

RESOLUTION NO. 2022-96

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING A CONTRACT WITH RINCON CONSULTING AND VERONICA TAM
CONSULTING TO PROVIDE URBAN PLANNING SERVICES TO COMPLETE THE HOUSING
ELEMENT SIXTH CYCLE FOR A CONTRACT AMOUNT NOT TO EXCEED \$300,000

WHEREAS, the City of Marina desires to complete the Sixth Cycle Housing Element, and

WHEREAS, completion of the Sixth Cycle Housing Element will ensure the City's Regional Housing Needs Allocation (RHNA) obligations as identified by the California Department of Housing and Community Development (State HCD) and the Association of Monterey Bay Area Governments (AMBAG) are met by December 2023, and

WHEREAS, completion of the Housing Element requires an agreement with Rincon Consulting and Veronica Tam Consulting for urban planning services, and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve a contract with Rincon Consulting and Veronica Tam Consulting to provide Urban Planning Services to complete the Housing Element Sixth Cycle for an amount not to exceed \$300,000; and
2. Authorize the Finance Director to make necessary accounting and budgetary entries, and
3. Authorize the City Manager to execute a contract amendment on behalf of City with Rincon Consulting subject to final review by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 19th of July 2022 by the following vote:

AYES, COUNCIL MEMBERS: Medina Dirksen, Biala, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: Burnett, Berkley

ABSTAIN, COUNCIL MEMBERS: None

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

**CITY OF MARINA
AGREEMENT FOR PROFESSIONAL
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into on _____, 2022, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and, Rincon Consulting of San Luis Obispo hereinafter referred to as the "Contractor." City and Contractor are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. City desires to retain Contractor to provide ongoing housing element support.
- B. Contractor represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- C. City desires to retain Contractor to provide such services.

Terms and Conditions

For of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises contained herein, City and Contractor agree to the following terms and conditions:

1. Scope of Work.

(a) Contractor is hereby hired and retained by the City to work in a cooperative manner with the City to fully and adequately perform those services set forth in Exhibit "A" attached hereto ("Scope of Work") and by this reference made a part hereof. With prior written notice to Contractor, City may elect to delete certain tasks of the Scope of Work at its sole discretion.

(b) Contractor shall perform all such work with skill and diligence and pursuant to generally accepted standards of practice in effect at the time of performance. Contractor shall provide corrective services without charge to the City for work which fails to meet these standards and which is reported to Contractor in writing within sixty days of discovery. Should Contractor fail or refuse to perform promptly its obligations under this Agreement, the City may render or undertake the performance thereof and the Contractor shall be liable for any expenses thereby incurred.

(c) If services under this Agreement are to be performed by a design professional, as that term is defined in California Civil Code §2782.8(b)(2), design professional certifies that all design professional services shall be provided by a person or persons duly licensed by the State of California to provide the type of services described in Section 1(a). By delivery of completed work, design professional certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws, and the professional standard of care in California.

(d) Contractor is responsible for making an independent evaluation and judgment of all relevant conditions affecting performance of the work, including without limitation site conditions, existing facilities, seismic, geologic, soils, hydrologic, geographic, climatic conditions, applicable federal, state and local laws and regulations and all other contingencies or considerations.

(e) City shall cooperate with Contractor and will furnish all information data, records and reports existing and available to City to enable Contractor to carry out work outlined in Exhibit "A." Contractor shall be entitled to reasonably rely on information, data, records and reports furnished by the City, however, the City makes no warranty as to the accuracy or completeness of any such information, data, records or reports available to it and provided to Contractor which were furnished to the City by a third party. Contractor shall have a duty to bring to the City's attention any deficiency or error it may discover in any information provided to the Contractor by the City or a third party.

2. Term of Agreement & Commencement of Work.

(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on 2025 and will automatically be extended unless terminated by either party as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

(i) This Agreement has been approved by the City's Council or by the board, officer or employee authorized to give such approval; and

(ii) The office of the City Attorney has indicated in writing its approval of this Agreement as to form; and

(iii) This Agreement has been signed on behalf of Contractor by the person or persons authorized to bind the Contractor hereto; and.

(iv) This Agreement has been signed on behalf of the City by the person designated to so sign by the City's Council or by the officer or employee authorized to enter into this Contract and is attested to by the Marina City Clerk.

(b) Contractor shall commence work on the Project on or by July 1, 2022. This Agreement may be extended upon written agreement of both parties. Contractor may be required to prepare a written schedule for the work to be performed, which schedule shall be approved by the City and made a part of Exhibit A, and to perform the work in accordance with the approved schedule.

3. Compensation.

(a) City liability for compensation to Contractor under this Agreement shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement City shall compensate Contractor in an amount not to exceed \$300,000 Dollars [three hundred thousand dollars] in accordance with the provisions of this Section and the Fee Schedule attached hereto as Exhibit B and incorporated herein by this reference.

(b) Invoice(s) in a format and on a schedule acceptable to the City shall be submitted to and be reviewed and verified by the Project Administrator (see Section 5(a)) and forwarded to the City's Finance Department for payment. City shall notify Contractor of exceptions or disputed items and their dollar value within fifteen days of receipt. Payment of the undisputed amount of the invoice will typically be made approximately thirty days after the invoice is submitted to the Finance Department.

(c) Contractor will maintain clearly identifiable, complete and accurate records with respect to all costs incurred under this Agreement on an industry recognized accounting basis.

Contractor shall make available to the representative of City all such books and records related to this Agreement, and the right to examine, copy and audit the same during regular business hours upon 24-hour's notice for a period of four years from the date of final payment under this Agreement.

(d) Contractor shall not receive any compensation for Extra Work without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by the City to be necessary for the proper completion of the Project but which is not included within the Scope of Work and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B.

(e) Expenses not otherwise addressed in the Scope of Services or the Fee Schedule incurred by Contractor in performing services under this Agreement shall be reviewed and approved in advance by the Project Administrator (Section 5(a)), be charged at cost and reimbursed to Contractor.

(f) There shall be no charge for transportation within Monterey, Santa Cruz and San Benito Counties required for the performance of the services under this Agreement; travel to other locations must be approved in writing and in advance by the City, mileage will be charged at the then current standard rate for business travel as set by the U.S. Internal Revenue Service for such approved travel.

4. Termination or Suspension.

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of a substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten days written notice of intent to terminate, and (2) provided an opportunity for consultation with the terminating party prior to termination.

(b) If termination for default is effected by the City, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the Contractor at the time of termination may be adjusted to cover any additional costs to the City because of the Contractor's default. If after the termination for failure of Contractor to fulfill its contractual obligations, it is determined that the Contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the City.

(c) The City may terminate or suspend this Agreement at any time for its convenience upon not less than thirty days prior written notice to Contractor. Not later than the effective date of such termination or suspension, Contractor shall discontinue all affected work and deliver all work product and other documents, whether completed or in progress, to the City.

(d) If termination for default is effected by the Contractor or if termination for convenience is effected by the City, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for termination shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by Contractor relating to written commitments that were executed prior to the termination.

5. Project Administrator, Project Manager & Key Personnel.

(a) City designates as its Project Administrator Guido F. Persicone, Community Development Director or his designee who shall have the authority to act for the City under this Agreement. The Project Administrator or his/her authorized representative shall represent the City in all matters pertaining to the work to be performed pursuant to this Agreement.

(b) Contractor designates Kimiko Lizardi as its Project Manager who shall coordinate all phases of the Project. The Project manager shall be available to City at all reasonable times during the Agreement term.

(c) Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement. Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of services upon written request of City. Contractor has represented to City that certain key personnel will perform and coordinate the work under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of the City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Kimiko Lizardi Jon Montgomery, Erik Holtz, Kat Castanon, Bryce Hane and other Rincon personnel of their choosing

6. Delegation of Work.

(a) If Contractor utilizes any subcontractors, consultants, persons, employees or firms having applicable expertise to assist Contractor in performing the services under this Agreement, Contractor shall obtain City's prior written approval to such employment. Contractor's contract with any subcontractor shall contain a provision making the subcontract subject to all provisions of this Agreement. Contractor will be fully responsible and liable for the administration, completion, presentation, and quality of all work performed. If such persons are utilized, they shall be charged at cost. City reserves its right to employ other contractors in connection with this Project.

(b) If the work hereunder is performed by a design professional, design professional shall be directly involved with performing the work or shall work through his, her or its employees. The design professional's responsibilities under this Agreement shall not be delegated. The design professional shall be responsible to the City for acts, errors or omissions of his, her or its subcontractors. Negligence of subcontractors or agents retained by the design professional is conclusively deemed to be the negligence of the design professional if not adequately corrected by the design professional. Use of the term subcontractor in any other provision of this Agreement shall not be construed to imply authorization for a design professional to use subcontractors for performance of any professional service under this Agreement.

(c) The City is an intended beneficiary of any work performed by a subcontractor for purposes of establishing a duty of care between the subcontractor and the City.

7. Skill of Employees. Contractor shall ensure that any employees or agents providing services under this Agreement possess the requisite skill, training and experience to properly perform such services.

8. Confidential and Proprietary Information. In the course of performing services under this Agreement Contractor may obtain, receive, and review confidential or proprietary documents, information or materials that are and shall remain the exclusive property of the City. Should Contractor undertake the work on behalf of other agencies, entities, firms or persons relating to the matters described in the Scope of Work, it is expressly agreed by Contractor that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Contractor's other clients, or to any other third party, without the City's prior express written consent.

