



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

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CITY COUNCIL STAFF REPORT

Meeting: March 7, 2023

Subject

Consider awarding a consultant agreement to PlaceWorks to complete the 6th-Cycle General Plan Housing Element update, related rezoning and land use amendments, and all necessary environmental review as required under State law, and associated budget modification.

Recommended Action

1. Authorize the City Manager to execute a consultant agreement with PlaceWorks for an amount not to exceed \$1,096,757 to complete the 6th-Cycle General Plan Housing Element update, related rezoning and land use amendments, and all necessary environmental review as required under State law (Attachment B);
2. Approve Resolution No. ___ for Budget Modification #2223-262 to increase appropriations in Special Projects CWP RHNA and Gen Plan Update GL 100-71-702 750-101 of the adopted FY 2022-23 budget by \$617,868 for the 6th-Cycle General Plan Housing Element Update, related rezoning and land use amendments, public noticing, legal counsel, and all necessary environmental review as required under State law for the fiscal year 2022-23.

Reasons for Recommendation

1. *Award Professional Contract with PlaceWorks*

The City began its Housing Element update process in mid-2021, with staff performing community outreach about the upcoming process. On September 21, 2021, the City entered into a services agreement with EMC Planning Group (EMC) to prepare and complete the Housing Element update in accordance with State law and California Housing and Community Development Department's (HCD) guidance. The update process was initiated in mid-2021 in order to meet the HCD Housing Element certification deadline of January 31, 2023, which all Bay Area cities and counties were required to meet. Beginning in October 2021 and continuing over the course of the next year EMC and staff held over 20 public meetings with the City

Council, the Planning Commission, the Housing Commission and the ad hoc Community Engagement Plan-Strategic Advisory Committee regarding the Housing Element update. In addition, four community meetings on the Housing Element update were held between December 2021 and September 2022. In conjunction with the public meetings an extensive community outreach process was also undertaken. Due to the number of public meetings and focus on outreach, however, work on the updated Housing Element fell significantly behind schedule and the City decided to terminate its agreement with EMC in October 2022.

Since the termination of the EMC contract, staff has continued to manage the Housing Element update and, as required by State law, released the Draft Housing Element for public review on November 18, 2022. Since the release of the Draft Housing Element staff has been supported by PlaceWorks under a limited-scope contract. On February 3, 2023, the Draft Housing Element was sent to HCD, beginning HCD's 90-day review process. At this crucial phase of the process, it is essential for the City to continue its work with PlaceWorks to complete the Housing Element update.

PlaceWorks has demonstrated expertise successfully managing Housing Element updates throughout California, particularly for the current, more complicated 6th-Cycle update, and has provided high-quality work product for the City on planning and environmental issues in recent years. Their familiarity with Cupertino and the Housing Element update process makes PlaceWorks uniquely qualified to manage the project through to completion. Notably, PlaceWorks has already successfully assisted the Cities of Alameda and Emeryville in obtaining HCD-certified Housing Elements during the 6th-Cycle. It is especially vital that the City not delay getting PlaceWorks under contract given the time constraint the City faces in having to complete both the Housing Element update and all necessary zoning changes by January 31, 2024, in order to be in compliance with State law and avoid penalties, such as the loss of State funding, and potentially being subject to measures such as the builders' remedy.

PlaceWorks scope of services includes the following:

- Preparation of a revised draft and final Housing Element to be adopted by the City and certified by HCD;
- Support of City staff in preparation for public meetings, though City staff will act in a lead capacity during public meetings;
- Consultation and coordination with HCD staff;
- Community education and engagement;
- Zoning and other land use changes necessary to implement the updated Housing Element;
- Necessary environmental review, such as preparation of an Environmental Impact Report (EIR);

- Updating the Safety and Land Use Elements of the General Plan, as required by State law concurrent with a Housing Element update.

Since the contract amount exceeds \$200,000, City Council approval is required to authorize the City Manager to execute the contract (see Attachment C). As a professional services contract, the award of the contract is exempt from competitive bidding requirements pursuant to Municipal Code section 3.22.070(D).

