant shall assist the City of South Pasadena in the preparation, adoption, and certification of the city's 6th Cycle Housing Element. Working together with the City's staff and consultant team to provide new perspectives, ideas, and strategies on possible changes to the Housing Element to help ensure certification by the California Department of Housing and Community Development (HCD).
- 3.2. "Agreement Administrator": The Agreement Administrator for this project is Angelica Frausto-Lupo Director of Community Development. The Agreement Administrator shall be the principal point of contact at the City for this project.

All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. City reserves the right to change this designation upon written notice to Consultant.

- 3.3. "Approved Fee Schedule": Consultant's compensation rate: \$150.00 per hour with a not to exceed amount of \$25,000. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- 3.4. "Maximum Amount": The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is Twenty Five Thousand Dollars (\$25,000).
- 3.5. "Commencement Date": July 25, 2022.
- 3.6. "Termination Date": December 31, 2022.

#### **4. TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Termination Date unless extended by written agreement of the parties or terminated earlier under Section 18 ("Termination") below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by City in writing and incorporated in written amendments to this Agreement.

#### **5. CONSULTANT'S DUTIES**

- 5.1. **Services.** Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.
- 5.2. **Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator.
- 5.3. **Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Consultant shall concurrently inform the Agreement Administrator, in writing, of Consultant's estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.



- 5.4. **Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.
- 5.5. **Professional Standards.** Consultant shall perform all work to the standards of Consultant's profession and in a manner reasonably satisfactory to City. 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 this Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).
- 5.6. **Avoid Conflicts.** During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if such work would present a conflict interfering with performance under this Agreement. However, City may consent in writing to Consultant's performance of such work.
- 5.7. **Appropriate Personnel.** Consultant has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Darrell Holmes shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 5.8. **Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to the City that those persons will perform and coordinate their respective 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. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 5.9. **Permits and Approvals.** Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.
- 5.10. **Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subcontractor. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.

- 5.11. **Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

## 6. SUBCONTRACTING

- 6.1. **General Prohibition.** This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 6.2. **Consultant Responsible.** Consultant shall be responsible to City for all services to be performed under this Agreement.
- 6.3. **Identification in Fee Schedule.** All subcontractors shall be specifically listed and their billing rates identified in the Approved Fee Schedule. Any changes must be approved by the Agreement Administrator in writing as an amendment to this Agreement.
- 6.4. **Compensation for Subcontractors.** City shall pay Consultant for work performed by its subcontractors, if any, only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule. Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subcontractors performing services under this Agreement. City shall not be liable for any payment, compensation, or federal and state taxes for any subcontractors.

## 7. COMPENSATION

- 7.1. **General.** City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Fee Schedule in full satisfaction for such services. Compensation shall not exceed the Maximum Amount (\$25,000). Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.

- 7.2. **Invoices.** Consultant shall submit to City an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification/position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges.
- 7.3. **Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 7.5. **Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the City through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of the City.
- 7.6. **City Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until City is satisfied that the services are satisfactory.
- 7.7. **Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 11, City shall have the right to withhold payments under this Agreement to offset that amount.

## 8. 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 certain "public works" and "maintenance" projects. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

## 9. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and

remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

## **10. RELATIONSHIP OF PARTIES**

- 10.1. **General.** Consultant is, and shall at all times remain as to City, a wholly independent contractor.
- 10.2. **No Agent Authority.** Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.
- 10.3. **Independent Contractor Status.** Under no circumstances shall Consultant or its employees look to the City as an employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation, and other applicable federal and state taxes.
- 10.4. **Indemnification of CalPERS Determination.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **11. INDEMNIFICATION**

- 11.1 **Definitions.** For purposes of this Section 11, "Consultant" shall include Consultant, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement. "City" shall include City, its officers, agents, employees and volunteers.