9. Ownership of Data. Unless otherwise provided for herein, all documents, material, data, drawings, plans, specifications, computer data files, basis for design calculations, engineering notes, and reports originated and prepared by Contractor, or any subcontractor of any tier, under this Agreement shall be and remain the property of the City for its use in any manner it deems appropriate. Contractor agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Contractor shall provide two (2) sets of reproducible of the above-cited items, except for the computer data files which shall consist of one (1) set. Contractor shall use all reasonable efforts to ensure that any electronic files provided to the City will be compatible with the City's computer hardware and software. Contractor makes no representation as to long-term compatibility, usability or readability of the format resulting from the use of software application packages, operating systems or computer hardware differing from those in use by the City at the commencement of this Agreement. Contractor shall be permitted to maintain copies of all such data for its files. City acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work and, should City use these products or data in connection with additions to the work required under this Agreement or for new work without consultation with and without additional compensation to Contractor, Contractor makes no representation as to the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Work and shall have no liability or responsibility whatsoever in connection with such use which shall be at the City's sole risk. Any and all liability arising out of changes made by the City to Contractor's deliverables is waived against Contractor unless City has given Contractor prior written notice of the changes and has received Contractor's written consent to such changes.

10. Conflict of Interest.

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

(b) City understands and acknowledges that Contractor may be, as of the date of commencement of services under this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Contractor is unaware of any stated position of the City relative to such projects. Any future position of the City on such projects may result in a conflict of interest for purposes of this section.

(c) No official or employee of the City who is authorized in such capacity on behalf of the City to negotiate, make, accept, or approve, or take part in negotiating, making accepting or approving this contract, shall become directly or indirectly interested in this contract or in any part thereof. No officer or employee of the City who is authorized in such capacity and on behalf of the City to exercise any executive, supervisory, or similar function in connection with the performance of this contract shall become directly or indirectly interested personally in this contract or any part thereof.

11. Disclosure. Contractor may be subject to the appropriate disclosure requirements of the California Fair Political Practices Act, as determined by the City Manager.

12. Non-Discrimination.

(a) During the performance of this Agreement the Contractor shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and the City. In performing this Agreement, Contractor shall not discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (including cancer), age, marital status, denial of family and medical care leave and denial of pregnancy disability leave. Contractor shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.

(b) Contractor shall include the nondiscrimination and compliance provisions of this Section in all subcontracts.

13. Indemnification.

(a) Other than in the performance of professional services by a design professional, which shall be solely as addressed by subsection (b) below, and to the full extent permitted by law, Contractor shall (1) immediately defend (with independent counsel reasonably acceptable to the City) and (2) indemnify the City, its Council, boards, commissions, employees, officials and agents ("Indemnified Parties" or in the singular "Indemnified Party") from and against all liabilities regardless of nature or type arising out of or resulting from Contractor's performance of services under this contract, or any negligent or wrongful act or omission of the Contractor or Contractor's officers, employees, agents or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses; defense costs including but not limited to reasonable attorney's fees; court costs; expert witness fees; and costs of alternate dispute resolution ("Liabilities"). The Contractor's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, the Contractor's indemnification obligation shall be reduced in proportion to the established comparative liability of the Indemnified Party.

(b) To the fullest extent permitted by law (including without limitation California Civil Code Sections 2782.8), when the services to be provided under this Agreement by Contractor are design professional services to be performed by a design professional, as that term is defined under said section 2782.8, the design professional shall (1) immediately defend (with independent counsel reasonably acceptable to the City) and (2) indemnify the City and any Indemnified Party for all Liabilities regardless of nature or type that arise out of, pertain to, or relate to the

negligence, recklessness, or willful misconduct of design professional, or the acts or omissions of an officer, employee, agent or subcontractor of the design professional. The design professional's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then design professional's indemnification obligation shall be reduced in proportion to the established comparative liability of the Indemnified Party.

(c) All obligations under this section are to be paid by Contractor as incurred by City. The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its employees and officials. An allegation or determination of comparative active negligence or willful misconduct by an Indemnified Party does not relieve the Contractor from its separate and distinct obligation to defend the City. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

(d) If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to defend the Indemnified Party, as provided above, Contractor, upon notice from the City, shall immediately defend any Indemnified Party at Contractor's expense by counsel reasonably acceptable to the City. An Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended.

(e) The review, acceptance or approval of the Contractor's work or work product by any Indemnified Party shall not affect, relieve or reduce the Contractor's indemnification or defense obligations. This obligation to indemnify and defend City, as set forth herein, is binding on the successors, assigns, or heirs of Contractor and shall survive the completion of the services or the termination of this Agreement or this Section.

14. Insurance.

(a) As a condition precedent to the effectiveness of this Agreement and without limiting Contractor's indemnification of the City, Contractor agrees to obtain and maintain in full force and effect at its own expense the insurance policies set forth in Exhibit "C" "Insurance" attached hereto and made a part hereof. Contractor shall furnish the City with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf, along with copies of all required endorsements. All certificates and endorsements must be received and approved by the City before any work commences. All insurance policies shall be subject to approval by the City Attorney and Risk Manager as to form and content. Specifically, such insurance shall: (1) protect City as an additional insured for commercial general and business auto liability; (2) provide City at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium; and (3) be primary with respect to City's insurance program. Contractor's insurance is not expected to respond to claims that may arise from the acts or omissions of the City.

(b) City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required herein by giving Contractor ninety days advance written notice of such change. If such change should result in substantial additional cost of the Contractor, City agrees to negotiate additional compensation proportional to the increased benefit to City.

(c) All required insurance must be submitted and approved the City Attorney and Risk Manager prior to the inception of any operations by Contractor.

(d) The required coverage and limits are subject to availability on the open market at reasonable cost as determined by the City. Non availability or non affordability must be documented by a letter from Contractor's insurance broker or agency indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each. Within the foregoing constraints, Contractor's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which City may immediately suspend or terminate this Agreement or, at its discretion, procure or renew such insurance to protect City's interests and pay any and all premium in connection therewith and recover all monies so paid from Contractor.

(e) By signing this Agreement, Contractor hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provision of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Contract. Unless otherwise agreed, a waiver of subrogation in favor of the City is required.

15. Independent Contractor. The parties agree that Contractor, its officers, employees and agents, if any, shall be independent contractors with regard to the providing of services under this Agreement, and that Contractor's employees or agents shall not be considered to be employees or agents of the City for any purpose and will not be entitled to any of the benefits City provides for its employees. City shall make no deductions for payroll taxes or Social Security from amounts due Contractor for work or services provided under this Agreement.

16. Claims for Labor and Materials. Contractor shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Agreement, so as to prevent any lien or other claim under any provision of law from arising against any City property (including reports, documents, and other tangible matter produced by the Contractor hereunder), against the Contractor's rights to payments hereunder, or against the City, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

17. Discounts. Contractor agrees to offer the City any discount terms that are offered to its best customers for the goods and services to be provided herein, and apply such discounts to payment made under this Agreement which meet the discount terms.

18. 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.

19. Dispute Resolution. If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. If the dispute is not resolved by meeting and conferring, the matter shall be submitted for formal mediation to a mediator selected mutually by the parties.

The expenses of such mediation shall be shared equally between the parties. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be binding, unless within thirty days after issuance of the arbitrator's written decision, any party files an action in court. Venue and jurisdiction for any such action between the parties shall lie in the Superior Court for the County of Monterey.

20. Compliance with Laws.

(a) Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California and the City including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Agreement shall be governed by, enforced and interpreted under the laws of the State of California. Contractor shall comply with new, amended or revised laws, regulations or procedures that apply to the performance of this Agreement.

(b) If the Project is a "public work," or prevailing wages are otherwise required, Contractor shall comply with all provision of California Labor Code section 1720 *et seq.*, as applicable, and laws dealing with prevailing wages, apprentices and hours of work.

(c) Contractor represents that it has obtained and presently holds all permits and licenses necessary for performance hereunder, including a Business License required by the City's Business License Ordinance. For the term covered by this Agreement, the Contractor shall maintain or obtain as necessary, such permits and licenses and shall not allow them to lapse, be revoked or suspended.

21. Assignment or Transfer. This Agreement or any interest herein may not be assigned, hypothecated or transferred, either directly or by operation of law, 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.

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

To City:	City Manager City of Marina City Hall 211 Hillcrest Avenue Marina, California 93933
To Contractor:	Megan Jones, Principal 2969, 1530 Monterey St STE D, San Luis Obispo, CA 93401

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three days after deposit in the custody of the U.S. Postal Service. A copy of any notice sent as provided herein shall also be delivered to the Project Administrator and Project Manager.

23. **Amendments, Changes or Modifications.** This Agreement is not subject to amendment, change or modification except by a writing signed by the authorized representatives of City and Contractor.
24. **Force Majeure.** Notwithstanding any other provisions hereof, neither Contractor nor City shall be held responsible or liable for failure to meet their respective obligations under this Agreement if such failure shall be due to causes beyond Contractor's or the City's control. Such causes include but are not limited to: strike, fire, flood, civil disorder, act of God or of the public enemy, act of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemic, quarantine restriction, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.
25. **Attorney's Fees.** In the event of any controversy, claim or dispute relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.
26. **Successors and Assigns.** All of the terms, conditions and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment.
27. **Authority to Enter Agreement.** Contractor 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.
28. **Waiver.** A waiver of a default of any term of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.
29. **Severability.** Should any portion of this Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Agreement will continue as modified.
30. **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. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement.
31. **Advice of Counsel.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of this Agreement.
32. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.
33. **Time.** Time is of the essence in this contract.

34. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters as set forth in this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in this Agreement shall be binding or valid.

IN WITNESS WHEREOF, Contractor and the City by their duly authorized representatives, have executed this Agreement, on the date first set forth above, at Marina, California.

CITY OF MARINA

CONTRACTOR

By: Layne Long, City Manager

Date: _____, 2022

By: Megan Jones, Principal

Date: _____, 2022

Approved as to

form:

By: _____
City Attorney

Section 1 (a) SCOPE OF WORK -

[Include Work Schedule if required.]



RINCON CONSULTANTS, INC.