2. *Approve Budget Modification #2223-262*

The City's contract with EMC had a budget of \$748,040, \$487,445 of which was expended, leaving \$260,595 of their original budget unspent. EMC's scope of work focused primarily on providing an update to the Housing Element itself and performing the necessary CEQA analysis to adopt the Housing Element, but it was not as comprehensive as PlaceWorks proposed scopes of work, which include rezoning and related land use amendments and a more thorough CEQA scope of work based on the likelihood of significant rezoning being necessary to implement the updated Housing Element.

At present there is a remaining balance of \$593,889 for the Housing Element update, referred to in the FY 2022-23 Budget as "Special Projects CWP RHNA and Gen Plan Update GL 100-71-702 750-101)." PlaceWorks has submitted two scopes of work (Attachment B) with a total budget of \$1,096,757. The first scope of work, focused exclusively on the preparation of the Housing Element itself, has a budget of \$233,315. The second scope of work encompasses a range of planning, land use and environmental review tasks that are necessary to adopt the Housing Element and enable it to be implemented. This second scope of work has a budget, including a 15% contingency, of \$863,442. Therefore, in order to approve the service agreement with PlaceWorks, and have PlaceWorks complete the tasks identified in their scopes of work, an additional \$502,868 would need to be appropriated to the Housing Element update budget. The Fiscal Impact section, below, discusses additional estimated costs related to legal review and noticing that are also being requested, which raises the total requested appropriation to \$617,868.

Sustainability Impact

No sustainability impact.

Fiscal Impact

The City has a remaining budget of \$593,889 for the 6th Cycle Housing Element update as part of the FY 2022-23 Adopted Budget 100-71-702 750-101. However, the proposal (see Attachment B) and associated project expense estimates exceed the existing project budget; staff therefore requests Budget Modification No. 2223-262 to increase project appropriations in 100-71-702 750-101 by \$617,868 to account for the estimated consultant costs, project noticing (e.g., citywide postcards, legal ads, or similar noticing for

additional community outreach) and legal review fees. No project contingency beyond the 15% contingency included in PlaceWorks scope of work is requested at this time. Table A, below, lists the current remaining project budget and estimated expenses and the differences that will need to be added to the budget to cover estimated costs. Additional appropriations will be funded from the unassigned fund balance in the General Fund that was estimated at \$63.1 million as of the FY 2022-23 Mid-Year Financial Report.

It is also important to note that in 2021 the City was awarded \$300,000 in Local Early Action Program (LEAP) grant funds from HCD and \$52,613 in Regional Early Impact Planning (REAP) non-competitive grant funds from the Association of Bay Area Governments (ABAG)/Metropolitan Transportation Commission (MTC) for assistance with the preparation of the 6th-Cycle Housing Element, for a total of \$352,613. The City is expecting full reimbursement of the LEAP and REAP funds in next few months based on the work already completed on the Housing Element update. All work relating to the LEAP and REAP funding must be completed by September 30, 2023. Therefore, it is recommended that the Council record the revenues from the two grants that have been awarded.

Table A

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| Consultant (PlaceWorks) Contract | \$1,096,757 |
| Estimated noticing: newspaper legal ads, postcards and postage | \$15,000 |
| Estimated legal review costs; litigation | \$100,000 |
| Total estimated remaining Consultant, noticing and legal costs | \$1,211,757 |
| Current Budget (100-71-702 750-101) | \$593,889 |
| Requested Appropriation | \$617,868 |

Upon authorization from the Council, the City Manager will execute the contract and the consultant will be authorized to commence the activities outlined in their scope of work to prepare a compliant Housing Element.

California Environmental Quality Act

CEQA review will be completed prior to the adoption of the Housing Element.

Piu Ghosh, Planning Manager

Reviewed by: Christopher Jensen, City Attorney

Approved by: Pamela Wu, City Manager

Attachments:

A - Draft Resolution

B - Scopes of Work and Fee Estimates

C - Service Agreement