- 11.2 **Consultant to Indemnify City.** To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and defend City from and against any and all claims, losses, costs or expenses for any personal injury or property damage arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or failure to comply with any provision in this Agreement.
- 11.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify City for such loss or damage as is caused by the sole active negligence or willful misconduct of the City.
- 11.4 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 11.5 **Defense Deposit.** The City may request a deposit for defense costs from Consultant with respect to a claim. If the City requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 11.6 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section 11 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City.
- 11.7 **Indemnification by Subcontractors.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor or any other person or entity involved in the performance of this Agreement on Consultant's behalf.
- 11.8 **Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

## 12. INSURANCE

- 12.1. **Insurance Required.** Consultant shall maintain insurance as described in this section and shall require all of its subcontractors, consultants, and other agents to do the same. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

12.2. **Documentation of Insurance.** City will not execute this agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Consultant shall file with City:

- Certificate of Insurance, indicating companies acceptable to City, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference: residential inspection scope of repairs and cost of repairs
- Documentation of Best's rating acceptable to the City.
- Original endorsements effecting coverage for all policies required by this Agreement.
- City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

12.3. **Coverage Amounts.** Insurance coverage shall be at least in the following minimum amounts:

- Professional Liability Insurance:                   \$2,000,000 per occurrence,  
  \$4,000,000 aggregate
  
- General Liability:
  - General Aggregate:   \$4,000,000
  - Products Comp/Op Aggregate                             \$4,000,000
  - Personal & Advertising Injury                           \$2,000,000
  - Each Occurrence    \$2,000,000
  - Fire Damage (any one fire)                             \$ 100,000
  - Medical Expense (any 1 person)                       \$ 10,000
  
- Workers' Compensation:
  - Workers' Compensation                                 Statutory Limits
  - EL Each Accident   \$1,000,000
  - EL Disease - Policy Limit                               \$1,000,000
  - EL Disease - Each Employee                           \$1,000,000
  
- Automobile Liability
  - Any vehicle, combined single limit \$1,000,000

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall

be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

- 12.4. **General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.
- 12.5. **Worker's Compensation Insurance.** Consultant is aware of the provisions of Section 3700 of the Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Consultant will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.
- 12.6. **Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks.
- 12.7. **Professional Liability Insurance or Errors & Omissions Coverage.** The deductible or self-insured retention may not exceed \$50,000. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage shall be continued for two years after the completion of the work by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- 12.8. **Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- 12.9. **Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of South Pasadena must be endorsed as an additional insured for each policy required herein, other than Professional Errors and Omissions and Worker's Compensation, for liability arising out of ongoing and completed operations by or on behalf of the Consultant. Consultant's insurance policies shall be primary as respects any claims related to or as the result of the Consultant's work. Any insurance, pooled coverage or self-insurance

maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.

- 12.10. Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Consultant does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Consultant under this Agreement. Failure of the Consultant to maintain the insurance required by this Agreement, or to comply with any of the requirements of this section, shall constitute a material breach of this Agreement.
- 12.11. Notices.** Contractor shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. Consultant shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Consultant shall provide proof that cancelled or expired policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of South Pasadena, Attn: Angelica Frausto-Lupo, Director of Community Development, 1414 Mission Street, South Pasadena, CA 91030.
- 12.12. Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 12.13. Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the City. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 12.14. Report of Claims to City.** Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.



**12.15. Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts prior to execution of this Agreement.

City has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Consultant shall be responsible for all premiums and deductibles in all of Consultant's insurance policies. The amount of deductibles for insurance coverage required herein are subject to City's approval.

**12.16. Duty to Defend and Indemnify.** Consultant's duties to defend and indemnify City under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

### **13. MUTUAL COOPERATION**

**13.1. City Cooperation in Performance.** City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

**13.2. Consultant Cooperation in Defense of Claims.** If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

### **14. NOTICES**

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

Angelica Frausto-Lupo  
Director of Community Development  
City of South Pasadena  
1414 Mission Street  
South Pasadena, CA 91030  
Telephone: (626) 403-7220

If to Consultant

Grant Henninger  
Founding Principal  
1030 S. Country Glen Way  
Anaheim, CA 92808  
(714) 323-5731

With courtesy copy to:

Andrew L. Jared  
South Pasadena City Attorney  
Colantuono, Highsmith & Whatley, PC  
790 E. Colorado Blvd. Ste. 850  
Pasadena, CA 91101  
Telephone: (213) 542-5700  
Facsimile: (213) 542-5710

## **15. SURVIVING COVENANTS**

The parties agree that the covenants contained in paragraph 5.11 (Records), paragraph 10.4 (Indemnification of CalPERS Determination), Section 11 (Indemnity), paragraph 12.8 (Claims-Made Policies), paragraph 13.2 (Consultant Cooperation in Defense of Claims), and paragraph 18.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

## **16. TERMINATION**

- 16.1. **City Termination.** City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 16.2. **Consultant Termination.** Consultant may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.
- 16.3. **Compensation Following Termination.** Upon termination, Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement. The City shall have the benefit of such work as may have been completed up to the time of such termination.
- 16.4. **Remedies.** City retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

## **17. INTERPRETATION OF AGREEMENT**

- 17.1. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 17.2. **Integration of Exhibits.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by City and Consultant.
- 17.3. **Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the language of the section or paragraph shall control and govern in the construction of this Agreement.
- 17.4. **Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 17.5. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 17.6. **No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

## 18. GENERAL PROVISIONS

- 18.1. **Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required.

All City data shall be returned to City upon the termination or expiration of this Agreement.

- 18.2. **Conflicts of Interest.** 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. Consultant further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. 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.
- 18.3. **Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.4. **Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 18.5. **No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 18.6. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 18.7. **Non-Discrimination.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant

agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

- 18.8. **Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.
- 18.9. **Excused Failure to Perform.** Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.10. **Remedies Non-Exclusive.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies.
- 18.11. **Attorneys' Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs expended in the action.
- 18.12. **Venue.** The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"  
City of South Pasadena

"Consultant"  
Mobius Planning

By: *Domenica Megardichian*  
Signature

By: *Grant Henninger*  
Signature

Printed: Domenica Megardichian for

Printed: Grant Henninger

Title: Deputy City Manager  
*Annika Chapman*

Title: Principal

Date: 07/26/22

Date: 7/26/2022

**Attest:**

By: *Christina Munoz*  
Christina Munoz  
Deputy City Clerk

Date: 7/26/22

**Approved as to form:**

By: *Andrew Jared*  
Andrew Jared, City Attorney

Date: 7/26/2022

**ATTACHMENT 3**  
Proposed Mobius Planning First Amendment

**FIRST AMENDMENT TO  
AGREEMENT FOR SERVICES**

THIS AMENDMENT (“Amendment”) is made and entered into on the 2<sup>nd</sup> day of November, 2022 by and between the CITY OF SOUTH PASADENA (“City”) and Mobius Planning. (“Consultant”).

**RECITALS**

WHEREAS, on July 26, 2022, the City Manager executed a contract with Mobius Planning to serve as project manager and provide new perspective and ideas on the 2021-2029 Housing Element;

WHEREAS, the Term of the Agreement is through December 31, 2022, with the option to extend upon written agreement of the parties;

WHEREAS, the City and Consultant desire to amend the scope of services to include consultant on the 6<sup>th</sup> Cycle Housing Element, adoption hearings, zoning text amendments, and implementation of the Housing Plan, and extend the contract term.

NOW, THEREFORE, THE CITY AND THE CONSULTANT AGREE AS FOLLOWS:

1. PARAGRAPH 3.1 “Scope of Services”: Consultant shall provide those services described in Housing Element Preparation Proposal letter dated November 1, 2022, attached hereto as Exhibit A.

2. PARAGRAPH 3.4 “Maximum Amount” is amended to read as follows: “The highest total compensation and cost payable to Consultant by the City under this agreement. The Maximum Amount under this Agreement is One Hundred Twenty Five Thousand Dollars (\$125,000).”