2511 Garden Road, Suite C-250 • Monterey, California 93940 • 831-333-0310

July 13, 2022

Guido Persicone, Community Development Director
City of Marina Community Development Department
211 Hillcrest Avenue
Marina, California 93933

Subject: Proposal to prepare City of Marina Housing Element Update

Dear Mr. Persicone:

Rincon Consultants, Inc. (Rincon) is enthusiastic about the opportunity to partner with Veronica Tam & Associates and work with the City of Marina to develop the 6th Cycle Housing Element. We have assembled a team of highly skilled planning and housing professionals who combine extensive experience with both the technical and policy aspects of Housing Element updates, public engagement, extensive knowledge of the California Environmental Quality Act (CEQA) and many years of experience working on Housing Element and General Plan updates. Rincon has completed or is currently preparing 6th Cycle Housing Element updates for over 20 jurisdictions in the SANDAG, SCAG, ABAG, and StanCOG regions. We are proud of our team's ability to work effectively with City staff, decision-makers, and community groups to develop and implement innovative approaches and solutions.

In this submittal you will find a comprehensive approach to preparing the Housing Element update that includes dedicated project management, inclusive community engagement, integrated planning strategies and effective implementation tools to support the planning process. Our approach includes:

- **Experienced and Responsive Project Leadership.** Rincon will provide a project management team that is committed to continuous and consistent communication, responsiveness and is adaptable to unforeseen circumstances. Project Manager **Ryan Russell's** local knowledge and in-depth understanding of and experience leading 6th Cycle housing element updates and corresponding CEQA documentation will support the complex needs of this project. **Kimiko Lizardi** as a hands-on Principal-in-Charge brings over 20 years of experience in long-range and environmental consulting and provides strategic oversight for a wide variety of projects statewide including housing elements updates, general plan updates, specific plans and municipal code amendments. In addition, Kimiko is currently serving as Principal-In-Charge for the Downtown Vitalization Specific Plan and Housing Overlay project. **Megan Jones**, as QA/QC and CEQA technical advisor, brings a depth of experience on projects in Marina as well as highly controversial planning and CEQA projects across the Monterey Bay area. She will support strategic guidance and ensure that the right Rincon resources are available when needed.
- **Collaborative Partnership.** In addition to our experience, we are partnered with **Veronica Tam and Associates, Inc. (VTA)**, a well-recognized consulting firm with unparalleled experience in housing planning and community development. VTA has worked on more than 30 6th Cycle housing elements, providing valuable experience with the California Department of Housing and Community Development's (HCD's) interpretation of new state laws and supported the update of the City of Marina's 4th and 5th Cycle housing element updates.

- **Housing Element and Affirmatively Furthering Fair Housing.** We will characterize the major challenges that the City of Marina's special needs populations, including low income and disadvantaged communities, face and will carefully examine social-equity solutions and community benefit when exploring housing opportunities. This will be informed by community engagement and will support policies aimed at improving housing diversity and access.
- **Efficient Tools.** We will support the City's review of housing sites and existing land uses through an interactive web-based tool, creating efficiencies in the review process and supporting data visualization.

We are confident that the Rincon team will continue to meet the needs of the City, and we welcome an opportunity to meet with you to further discuss our proposal. Please do not hesitate to contact us if you have questions about this proposal or need additional information.

Sincerely,

Rincon Consultants, Inc.



Kimiko Lizardi, Director of Environmental and Long-Range Planning

klizardi@rinconconsultants.com

Contact for Clarification



Megan Jones, MPP, Principal

mjones@rinconconsultants.com

Authorized to contractually obligate and negotiate
on behalf of Rincon <mailto:mjones@rinconconsultants.com>

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1 Workplan Overview

Our team's approach to the City of Marina Housing Element is based on our knowledge of Marina through our local and regional work, including work on Marina's 4th and 5th Cycle Housing Element Updates, the preparation of a Housing Overlay Zone to implement the City's 5th Cycle Housing Element RHNA obligation as well as the update of the City's Downtown Vitalization Specific Plan. Rincon is also working with the City on a public parcel viewer and digitization of the City's general plan land use and zoning maps. Through our current and past work with the City, we have a clear understanding of the 5th Cycle RHNA obligation, the City's existing General Plan and Zoning Code, familiarity with the City's Annual Progress Report and housing sites that have been identified through previous housing element efforts. We also understand that the City is navigating a number of parallel planning efforts and has differing needs relative to Housing Element compliance, the Downtown Vitalization Specific Plan and upcoming general plan and zoning code updates. We are also cognizant that Marina has limited staffing resources and therefore requires a consultant partner that can respond to multiple, concurrent tasks and has the experience and technical expertise to support the City in developing the best strategies to meet the City's immediate and longer term objectives.

Robust and Compliant Sites Inventory Analysis

Local jurisdictions are facing significant and challenging decisions to meet the new 6th Cycle Housing Element requirements including new State laws on adequate sites, non-governmental constraints, fair housing, and housing element update processes as well as increased scrutiny and standards of review from the California Department of Housing and Community Development (HCD).

This cycle has also seen dramatic increases in Regional Housing Needs Allocation (RHNA) requirements while available land and sites identification requirements become more stringent. While the City of Marina's 6th Cycle RHNA allocation (685 units) is a decrease from the 5th Cycle RHNA (1,308 units), site adequacy must still be reviewed. In the past, housing elements were focused on demonstrating that zoning could accommodate additional housing to meet the RHNA, but this cycle requires a detailed demonstration through local and regional trends and more robust site adequacy analysis that proposed RHNA sites will likely be developed within the next eight-year planning period. This sites adequacy analysis must take into consideration:

- No net loss of capacity when sites are developed
- Continued ability to meet the RHNA by income group
- Stringent standards for assessing feasibility when reusing vacant and underutilized sites that have been previously included in the 5th Cycle Housing Element
- Demonstrated trends of development

To support this more robust sites inventory analysis, Rincon's scope includes the creation of a web-based, GIS application to prepare and support interactive review of the 6th Cycle housing sites inventory. We constantly strive to improve the efficiency of our work effort and the quality of our products and we understand the benefits, including cost savings, that technology can play. To that end, this cutting-edge tool will enhance collaboration between the City and the Rincon team as we work together to identify the 6th Cycle housing sites inventory and will provide the City with a tool that can be used post Housing Element adoption to support ongoing management of the City's sites inventory.

AFFH Compliance

In addition, the 6th Cycle Housing Element update requires greater emphasis and commitment to significant and meaningful change and correction of fair housing issues. California Government Code Section 8899.50 requires local agencies to affirmatively further fair housing (AFFH). Under California law, AFFH means “taking meaningful actions, in addition to combatting discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.” Government Code Section 8899.50 stipulates that an assessment of fair housing (AFH) includes the following components:

- A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction’s fair housing enforcement and fair housing outreach capacity
- An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk
- An assessment of the contributing factors for the fair housing issues identified under the Government Code
- An identification of the jurisdiction’s fair housing priorities and goals, giving highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved
- Strategies and actions to implement those priorities and goals, which may include, but are not limited to, enhancing mobility strategies, and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement

Through our experience in other regions preparing AFFH analyses consistent with HCD’s Affirmatively Furthering Fair Housing Guidance for All Public Entities and for Housing Elements (AFFH Guidance Memo), we have learned the importance of gaining local area knowledge to support a more thorough understanding of fair housing issues including why the problems exist and why they persist. In addition, the process of housing sites identification needs to also include an analysis of whether the sites identified serve the purpose of replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity. The AFFH analysis must also include meaningful actions that demonstrate how each jurisdiction is doing its part to combat fair housing issues at the local level. Ensuring community engagement reaches priority populations who are often underrepresented and most negatively affected by fair housing issues will be a critical element of our community engagement approach.

Inclusive and Meaningful Community Engagement

The Rincon team will work closely with the City to develop a systematic and inclusive outreach and engagement plan that outlines a transparent process and identifies key stakeholders and underrepresented populations throughout the City. The engagement will be clear and visual allowing complex concepts to be understood by all members of the community, and feedback will be recognized by clearly documenting and illustrating how community input shaped the proposed Housing Element goals, policies and programs. We will work closely with City staff to ensure that we develop and employ engagement methods that include – and elevate – traditionally underrepresented voices and low- income communities.

2 Scope of Work

Task 1 Project Initiation

Subtask 1.1 Initial Sites Review

The Rincon team and City staff will meet to discuss and review the sites inventory. The City is in the process of identifying and developing a Housing Overlay to implement the 5th Cycle RHNA obligation. Due to the decrease in the City's 6th Cycle RHNA, it is anticipated that the City would be able to use the Housing Overlay sites to support the lower income RHNA requirements for the 6th Cycle. However, additional review is needed to determine if there is still sufficient capacity remaining in previously identified sites to support the moderate and above-moderate income RHNA. During the sites review process, the City may also want to consider if there are other logical sites to support the RHNA. In addition, the team will want to review the sites in the context of AFFH requirements. The Rincon team will walk the City through a preliminary review of the sites and discuss any additional opportunities sites. During this meeting, the Rincon team will provide an overview of the site identification methodology and requirements ensuring City staff has an understanding of HCD's guidance and requirements.

Deliverables

- Sites Inventory Presentation
- Agenda and Meeting Notes

Task 2 6th Cycle Housing Element Update

Subtask 2.1 Evaluation of Past Accomplishments

Veronica Tam and Associates (VTA) will lead the preparation of the Evaluation of Past Accomplishments. VTA will evaluate the City's progress in implementing the 2015-2023 Housing Element. VTA will review the City's Housing Element Annual Progress Reports as a starting point for this evaluation and will provide an assessment of the effectiveness of the prior housing element's goals and programs. VTA will also interview staff to discuss the initial findings and obtain additional insight regarding the effectiveness of the programs. VTA will compile the evaluation in a matrix format, including a brief discussion of the policy/program, an evaluation of progress and an initial recommendation on the appropriateness of the goal/program to carry forward into the updated 6th Cycle Housing Element.

What's New in 6th Cycle

The review of past accomplishments must include a discussion of the City's cumulative impact on addressing the housing needs of special populations.

Deliverables

- Draft Memorandum Evaluation of Past Accomplishments of the 2015-2023 Housing Element (word)
- Final Memorandum Evaluation of Past Accomplishments of the 2015-2023 Housing Element (word and PDF)

Subtask 2.2 Housing Needs Assessment and Housing Constraints

A. Housing Needs Assessment

VTA will lead the preparation of the Housing Needs Assessment. The Housing Needs Assessment will contain the following topics to satisfy Government Code Section 65583(a) requirements:

a) demographics, income, and employment trends; b) household characteristics; c) housing stock characteristics; d) at-risk housing analysis; and analysis of special housing needs. We will utilize a variety of data sources to update the City's Housing Element needs assessment. These include ACS, 2020 Census, Department of Finance population and housing estimates, State Employment Development Department labor statistics, and housing market data, among others.

What's New in 6th Cycle

HCD requires specific information on farmworker populations (including seasonal and migrant farmworkers). American Community Survey (ACS) data is not adequate to address this requirement. If local farmworker population is not available, HCD will accept county-level, USDA Agricultural Census data. HCD also requires specific information on the jurisdictions housing stock conditions based on local knowledge. ACS data on age of structure and availability of plumbing and heating facilities is not considered adequate.

B. Housing Constraints

VTA will lead the preparation of the Housing Constraints section. The Housing Constraints section will identify potential governmental and non-governmental constraints to housing production, including environmental and infrastructural constraints. This analysis must contain a review of factors that may potentially constrain the development, improvement, and preservation of housing in City of Marina. Factors to be reviewed include market, governmental, environmental, and infrastructural constraints.

The City's 6th Cycle Housing Element will be updated to meet new state law requirements. Additional impediments may be identified based on discussions with staff and community stakeholders.

What's New in 6th Cycle

- State Legislation:
 - Assembly Bill (AB) 101 – Low Barrier Navigation Centers
 - AB 139 – Parking standards for emergency shelters
 - AB 2162 – Supportive housing meeting specific criteria and located within 0.5 miles from transit
 - AB 1762, SB 1227, and AB 2345 – Density Bonus
 - SB 35 and objective development standards
- Compliance with transparency in development regulations
- Non-governmental constraints – assessment of NIMBYism, lending practices, shortage of labor, and other economic factors
- HCD new policy direction to address the provision of large residential care for seven or more persons

Assumptions

- City staff will provide one set of consolidated comments on the Screencheck Draft Housing Needs Assessment and Housing Constraints sections
- The Administrative Draft Housing Needs Assessment and Housing Constraints sections will be incorporated into the Administrative Draft Housing Element in Task 2.6.

Deliverables

- Screencheck Draft Housing Needs Assessment and Housing Constraints sections (word)

- Administrative Draft Housing Needs Assessment and Housing Constraints sections incorporated into the Administrative Draft Housing Element

Subtask 2.3 Housing Sites and Housing Resources

The City of Marina was assigned a RHNA of 685 housing units (94 very low income, 62 low income, 173 moderate-income, and 356 above moderate). This RHNA is a 48 percent decrease from the City's 5th Cycle RHNA of 1,308 housing units.

Rincon will lead the housing resources and housing sites opportunities analysis which will include the following key components:

What's New in 6th Cycle

State law pertaining to adequate site requirements (AB 1397 and SB 166) has changed. AB 1397 places higher standards on the reuse of sites, reliance on nonvacant sites and extreme sizes of sites (too small and too large). SB 166 requires a no-net loss accounting that necessitates a sites inventory with a comfortable buffer (typically 15-30 percent).

A. Housing Sites Opportunities

Rincon will use the City's current housing sites inventory as a starting point and will work with City staff to determine which sites are still viable RHNA sites based on new state law requirements. Working with City staff, Rincon will update the site selection criteria to identify new opportunities sites and to reevaluate sites previously identified in the 5th Cycle Housing Element Land Inventory. As part of the site selection process, we will consider General Plan policies and land use densities, zoning, available infrastructure and opportunities within approved plans, and major hazards (such as sea-level rise and wildfires). Rincon has also proposed an optional task that would support a more thorough understanding of the City's existing land use condition and underutilized sites. It is not required to support Housing Element compliance, but could offer additional insight into areas of opportunity, not only for housing site identification but for redevelopment potential throughout the City that might be realized and supported under future planning efforts including the Downtown Vitalization specific Plan and General Plan update (see Optional Task A).

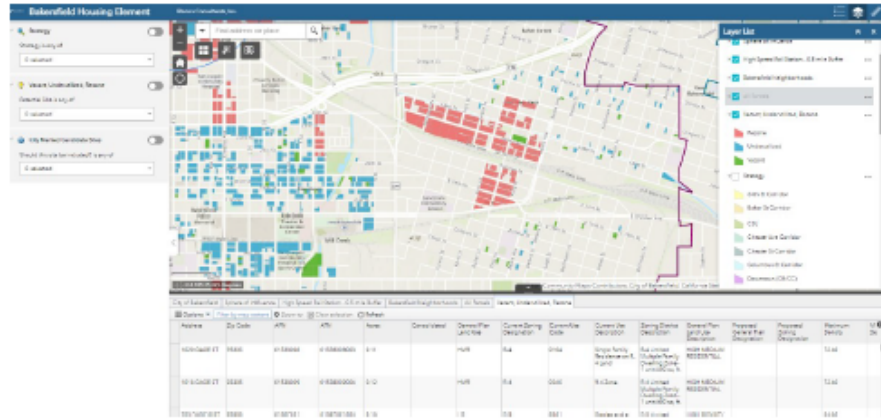
This task requires collaboration with City staff to identify and evaluate individual sites and essential development criteria and likelihood of development based on local knowledge such as ownership status and interest, tenant status, stability and turnover, and particular opportunities and constraints. The Housing Sites Inventory analysis will include the steps further described below.

B. Site Inventory Selection Tool

To support collaboration between the Rincon team and City staff, Rincon will prepare a Site Inventory Selection tool. This is a web-based, GIS application that will allow the team to review the site inventory in an interactive GIS format. The tool will allow the City to comment on individual sites identified and to propose modifications to selections.

C. Document Potential Sites

Rincon will use the Site Inventory Selection tool to identify sites and support the sites inventory analysis. Rincon will document the realistic development capacity of each site based on local development trends and/or proposed programs. The potential sites will be visualized in the



D. Review Sites for Affirmatively Furthering Fair Housing (AFFH)

Rincon will prepare an evaluation of the sites to determine how they meet AFFH requirements and will work with City staff to determine if the sites identified in the inventory are located throughout the community in a manner that has the ability to affirmatively further an increase in fair housing.

E. Non-Vacant Sites Analysis

Rincon will complete an analysis of non-vacant sites to address a portion of the RHNA. As part of this task, we will analyze realistic development potential within the planning period by considering the extent that a non-vacant site's existing use impedes additional residential development, the jurisdiction's past experience converting existing uses to higher density residential development, market trends and conditions.

F. Local Housing Trends

Anticipated and actual project densities will be used to project and substantiate assumed future development yields of proposed RHNA sites. This step assumes that City staff will provide documentation to compare the maximum zoning density to the actual project yield, including percentage and types of affordable units from development projects built, approved or under review during the 5th Cycle period. This step will also be informed by input from residential developers obtained during focus group meetings in Task 3.2 to support estimated residential capacities on proposed RHNA sites.

G. Infrastructure Constraints

We will work with City staff and the Marina Coast Water District and appropriate utility providers to determine if parcels included in the sites inventory have sufficient access to water, sewer and dry utilities and adequate capacity to support housing development. This step assumes that GIS supporting data will be provided, if available to support the analysis conducted by Rincon. This step also assumes that City staff will support the review of existing plans and programs and support Rincon in the identification of potential limitations or constraints and improvements necessary to support housing development on the identified sites. This task does not include technical infrastructure analyses.

Assumptions

- Rincon will use an internal web-app to support City staff review of housing sites selection

- City staff will provide comments on the housing sites through the web-app, including up to two rounds of review (screencheck and administrative draft)

Deliverables

- Screencheck Draft Site Inventory (Web-App)
- Administrative Draft Site Inventory (Web-App)
- Site Inventory excel tables and GIS shapefiles

H. Housing Resources

This task includes preparation of the Housing Resources section. The Housing Resources section will include a discussion of the following:

- Future housing needs, including a discussion of the RHNA requirement and planned or approved units and Accessory Dwelling Units (RHNA credit);
- Residential sites inventory, including methodology, site suitability, realistic development capacity and adequacy in meeting RHNA;
- Availability of infrastructure and services; and
- Financial resources for affordable housing.

Assumptions

- City staff will provide one set of consolidated comments provided on the Screencheck Draft Housing Resources section
- The Administrative Draft Housing Resources section will be incorporated into the Administrative Draft Housing Element in Task 2.6.

Deliverables

- Screencheck Draft Housing Resources section (word)
- Administrative Draft Housing Resources section incorporated into the Administrative Draft Housing Element

Subtask 2.4 Affirmatively Further Fair Housing

Rincon will prepare the AFFH analysis and will incorporate it as a new appendix. The AFFH analysis will address fair housing issues, identify contributing factors, develop goals and actions, and review prior goals and actions. Fair housing issues to be assessed include review of

fair housing enforcement and capacity, segregation and integration, racially/ ethnically concentrated areas of poverty, access to opportunity, and disproportionate housing needs and displacement risk. Analysis will consider local and regional patterns and trends, and local data and knowledge gathered through effective community engagement, as further described in Task 3.2. The Project Team has worked closely with HCD to fulfill the new and extensive AFFH guidance and HCD requirements.

What's New in 6th Cycle

The federal AFFH rule requires the jurisdiction to take "deliberate action to explicitly address, combat, and relieve disparities resulting from past and current patterns of segregation to foster more inclusive communities." AB 686 extended this AFFH requirement to cities and counties in California. Cities must incorporate fair housing issues, analysis, goals, and actions when updating their housing element.

Assumptions

- City staff will provide one set of consolidated comments provided on the Screencheck Draft AFFH section

- The Administrative Draft AFFH section will be incorporated into the Administrative Draft Housing Element in Task 2.6.