3. PARAGRAPH 3.6 “Termination Date” is amended to read as follows: “Until project completion.”

4. PROVISIONS OF AGREEMENT. All other terms, conditions, and provisions of the Agreement to the extent not modified by this Amendment, shall remain in full force and effect.



**TO EFFECTUATE THIS AMENDMENT**, the parties have caused their duly authorized representatives to execute this Amendment on the dates set forth below.

“CITY”  
City of South Pasadena

“Consultant”  
Mobius Planning

By: \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
*Signature*

Printed: Arminé Chaparyan

Printed: Grant Henninger

Title: City Manager

Title: Founding Principal

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_  
Desiree Jimenez, CMC, Chief City Clerk

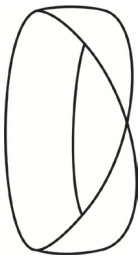
Date: \_\_\_\_\_

**Approved as to form:**

By: \_\_\_\_\_  
Andrew Jared, City Attorney

Date: \_\_\_\_\_

# EXHIBIT A



# Mobius Planning

**1030 S. Country Glen Way**  
**Anaheim, CA 92808**  
714-323-5731

Angelica Frausto-Lupo  
Community Development Director  
City of South Pasadena  
1414 Mission Street  
South Pasadena, CA 91030

November 1, 2022

## **RE: Housing Element Preparation Proposal**

Angelica,

Thank you for this opportunity to provide this proposal for the continued preparation of the City of South Pasadena's Sixth Cycle Housing Element. This proposal includes a scope of work, schedule, and budget for the preparation of the Fourth Draft Housing Element through implementation of the required General Plan and Zoning Amendments necessary to implement the Housing Element.

## Scope of Work

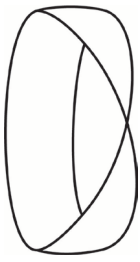
The Scope of Work is broken down into phases and tasks that are anticipated to be necessary to certify and adopt the city's Sixth Cycle Housing Element. Each task shall be billed as a fixed-fee, lump-sum at the conclusion of the task. If, for whatever reason, a phase or task is not needed, that phase or task will not be billed. For instance, if the California Department of Housing and Community Development (HCD) determines that the Fourth Draft Housing Element can be certified, then the phase of tasks related to preparing the Fifth Draft Housing Element will not be billed since that work will not be needed.

### Phase 1 – Fourth Draft Housing Element

On October 28, 2022, HCD provided the City with a response letter regarding their review of the Third Draft Housing Element that included numerous revisions required to the Housing Element before it can be certified. This Phase of the Scope of Work includes all tasks required to address HCD's response letter and prepare the Fourth Draft Housing Element. The Fourth Draft Housing Element must be submitted to HCD no later than December 13, 2022.

#### Task 1.1 – Prepare Fourth Draft Housing Element - \$50,000

As part of this task, Mobius Planning will revise the Housing Element to address the comments from HCD and submit a Fourth Draft Housing Element. Included in this task is a detailed letter to HCD itemizing the changes to the Housing Element and how they address each of HCD's comments on the Third Draft.



## Mobius Planning

**1030 S. Country Glen Way**

**Anaheim, CA 92808**

714-323-5731

### Task 1.2 – Community Input – \$2,000

As part of this task, Mobius Planning will participate in or lead two community meetings or events to get feedback on the revisions to the Housing Element. It is anticipated that one of these two events will be the 1<sup>st</sup> Annual South Pasadena Social Services and Social Justice Forum to be held on November 9<sup>th</sup>. An additional meeting is expected to be held prior to submittal of the Fourth Draft Housing Element to HCD.

### Task 1.3 – Public Meetings – \$2,000

As part of this task, Mobius Planning will prepare staff reports and present to the Planning Commission and City Council regarding HCD's response letter and the revisions to the Housing Element to address HCD's comments. It is anticipated that two public meetings will be held prior to the submittal of the Fourth Draft Housing Element to HCD.