Deliverables

- Screencheck Draft AFFH section (word)
- Administrative Draft AFFH section incorporated into the Administrative Draft Housing Element

Subtask 2.5 Update Marina's Housing Goals, Quantified Objectives, and Policies

VTA will lead preparation of the housing goals, policies, and quantified objectives. Based upon the analyses and research conducted in the previous tasks, VTA will update the housing programs. For each program included in the Housing Element, VTA will establish the timeframe for implementation, specific objectives, funding sources, and responsible agencies. The programs will satisfy requirements of Government Code Sections 65583(b) and (c).

What's New in 6th Cycle

State laws require the Housing Plan include specific programs:

- By-right approval of reuse sites if 20 percent is set aside for affordable housing
- Replacement housing for development on sites with existing uses
- Monitoring of no net loss
- Incentives to facilitate ADU development
- SB 35 and objective development standards
- AFFH meaningful actions to promote housing mobility, access to opportunity, reduce displacement, provide fair housing outreach and enforcement, and implement place-based neighborhood improvements.

Assumptions

- City staff will provide one set of consolidated comments provided on the Screencheck Draft Housing Plan
- The Administrative Draft Housing Plan will be incorporated into the Administrative Draft Housing Element in Task 2.6.

Deliverables

- Screencheck Draft Housing Plan section (word)
- Administrative Draft Housing Plan section incorporated into the Administrative Draft Housing Element

Subtask 2.6 Draft Housing Element 2023–2031

Rincon will compile the sections from previous tasks and prepare the following versions of the Draft Housing Element 2023–2031

- Administrative Draft Housing Element for staff review
- Public Review Draft for public and City Council review
- HCD Review Draft

What's New in 6th Cycle

AB 215 passed in 2021 (effective January 1, 2022) changes the public review process for the Housing Element.

- Draft Housing Element must be available for a 30-day review period prior to submitting for HCD review
- If comments are received, the City must take at least 10 business days to address the comments prior to submitting to HCD for review
- HCD review of the Draft Housing Element is extended to 90 days (from the 60-day review under old law)

Since individual sections of the Screencheck Draft Housing Element will be reviewed under previous tasks, this task assumes minimal revisions to the Administrative Draft Housing Element to prepare the public review version of the document.

During HCD's review the Rincon team will work to address all HCD comments. We will communicate with HCD and facilitate review of the revisions via revised pages. All revisions made to the Draft Housing Element will be shown as tracked changes. The goal is to secure a Finding of Substantial Compliance on the Draft Element before proceeding to adoption. This task includes two rounds of HCD review.

Deliverables

- Administrative Draft Housing Element (word)
- Public Review Draft Housing Element (word and PDF)
- HCD Review Draft (word and PDF)

Subtask 2.7 Land Use Element Consistency Review

Rincon will conduct a consistency review of the City of Marina's General Plan Land Use Element and Land Use Map to determine consistency with the draft Housing Element. Rincon will prepare a memo identifying amendments found to be necessary for consistency with the Housing Element. Rincon will also identify land use map amendments as required to implement the policies and programs set forth in the Housing Element update.

Deliverables

- Land Use Element consistency memo

Optional Task A: Existing Land Use Map and Inventory

Rincon will lead the preparation of an existing land use inventory for the City of Marina. The inventory will be prepared using GIS and will rely on existing data sources. This task also assumes that City staff will support data verification, including any necessary windshield surveys or google map photo interpretations as further described below.

To support collaboration between the Rincon team and City staff during this process, Rincon will prepare a web-based, GIS application (Web-App) that will allow City staff to review and verify the existing land use data in an interactive GIS format. The Web-App will allow City staff to comment on individual parcels and propose modifications. It will also be used for housing sites selection as further described in Task 2.3.

Existing Land Use

The first step of the existing land use inventory will be to establish the existing land use baseline. This task assumes that County of Monterey Assessor Parcel Data will be used to prepare an existing land use database. Rincon will work with the City to prepare an existing land use classification list. This list will identify the land use category and provide a brief description of the use. This may require the consolidation or clarification of land use classifications used in the County of Monterey Assessor Parcel Data. Rincon will reclassify the existing uses based on the approved existing use classification list, as needed.

Rincon will perform a comparative analysis of existing use categories to existing general plan land use categories to identify any discrepancies or nonconformities. Prior to initiating this analysis, Rincon will prepare an existing/general plan land use cross walk table for City staff review and approval. This task assumes that existing general plan land use data is readily available and does not require additional update or cleanup.

Rincon will add the existing land use data layer and the nonconforming data layer to the Web-App for City staff review and data verification. This task assumes that City staff will support data verification, as needed through local knowledge, windshield surveys or google map interpretations. This task assumes that City staff will provide one round of consolidated comments through the Web-App.

Existing Intensity/Density

Rincon will prepare an analysis of existing land use intensity for non-residential uses and dwelling unit density for residential uses. For non-residential use categories, Rincon will rely on County of Monterey Assessor Parcel data to provide parcel sizes and Open Street Map data to provide building footprints to estimate existing built areas. Rincon will rely on building height data provided by the Association of Marina Bay Area Governments (AMBAG) to estimate existing Floor Area Ratio. The Floor Area Ratio estimates will be spot checked at a neighborhood level to verify number of stories using Google Street View. For residential use categories, Rincon will rely on parcel size and unit count data provided in the County of Monterey Assessor Parcel data. Rincon will work with City staff to define intensity and density ranges to display the data.

Inventory Report and Maps

Rincon will prepare a brief inventory report containing the following:

- Brief description of the existing land use inventory methodology
- Existing Land Use map and Existing Land Use summary table that calculates the amount of land within each use category
- Nonconforming Use map and table organized by assessor parcel number, identifying those parcels where the existing use does not match the general plan land use designation
- Existing FAR and Existing Density maps

Rincon will also provide all GIS shapefiles and excel tables used to support the inventory and analysis.

Assumptions

- Existing land use and existing density data will be based on readily available assessor parcel data from the County of Monterey
- Existing intensity data will be based on an FAR calculation using readily available assessor parcel data from the County of Monterey, readily available building heights from AMBAG, readily available building footprint data from Open Street Map, and google map photo checks at a neighborhood level
- Mapping and analyses will be based on geospatial data provided by the City or readily available online
- City staff will provide any necessary field verification across all data sets

- City staff will provide all parcel-level comments for the existing land use inventory within the Web-App

Deliverables

- Up to two virtual meetings with City staff to discuss the existing land use map(s) and inventory
- Inventory Report, including Maps (word and PDF)
- GIS shapefiles
- Data tables (excel)

Optional Task B: Post Adoption Revisions

After adoption, the Housing Element must be submitted to HCD for its final review (60 days) and certification. This task includes additional support to the City to achieve State certification of the Housing Element, if HCD returns with an additional round of comments post-adoption.

What's New in 6th Cycle

AB 1398, passed in 2021, changes the requirements of the Housing Element regarding the timeline for rezoning. Housing Elements are due within 120-days from the statutory deadline. This 120-day period is commonly known as the "grace period". Prior to AB 1398, the Housing Element must be adopted within the grace period or jurisdictions would be subject to a four-year mid-term update requirement. AB 1398 eliminated the four-year, mid-term penalty and instead focuses on the need for jurisdictions to complete their necessary rezonings to accommodate the RHNA as soon as possible. Under AB 1398, a jurisdiction must achieve substantial compliance status within the grace period to have three years to complete the rezoning. If the City is unable to achieve compliance status within the grace period, it only gets one year to complete the necessary rezoning for RHNA.

Task 3 Community Engagement Strategy and Participation

Subtask 3.1 Community Engagement Strategy

Rincon understands that public engagement will be critical for the success of the Housing Element update. Rincon will kick off the community engagement effort by developing a Community Engagement Plan that will educate, inform, and gain meaningful input from a broad and diverse range of groups and populations in Marina. Community engagement will focus on the community at-large, directly affected stakeholders including property owners, businesses, residents and interest groups, civic decision-makers, and disenfranchised communities. The community engagement plan will be consistent with best practices and guidelines referenced in OPR's latest Technical Advisory, as well as HCD housing element update guidance. The engagement effort will be designed to effectively build collaborative interest, identify common values and goals in the project direction given the diverse group of local stakeholders, and to bring new participants into the conversation. To best accomplish this, our team will provide options for community engagement as a part of the Community Engagement Plan. A final Community Engagement Plan will be prepared in response to comments received from City staff.

Deliverable

- Draft and Final Community Engagement Plan (electronic format)

Subtask 3.2 Community Engagement

One of the most critical aspects of the Housing Update Element process is the public participation process. The Housing Element, and the newly added AFFH analysis in particular, relies heavily upon local knowledge to supplement and better understand the data and housing issues at hand, as well as, creating the programs that work best to serve local and regional needs.

The Rincon team also recognizes the importance and significance of involving those hard-to-reach groups and special needs populations, such as persons experiencing homelessness, elderly residents, single-parent households, non-English speaking individuals, persons with disabilities, and racial/ethnic minority families.

What's New in 6th Cycle?

AB 686 (Affirmatively Furthering Fair Housing) passed in 2017 requires that the outreach activities be informed by AFFH characteristics.

Our strategy for public participation includes using multiple forms of outreach and offering a variety of options for community members to engage and share information about their neighborhoods and experiences. We have outlined a general approach for Community Engagement below, which will be further refined with key City staff.

A. Virtual Focus Group Meetings/Stakeholder Interviews

Engagement of and input from local advocacy groups, minority and special needs populations, and housing developers are important to the Housing Element update (and required by HCD). We recommend engaging them early in the update process to receive feedback that can be incorporated into the Housing Element. The Rincon team will work with the City to conduct up to 15 separate interviews or 4-5 virtual focused group meetings to discuss the element update and receive feedback on constraints, resources, and opportunities in Marina, disadvantaged communities, and populations most vulnerable to climate change. We will work closely with City staff to identify stakeholders that represent a broad cross-section of the community so that the consultation list includes market rate developers, affordable housing developers and fair housing advocates, and community-based organizations.

B. Community Workshops

We propose one in-person workshop and one online/virtual (live) community workshops to engage with community residents, agencies, and key stakeholders. At the first workshop, to be held during initial preparation of the Housing Element update, we will provide a brief presentation summarizing the update process, background and contextual information including purpose, goals, objectives, contents and key issue and concerns. During the second workshop, we will present the public review draft Housing Element update.

A key advantage of online engagement is that it makes the meetings more convenient for individuals to attend from their homes or remotely; and it can be more easily accessible to some residents who would otherwise have to find transportation or have mobility issues. Another advantage of the online platform is the ability to record the workshop for later viewing, sharing, and summarizing.

C. Virtual Study Session

The Rincon team will facilitate one virtual study session with the Planning Commission or City Council to be organized as a "Housing Element 101" presentation, including details on the structure and importance of a Housing Element, HCD and AMBAG RHNA allocation methodologies, current housing characteristics and site selection strategies.

Deliverable

- Website Content and Email/Social Media Blasts (up to six)
- One Housing Survey
- Stakeholder Interviews/Focused Group Meetings
- Workshops (one in person, one virtual)
- Study Session (one virtual)

Optional Task C: Spanish Language Support Services

The Rincon team can support up to eight hours of document translation services for materials such as fliers, an online survey, and website content. These services can also include non-certified translation services for up to two virtual focus group meetings and up to four in-person meetings to include two workshops and two study sessions. Interpretation services would include an in-person translator who will simultaneously translate the English speaker(s) words and phrases into Spanish and for virtual meetings, a translator who will simultaneously translate the English speaker(s) words and phrases into Spanish via Zoom.

Optional Task D: Participatory Mapping Exercises and Tools

Participatory mapping exercises are a type of survey that allows participants to view, comment, and prioritize specific topics. Marina's sites inventory is anticipated to largely rely on sites previously used during the 5th Cycle Housing Element. However, if there is a need for a different site strategy, participatory mapping exercises are useful in supporting engagement around the sites inventory. Rincon can develop online maps that can be utilized as part of the online survey, or separately, when the site inventory is ready for public review. This participatory mapping exercise would allow community members to identify and rank current housing conditions, identify and rank potential opportunity sites, and rate potential methods for implementing affordable housing, design standards, and policy changes to reduce barriers to housing. The tool would show locations where housing should be avoided (i.e., safety hazard zones: airport safety zones, flood zones, sea level rise zones, fire hazard zones, etc.), should be carefully planned (i.e., historic districts), and then identify potential locations to be considered where RHNA housing needs could be met. Public feedback will be summarized in the Public Participation section and incorporated throughout the Housing Element update.

Optional Task E: Online Survey and Website Content

As part of the community engagement strategy, the Rincon team can collaborate with the City to develop content for the City of Marina webpage including:

- **Outreach Language.** Rincon will prepare language for the City of Marina website, City-generated newsletter, email blasts, social media, and informational flyers to keep the community engaged and informed at key point in the process. Rincon will prepare content to announce up to six project milestones in English and Spanish, which the City can repurpose for its various platforms. This task does not include development of a stand-alone website for the Housing Element.

- **Online Survey.** Knowing that many residents lead busy lives and may not be able to set aside time or have the ability to attend a virtual workshop, Rincon will design and disseminate a survey that will allow people to participate on their own time and in their own way. Rincon will draft the survey and revise questions based on staff feedback. Staff will be responsible for advertising the survey's availability through the City's other communication channels. Following its closing, an accompanying summary report will be created with numerical breakdowns of responses, charts, and graphs where applicable, and narrative descriptions of the qualitative results. Public feedback will be summarized in the Public Participation section and incorporated throughout the Housing Element update.

Task 4 CEQA Analysis

As discussed previously, the City has a number of parallel planning efforts in process. The timing of the adoption of the Housing Element update and the potential impacts resulting from the identified housing sites will drive the appropriate CEQA strategy.

The City is currently preparing the Housing Overlay Zone and a separate IS-MND and anticipates preparation of an EIR to support the Downtown Vitalization Specific Plan. The team will strategize with City staff to explore opportunities for streamlining CEQA while also considering legal defensibility, project timelines and costs. For the purposes of this scope of work, an IS-MND is outlined below and included in the cost estimate.

Subtask 4.1 Preparation of Project Description

Rincon will prepare a preliminary Project Description and assume City staff will conduct one round of review of the Project Description and provide one set of consolidated comments and edits.

Deliverables

- Preliminary Project Description (electronic delivery)

Subtask 4.2 Administrative Draft IS-MND

After City staff review and approval of the project description, Rincon will prepare an internal review (Administrative) Draft IS-MND, which will document existing conditions, project impacts, programmatic mitigation measures, and resulting level of significance for each of the topical areas required under CEQA. The 2015-2023 Housing Element IS-MND will be utilized to the extent practical to streamline this review. Rincon will perform basic modeling/quantification for such issues as transportation, air quality, greenhouse gas emissions (GHGs), noise, and utilities, and will develop programmatic mitigation that could be applied to future housing projects under the Housing Element. Each of the environmental issue areas included in the CEQA Environmental Checklist Form will be addressed at a level of detail sufficient to allow Rincon to make determinations of significance.

Rincon assumes that the City will draft and handle all noticing of letters for Assembly Bill (AB) 52 and Senate Bill (SB 18) compliance. However, Rincon can assist with these activities for an additional fee.

Assumptions

- This scope relies on screening level analysis and existing documentation. It does not include any technical studies. Should technical studies be required, Rincon will work with the City to obtain or prepare a separate scope and fee.

Deliverables

- Administrative Draft IS-MND (electronic delivery)

Subtask 4.3 Public Review Draft IS-MND

Rincon will respond to one round of consolidated City comments on the Administrative Draft IS-MND and prepare the Public Review Draft IS-MND. We assume comments on the Administrative Draft IS-MND will be provided in an electronic and editable format and will not be substantive or require additional analysis. Rincon will address one round of consolidated comments from City staff on the Public Review IS-MND prior to release to the public.

Rincon will provide an electronic copy (PDF) of the Public Review Draft IS-MND and Notice of Intent (NOI) to the City and will submit both documents digitally to the State Clearinghouse. The City will be responsible for posting the Public Review Draft IS-MND on the City's website, posting the NOI with the City Clerk, and other noticing required under CEQA, including coordination and payment for any newspaper notices. Rincon can assist with these tasks for an additional fee on a time and materials basis.

Deliverables

- Public Review Draft IS-MND (electronic delivery)

Subtask 4.4 Final IS-MND

Upon receipt of public comments on the Draft IS-MND, Rincon will prepare draft response to comments and an Administrative Final IS-MND for review by City staff. For the purposes of cost estimating, this scope of work assumes that up to four comment letters will be received, including one lengthy (over three pages) and/or substantive letter, that can be adequately responded to in a maximum of 18 professional staff hours. The actual level of effort required to respond will depend on the length, detail, and sophistication of the comments, in addition to the number of letters received. We reserve the right to reevaluate the effort level and request a scope amendment upon close of the public comment period.

Upon receipt of comments on the Administrative Final IS-MND, we will incorporate changes and prepare the Final IS-MND. This task will also include preparation of the Mitigation Monitoring and Reporting Program (MMRP), which will include a list of mitigation measures, monitoring timing, and responsibility.

If the project is approved, Rincon will prepare a Notice of Determination (NOD) for the City to file with the County Clerk. The City will be responsible for payment of County Clerk and California Department of Fish & Wildlife (CDFW) fees.

Deliverables

- Final IS-MND (electronic delivery)
- MMRP (electronic delivery)
- Notice of Determination

Task 5 Public Hearings

This task includes a budgeted allowance for up to two in-person public hearings to support staff, one before the Planning Commission, and one before City Council for the adoption of the Housing Element update. We will present the element update and respond to questions as directed by City staff. This budget assumes that Rincon's PM and CEQA lead will be in attendance and that either VTA or Rincon's PIC will attend.

Additional public hearing attendance will be billed on a time and materials basis, per Rincon's and/or VTA's billing rates in effect at the time the service is provided.

Deliverable

- In-person presentation support for two public hearings

Task 6 Project Management

At the onset of the project, Rincon will refine the scope and develop a schedule to show where the project is tracking with other work efforts in the City. Throughout the project, Rincon will proactively identify issues, immediately bring those issues to the attention of City staff, identify potential solutions, and coordinate with City staff as to the best course of action. The Rincon project manager and PIC will participate in 30-minute project management conference calls every other week (approximately 44 calls) with the project team. Rincon will use email communications and have telephone/videoconference conversations with City staff, as needed, during the course of the project to ensure clear communication. Rincon will prepare monthly invoices with status reports documenting the progress made each month on completing the project, and review and update the schedule when necessary.

Deliverables

- Project schedule
- Agendas and meeting notes for biweekly Project Status calls (electronic format)
- Monthly invoices

3 Organization

Team Organization

Illustrated below is the composition of our team.

Staff	Position/Role
Kimiko Lizardi	Principal-in-charge
Ryan Russell	Project Manager
Megan Jones	CEQA Technical Lead
Veronica Tam & Associates	Housing Technical Lead

4 Project Schedule

The Rincon team is prepared to begin the work program described in this proposal immediately upon authorization to proceed. Due to the City's anticipated start date for the project, which is late in the current housing cycle, achieving adoption by the statutory deadline of December 31, 2023 may not be possible. However, it is still possible to adopt within the 120-day grace period following the statutory deadline. AB 1398 requires that certification be achieved within the grace period in order to have three years to complete any required rezonings for RHNA. If certification is not achieved by the grace period, the City will have one year to complete the rezonings for RHNA, if necessary. During the kick off meeting, Rincon will work with the City to establish a clear and detailed schedule, including deliverables and key milestones. Rincon will coordinate with City staff to explore streamlining opportunities and refine the schedule as detailed in Task 1.2. Ensuring sufficient time for meaningful engagement and applying realistic timeframes to support the full scope of the project will be important for the program's overall success.