### Phase 2 – Fifth Draft Housing Element

In the event that HCD has additional comments to the Fourth Draft Housing Element, this Phase of the Scope of work includes all of the tasks required to address the HCD's comments and prepare a Fifth Draft Housing Element. If required, the Fifth Draft Housing Element will need to be submitted to HCD no later than 45 days after the City receives a response letter from HCD on the Fourth Draft Housing Element.

### Task 2.1 – Prepare Fifth Draft Housing Element - \$25,000

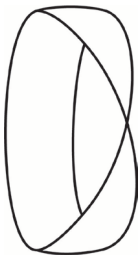
As part of this task, Mobius Planning will revise the Housing Element to address the comments from HCD and submit a Fifth Draft Housing Element. Included in this task is a detailed letter to HCD itemizing the changes to the Housing Element and how they address each of HCD's comments on the Third Draft.

### Task 2.2 – Community Input – \$2,000

As part of this task, Mobius Planning will participate in or lead two community meetings or events to get feedback on the revisions to the Housing Element.

### Task 2.3 – Public Meetings – \$2,000

As part of this task, Mobius Planning will prepare staff reports and present to the Planning Commission and City Council regarding HCD's response letter and the revisions to the Housing Element to address HCD's comments. It is anticipated that two public meetings will be held prior to the submittal of the Fourth Draft Housing Element to HCD.



# Mobius Planning

**1030 S. Country Glen Way**  
**Anaheim, CA 92808**  
714-323-5731

## Phase 3 – Adoption and Implementation

Once HCD has determined that the Housing Element can be certified, the City will need to adopt the Housing Element and any General Plan and Zoning Amendments required to implement the programs itemized in the Housing Element. The Phase of the Scope of Work includes all of the tasks necessary to assist in the adoption of those documents.

### Task 3.1 – Housing Element Adoption – \$1,000

As part of this task, Mobius Planning will prepare a staff report and present to the City Council regarding the adoption of the Housing Element. This task does not include a presentation to the Planning Commission. The Housing Element will need to be adopted within 30 days following notification from HCD that the Housing Element can be certified.

### Task 3.2 – Review General Plan Amendment – \$7,500

As part of this task, Mobius Planning will review the City’s General Plan Amendment prior to adoption to ensure it incorporates all of the programs identified in the Housing Element. If necessary, Mobius Planning will suggest changes to the General Plan Amendment. This task does not include preparation of the General Plan Amendment or presentation of the General Plan at any community or public meetings.

### Task 3.3 – Review Downtown Specific Plan – \$5,000

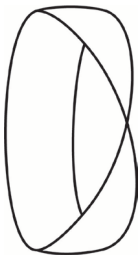
As part of this task, Mobius Planning will review the City’s proposed Downtown Specific Plan prior to adoption to ensure it incorporates all of the programs identified in the Housing Element. If necessary, Mobius Planning will suggest changes to the Downtown Specific Plan. This task does not include preparation of the Downtown Specific Plan or presentation of the Downtown Specific Plan at any community or public meetings.

### Task 3.4 – Review Zoning Code Changes – \$3,500

As part of this task, Mobius Planning will review the City’s proposed zoning code changes prior to adoption to ensure they incorporate all of the programs identified in the Housing Element. If necessary, Mobius Planning will suggest additional changes to the zoning code. This task does not include preparation of the zoning code amendment or presentation of the zoning code amendment at any community or public meetings

A summary of these tasks and billing amounts are included as Attachment A to this proposal.

I had previously provided to you my resume, which illustrates my background in affordable housing development and finance, entitlements, and housing advocacy. I am including it again as Attachment B to this letter since this will be going before the City Council for consideration,



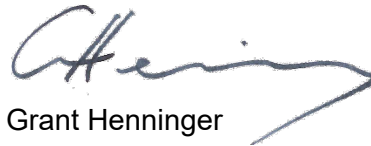
## Mobius Planning

**1030 S. Country Glen Way**  
**Anaheim, CA 92808**  
714-323-5731

and I want to ensure the Council has all of the same information that staff had when this contract was initially approved.

I look forward to continuing to help the City of South Pasadena on this critical issue.

With kindest regards,



Grant Henninger