5 Cost

Cost Assumptions

Rincon has provided an itemized budget inclusive of anticipated costs associated with the project, broken down by task and person-hour, including labor categories, hourly rate, estimated hours per task and total number of hours and costs, along with subconsultant labor and direct costs. This budget has been prepared with the objective of providing an honest assessment of fees and expenses, and we have identified assumptions aimed at ensuring clear expectations. Our approach includes estimating costs for optional tasks understanding that the City may request additional assistance.

Rincon can work with City staff to strategize and adjust the approach to best meet the City's needs. In addition, Rincon can also help the City identify potential cost savings measures. In particular, there are ways to leverage City staff resources for certain aspects of the project (such as community engagement) to create a more cost-effective program. Rincon assumed the following in developing our scope of work and cost estimate.

- All deliverables will be provided electronically in PDF and/or Word format. Comments from the City will be provided as a consolidated set of comments in editable electronic format (i.e., as track changes in MS Word). Following review, each deliverable will be finalized and submitted in electronic (PDF) format. PDFs will not be provided in ADA compliant format. With the exception of the final adopted Housing Element that Rincon will ship to HCD as an optional task, the City would be responsible for printing all other hard copy documents.
- Costs have been allocated to tasks based upon Rincon's proposed approach. Rincon may re-allocate costs among tasks and/or direct costs as circumstances warrant so long as the adjustments maintain the total price within its authorized amount.
- With the exception of those public hearings and meetings identified as in-person, all other community outreach will be conducted virtually.

Cost Estimate

The following table summarizes the total costs, by task for Rincon and VTA. The total cost including optional tasks is **\$299,698.67**, without optional tasks is **\$249,339**.



RINCON CONSULTANTS, INC.

22-13167 Marina Housing Element Update

Cost Estimate

	Rate	Hours	Labor Budget	Direct Expenses	Total Budget
Task 1: Project Initiation		18.00	3,088.00	736.00	3,824.00
1.1 Initial Sites Review Strategy		18.00	3,088.00	736.00	3,824.00
Task 2: Housing Element Update		399.00	65,593.00	51,658.00	117,251.00
2.1 Evaluation of Past Accomplishments		3.00	674.00	3,450.00	4,124.00
2.2 Housing Needs Assessment and Housing Constraints		20.00	3,856.00	28,750.00	32,606.00
2.3 Housing Sites and Housing Resources		152.00	24,452.00	1,472.00	25,924.00
2.4 Affirmatively Furthering Fair Housing		115.00	17,385.00	736.00	18,121.00
2.5 Update Marina's Housing Goals, Objectives and Policies		10.00	2,302.00	13,800.00	16,102.00
2.6 Draft Housing Element 2023-2031		78.00	13,536.00	3,450.00	16,986.00
2.7 Land Use Element Consistency Review		21.00	3,388.00	0.00	3,388.00
Task 3: Community Engagement		217.00	39,060.00	1,104.00	40,164.00
3.1 Community Engagement Plan		13.00	2,228.00	0.00	2,228.00
3.2 Community Engagement		204.00	36,832.00	1,104.00	37,936.00
Task 4: Environmental Review		218.00	35,720.00	0.00	35,720.00
4.1 Project Description		16.00	2,992.00	0.00	2,992.00
4.2 Administrative Draft IS/MND		134.00	21,510.00	0.00	21,510.00
4.3 Public Draft IS/MND		42.00	6,696.00	0.00	6,696.00
4.4 Response to Comments/Final IS/MND and MMRP		26.00	4,522.00	0.00	4,522.00
Task 5: Public Hearings		64.00	16,592.00	0.00	16,592.00
		64.00	16,592.00	0.00	16,592.00
Task 6 Project Management		138.00	29,780.00	2,208.00	31,988.00
		138.00	29,780.00	2,208.00	31,988.00
Reimbursable Expense		0.00	0.00	3,800.00	3,800.00
		0.00	0.00	3,800.00	3,800.00
Optional Tasks		283.00	48,893.00	1,466.67	50,359.67
Optional A Existing Land Use Map and Inventory		73.00	12,269.00	0.00	12,269.00
Optional B Post Adoption Revisions		58.00	9,880.00	0.00	9,880.00
Optional C Spanish Language Support Services		44.00	8,668.00	1,466.67	10,134.67
Optional D Participatory Mapping Exercises and Tools		68.00	11,112.00	0.00	11,112.00
Optional E Online Survey and Website Content		40.00	6,964.00	0.00	6,964.00
Project Total		1,337.00	238,726.00	60,972.67	299,698.67

Section 3 (a)

FEE SCHEDULE



Rincon Consultants, Inc.

Standard Fee Schedule for Environmental Sciences and Planning Services

Professional, Technical and Support Personnel*	Hourly Rate
Principal II	\$295
Director II	\$295
Principal I	\$280
Director I	\$280
Senior Supervisor II	\$245
Supervisor I	\$228
Senior Professional II	\$212
Senior Professional I	\$197
Professional IV	\$174
Professional III	\$161
Professional II	\$145
Professional I	\$128
Associate III	\$117
Associate II	\$102
Associate I	\$95
Senior GIS Specialist	\$160
GIS/CADD Specialist II	\$140
GIS/CADD Specialist I	\$125
Technical Editor	\$130
Project Accountant	\$110
Billing Specialist	\$95
Production Specialist	\$105
Clerical	\$95

*Professional classifications include environmental scientists, urban planners, biologists, geologists, marine scientists, GHG verifiers, sustainability experts, cultural resources experts, and other professionals. Expert witness services consisting of depositions or in-court testimony are charged at the hourly rate of \$375.

Reimbursable Expenses

Direct Cost	Rates
Photocopies – Black and White	\$0.20 (single-sided) & \$0.40 (double-sided)
Photocopies – Color	\$1.50 (single-sided) & \$3.00 (double-sided)
Photocopies – 11 x 17	\$0.50 (B&W) & \$3.30 (color)
Oversized Maps	\$8.00/square foot
Digital Production	\$15/disc and \$20/flash drive
Light-Duty and Passenger Vehicles*	\$88/day
4WD and Off-Road Vehicles*	\$140/day

* \$0.65/mile for mileage over 50 and for all miles incurred in employee-owned vehicles.

Other direct costs associated with the execution of a project, that are not included in the hourly rates above, are billed at cost plus 15%. These may include, but are not limited to, laboratory and drilling services, subcontractor services, authorized travel expenses, permit charges and filing fees, mailings and postage, performance bonds, sample handling and shipment, rental equipment, and vehicles other than covered by the above charges.

Annual Escalation. Standard rates subject to annual escalation. **Payment Terms.** All fees will be billed to Client monthly and shall be due and payable upon receipt or as indicated in the contract provisions for the assignment. Invoices are delinquent if not paid within ten (10) days from receipt or per the contractually required payment terms.

Exhibit C - Insurance

Contractor agrees to provide insurance in accordance with the requirements set forth herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor shall furnish the City with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by the City before any work commences. The City reserves its right to require complete, certified copies of all required insurance policies at any time. The following coverage will be provided by Contractor and maintained on behalf of the City and in accordance with the requirements set forth herein.

Commercial General Liability (primary). Commercial general liability insurance covering Contractor's operations (and products where applicable) is required whenever the City is at risk of third party claims which may arise out of Contractor's work or presence on City premises. Contractual liability coverage is a required inclusion in this insurance.

General liability insurance coverage shall be at least as broad as ISO form CG 00 01 10 01 and approved in advance by the City Attorney and Risk Manager. Total limits shall be no less than one million dollars (\$1,000,000) combined single limit per occurrence for general liability, bodily injury, personal injury and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be two million dollars (\$2,000,000). Contractor must give written notice to the City of any pending claim, action or lawsuit which has or may diminish the aggregate. If any such claim or lawsuit exists, Contractor shall be required, prior to commencing work under this Agreement, to restore the impaired aggregate or prove it has replacement insurance protection to the satisfaction of the City Attorney and Risk Manager.

City, its Council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contains the provisions required by this contract. Coverage shall apply on a primary, non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the City or any agent of City. Coverage is not expected to respond to the claims which may arise from the acts or omissions of the City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation endorsement. There shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or employment-related practices.

Umbrella Liability Insurance. Umbrella liability insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage.

Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor's limitation endorsement. Policies limits shall be not less than one million dollars (\$1,000,000) per occurrence and in the aggregate, above any limits required in the underlying policies shall have starting and ending dates concurrent with the underlying coverage.

Business Auto. Automobile liability insurance is required where vehicles are used in performing the work under this Agreement or where vehicles are driven off-road on City premises, it is not required for simple commuting unless City is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

If automobile insurance is required for work under this Agreement coverage shall be at least as broad as ISO form CG 00 01 10 01 including symbol 1 (Any Auto) approved by the City Attorney and Risk Manager. Coverage shall be endorsed to stated that the City, its Council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insured with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible with a form equivalent to ISO form CG 20 10 10 93. Limits shall be no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage. Starting and ending dates shall be concurrent. If Contractor owns no autos, a non-owned auto endorsement to the commercial general liability policy described above is acceptable.

Workers' Compensation/Employers' Liability. Workers' Compensation and Employer's Liability insurance are not required for single-person contractors. However, under California law these coverages (or a copy of the State's Consent to Self-Insure) must be provided if Contractor has any employees at any time during the period of this Agreement. Policy(s) shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employers' liability limits shall be no less than one million dollars (\$1,000,000) per accident or disease and shall be scheduled under any umbrella policy described above. Unless otherwise agreed, policy(s) shall be endorsed to waive any right of subrogation as respects the City, its Council, boards and commissions, officers, employees, agents and volunteers.

Property Insurance. Property insurance, in a form and amount approved by the City Attorney and Risk Manager, is required for Contractors having exclusive use of premises or equipment owned or controlled by the City. City is to be named a Loss Payee "As Its Interest May Appear" in property insurance in which the City has an interest, e.g., as a lien holder. Fire damage legal liability is required for persons occupying a portion of City premises.

Errors and Omissions/Professional Liability. Errors and Omissions or professional liability coverage appropriate to Contractor's profession, in a form and amount approved by the City Attorney and Risk Manager, will be specified on a project-by-project basis if Contractor is working as a licensed professional. Contractor shall maintain such insurance for a period of five years following completion of the project. Such insurance shall be in an amount of not less than one million dollars (\$1,000,000) per claim and in annual aggregate. Design professionals shall maintain such insurance in place until the expiration of the warranty period of the Project.

Contractor and City further agree as follows:

a) This Exhibit supersedes all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Exhibit.

b) Nothing contained in this Exhibit is to be construed as affecting or altering the legal status of the parties to this Agreement. The insurance requirements set forth in this Exhibit are intended to be separate and distinct from any other provision in this Agreement and shall be interpreted as such.

c) All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

d) Requirements of specific coverage features or limits contained in this Exhibit are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

e) For purposes of insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or toward performance of this Agreement.

f) All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement, shall not prohibit Contractor, Contractor's employees, or agents from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against the City.

g) Contractor's insurance shall be written by an acceptable insurance provided, as determined by the City, which satisfies the following minimum requirements: An insurance carrier authorized and admitted to do business in the State of California and maintaining an agent for service of process within the state. Such insurance carrier shall maintain a current "A.M. Best" rating classification of "A-" or better and a financial size of \$10 million to \$24 million (Class V) or better, or a Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state. Self-insurance will not be considered to comply with these insurance specifications. Workers Compensation and Employer's Liability shall be provided by an A-V rated carrier or by the California State Compensation Fund. If provided by a carrier other than California State Compensation Fund, Contractor shall provide proof of the carrier's A-V rating to the City.

h) In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, 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 Contractor.

i) Contractor agrees to provide evidence of the insurance required herein, satisfactory to City Attorney and Risk Manager, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional endorsement to Contractor's general liability and umbrella liability policies. Certificate(s) are to reflect that the insurer will provide at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Contractor agrees to provide complete copies of policies to City within ten days of City's request for said copies.

j) Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement 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. Any actual or alleged failure on the part of the City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of City or any additional insured, in this or any other regard.

k) Contractor agrees to require all subcontractors or other parties hired for this Project to provide workers' compensation insurance as required herein and general liability insurance naming as additional insureds all parties to this Agreement. Contractor agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Contractor agrees to require that no contract used by any subcontractor, or contracts Contractor enters into on behalf of City, will reserve the right to charge back to City the cost of insurance required by this Agreement. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor contracts with on behalf of City will be submitted to City for review. Contractor acknowledges that such contracts or agreements may require modification if the insurance requirements do not reflect the requirements herein. Failure of City to request copies of such agreements will not impose any liability on City, its Council, boards and commissions, officers, employees, agents and volunteers.

l) If Contractor is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its Managers, Affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

m) Contractor agrees to provide immediate notice to City of any claim or loss against Contractor that includes City as a defendant. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

n) Coverage will not be limited to the specific location or individual entity designated as the address of the Project. Contractor agrees to have its coverage endorsed so that all coverage limits required pursuant to this requirement are available separately for each and every location at which Contractor conducts operations of any type on behalf of City. Contractor warrants that these limits will not be reduced or exhausted except for losses attributable to those specific locations and not by losses attributable to any other operations of Contractor.

o) Contractor agrees not to attempt to avoid its defense and indemnity obligations to City, its Council, boards and commissions, officers, employees, agents and volunteers by using as a defense Contractor's statutory immunity under workers' compensation or similar statutes.

r) Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between Contractor and City or between City and any other insured or Named Insured under the policy, or between City and any party associated with City or its employees.

s) Contractor shall maintain commercial general liability, and if necessary, commercial umbrella liability insurance, with a limit of not less than one million dollars (\$1,000,000) each occurrence for at least three years following substantial completion of the work.

July 11, 2022

Item No. **8g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 19, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING A CONTRACT WITH RINCON CONSULTING AND VERONICA TAM CONSULTING TO PROVIDE URBAN PLANNING SERVICES TO COMPLETE THE SIXTH CYCLE HOUSING ELEMENT FOR AN AMOUNT NOT TO EXCEED \$300,000; AND AUTHORIZE THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZE THE CITY MANAGER TO EXECUTE A CONTRACT AMENDMENT ON BEHALF OF CITY WITH RINCON CONSULTING AND VERONICA TAM CONSULTING SUBJECT TO FINAL REVIEW BY THE CITY ATTORNEY.

RECOMMENDATION: City Council consider

1. Adopt a Resolution No. 2022-, approving a contract with Rincon Consulting and Veronica Tam to provide urban planning services to complete the Sixth Cycle Housing Element for an amount not to exceed \$300,000 (**“EXHIBIT A”**); and
2. Authorize the Finance Director to make necessary accounting and budgetary entries, and
3. Authorize the City Manager to execute a contract amendment on behalf of City with Rincon Consulting subject to final review by the City Attorney.

BACKGROUND:

Affordable Housing Overlay-Fourth and Fifth Cycle Housing Elements

The Housing Element is the only chapter of the General Plan that is mandated by the State of California to be updated frequently. The update to the Housing Element is done based on cycles as determined by the California Department of Housing and Community Development (State HCD) and depending on which Council of Government (COG) a city is located in. The City of Marina is in the Association of Bay Area Governments (AMBAG COG). The Fourth Housing Element Cycle for the Association of Monterey Bay Area Governments (4th Cycle) ran from 2007-2014 and the Fifth Cycle ran from 2014-2023. As the Council is aware, the City of Marina is several years past due in getting its Fifth Cycle (5th) Housing Element certified by State HCD. The city agreed to increase the zoning within the Downtown Specific Plan to accommodate the Fifth Cycle housing allocation given to it by AMBAG.

On February 15, 2022 the City Council awarded a contract with Rincon Consulting to modify the Downtown Specific Plan to reduce the subjective elements of the plan per recent changes to state law and to create an affordable housing overlay zone in order for the City to meet its' regional housing needs allocation for the Fifth (5th) Cycle. Rincon Consultant and city staff have been working on the affordable housing overlay zone and will be bringing this policy before the City Council in the next thirty to forty-five (30-45) days.¹ In meetings with State HCD staff, they generally seemed supportive of the idea, so if the City Council were to adopt the policy in the near-term, Marina could be made whole for previous Housing Element cycles.

¹ See the February 15, 2022 staff report for additional details about the Affordable Housing Overlay:
<https://www.cityofmarina.org/AgendaCenter>

Sixth Cycle Housing Element.

On a parallel track, while the city is seeking compliance with the previous RHNA cycles, work needs to begin in earnest on the Sixth Cycle Housing Element which all Monterey County cities must finish by December 15, 2023. This is a timely proposal because of recent changes to State law that mandate extended review periods including State HCD comment periods that total approximately one half of a year.² If the City Council were to authorize award of the contract on July 19, 2022 and city staff executes said contract by August 1st, city staff are fairly confident the process can be completed by December of 2023. Below is Table 1 (Sixth Cycle Housing Element Cycle) which shows the major milestones that must be met in order for the City to meet the project deadline.

Table 1 (Major 2031 Housing Element Milestones)		
Schedule	Major Milestones	Dates
Contract awarded	8/1/2022	Aug-22
Outreach, Prepare Draft HE, Workshop #1	12/1/2022	Aug-Nov 2022
Mandated Public Comment Period (30 days)/10 days to response in writing prior to review by the PC or CC	1/2/2023	30 days
Planning Commission review of draft HE	2/1/2023	Feb 2023 (Two Meetings)
Council Review of draft Housing Element (HE)	3/1/2023	March 2023 (Two Meetings)
State HCD first round of review (90 days)	6/1/2023	90 Days
City responses to HCD comments (60 days)/Workshop #2	8/1/2023	60 days
City resubmits draft HE back to State HCD and seeks letter of compliance (60 days)	10/2/2023	60 days
Planning Commission review of draft HE (second round)	10/12/2023	Oct 2023 (Two Meetings)
City Council review of Final HE (second round)	11/7/2023 11/21/2023	Nov 2023 (Two Meetings)
Submittal of the Final Housing Element to State HCD	12/5/2023	
AMBAG Deadline to submit to the State	12/15/2023	

In addition to the state review times identified in Table 1 above, this housing element cycle also mandates additional comment period from the public prior to Planning Commission and City Council review (see AB 215), and an extensive amount of outreach to all economic segments of the community to ensure future housing policies affirm fair housing per AB 686. All told, these additional regulatory requirements mandate immediate action by the City of Marina.

FISCAL IMPACT:

The contract amount shall not exceed \$300,000. This is proposed to be funded from the Unallocated General Fund Balance. It should be noted that lack of Housing Element compliance with the State of California has far greater fiscal implications for the City of Marina:

This is proposed to be funded from Unallocated General Fund Balance

² The first time we submit the Housing Element to the State, HCD has 90 days to review the document. The second time we submit the document they have 60 days to review so 150 days of the project schedule is already set and needs to be accounted for.

- *Active Transportation Program (ATP) Funds*-Recently, the Marina Public Works Department was ineligible to file for two million dollars in ATP funds to upgrade Imjin Parkway because the City does not have a certified Housing Element.
- *Safe Routes to School Funds*-The City did not file for one million dollars in Safe Routes to School funds in 2021 due to not having a Housing Element.
- *State Law Compliance*-As part of AB 72 (2017-2018) the California Office of the Attorney General may be notified that the City's Housing Element is out of compliance with Housing Element law, and the City may be subject to enforcement actions.
- *Loss of Local Land Use Controls*-The courts may suspend the locality's authority to issue building permits or grant zoning changes, variances, or subdivision map approvals.
- *Fees*-If a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees to the plaintiff's attorneys in addition to the fees paid to its own attorneys. These fees can easily exceed \$100,000.

CONCLUSION

In conclusion, city staff are recommending approval of this contract to meet the City's long term Regional Housing Needs Allocation (RHNA) obligations

REVIEWED/CONCUR:

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