

July 20, 2010
Operations Services Department

TITLE: APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH ENVIRONMENTAL SCIENCE ASSOCIATES (ESA) TO PREPARE THE CITY'S CLIMATE ACTION PLAN AND ASSOCIATED ENVIRONMENTAL IMPACT REPORT

SUMMARY

In 2006, Governor Schwarzenegger signed into law State Assembly Bill 32: Global Warming Solutions Act (AB32) requiring significant reductions in the State's greenhouse gas emissions. As part of the overall strategy for meeting AB32 requirements, staff is recommending the preparation of a comprehensive Climate Action Plan (CAP). Because the City will be undertaking a Housing Element Update during the same time frame, ESA's scope of work includes preparing environmental work for the Housing Element update as well as the CAP. In accordance with the Tentative Agreement/Settlement Term Sheet with Urban Habitat et al, the City is agreeing to complete the CAP by February 17, 2012 and to submit the Housing Element to the State Department of Housing and Community Development no later than August 16, 2011.

RECOMMENDATION

1. Authorize the City Manager to execute a Professional Services Agreement with Environmental Science Associates (ESA) in the amount of \$ 298,448 to complete a Climate Action Plan, and an Environmental Impact Report for the CAP and the Housing Element Update.
2. Approve a project contingency of \$25,000 to address additional costs that may develop during the project.

FINANCIAL STATEMENT

Total cost for the CAP portion of the project is \$216,968. Of this amount, \$165,000 will be funded by federal Energy Efficiency and Conservation Block Grant and \$51,968 including the \$25,000 contingency will be funded by General Fund Contingency. Cost for completing the Housing Element environmental analysis is \$106,480 which will be funded from the Lower Income Housing fund. The City is also applying for a sustainable community grant which if approved will reduce the use of the General Fund contingency.

BACKGROUND

The City has recently completed a number of environmental projects including a comprehensive Energy Efficiency Conservation Strategy (EECS) using ARRA stimulus funding and County wide GHG inventory which established a baseline emissions value for 2005. The City is also a member of the Alameda County Climate Protection Project and taken several significant steps to reduce GHG emissions by developing programs to conserve resources, water, and energy. While programs completed to date represent an important step toward climate action planning, the City recognizes the need to develop a comprehensive suite of programs and strategies to reduce GHGs that enable the City to respond to AB32 and the City's General Plan that promotes greater environmental sustainability.

In recognition of these interests, and in cooperation with the Committee on the Energy and Environment, staff circulated a request for proposal to identify a firm to complete a Climate Action Plan. A total of eighteen proposals were received and four firms participated in interviews with City staff from Planning, Traffic Engineering, Operations, and a representative from the City's Committee on Energy and Environment. A final interview was conducted with the two top firms leading to the selection of ESA. .

DISCUSSION

Climate Action Plan and Environmental Impact Report

The Climate Action Plan will be developed using the current BAAQMD guidelines with the intention of creating a "qualified climate action plan" as defined by BAAQMD that includes feasible measures to reduce GHG emissions (consistent with AB 32 goals or Executive Order S-03-05 targets) would be considered less than significant.

The elements of a qualified climate action plan include:

- GHG inventory for current year and forecast for 2020
- An adopted GHG reduction goal for 2020
- Feasible reduction measures to reduce GHG emissions for 2020 to the identified target
- Inclusion of relevant measures from the AB 32 Scoping Plan
- Quantification of the reduction effectiveness of each measure
- Implementation steps, financing mechanisms, and identification of responsible parties
- Monitoring and updating of the inventory and reduction plan at least every five years
- Schedule of implementation
- Certified CEQA document

Timing and quality of the CAP development is very important for a number of reasons:

1. To comply with the Attorney General's suit we must complete the CAP within eighteen months, or by February 2012.
2. From a regulatory standpoint we must also reduce GHG's significantly by 2020 which is only nine years to the target emissions date.

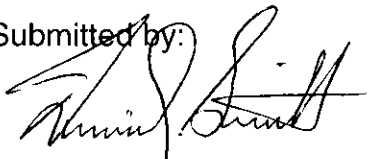
3. It is also important to move quickly to protect our environment and stimulate our local economy with creative solutions to become more efficient and sustainable and to be a role model in our community.
4. Currently many grant opportunities still exist to help the City fund and implement elements of the climate action plan. Time is of the essence!

To complete the CAP, staff anticipates a significant public process that will include a number of public meetings and events designed to gather input from the community. Staff also intends to develop a unique web page that will provide ongoing updates on the process and provide interactive tools to engage the public. The process will also include outreach to local businesses and City Commissions. Staff will work in close cooperation with the CE&E to coordinate the effort.

Housing Element Environmental Impact Report

Currently staff is in the process of circulating a Request for Proposal to identify a firm qualified to assist with the completion of the Housing Element Update. Because of the overlap in time frames of the Climate Action Plan and the Housing Element process, and the potential overlap of issues in the two processes, staff concluded that the environmental impact analysis for both projects would be best coordinated if completed by the same firm. The environmental analysis to be prepared for the Housing Element, most likely to be a "Supplemental EIR" to the Current General Plan EIR, has been added to the overall ESA contract scope. This project will follow the process that will be established for the Housing Element Update.

Submitted by:



Daniel Smith
Operations Services Director

Fiscal Review



Emily Wagner
Finance Director

Approved by:



Nelson Fialho
City Manager



Brian Dolan
Director of Community Development

Attachment 1: Scope and Cost breakdown

Attachment 2: Consultant Contract

July 8, 2010: Revised Scope, Budget, Timeline**Pleasanton Climate Action Plan;
General Plan Update and Housing Element Environmental Documentation****Scope****A. Housing Element****A1. Kick-Off Meeting**

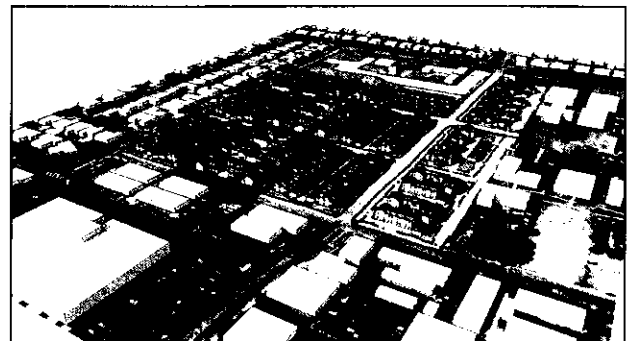
A kick-off meeting will be held with City staff to discuss the Housing Element litigation and settlement agreement, as well as strategies to gain HCD concurrence of the proposed land use inventory early in the process. The kick-off meeting will also be used to review the potential land use changes that the Housing Element will propose, the public participation program for the Housing Element, and other issues needing up-front resolution.

A2. Test Residential Land Use Scenarios for GHG Implications

The CAP development process will include the development and modeling of three different land use/transportation scenarios that reduce emissions and VMT, and improve the jobs-housing balance. Scenarios will be run through the Alameda County Congestion Management Agency (ACCMA) travel demand model, and will provide sufficient imagery so that staff, officials, and the public can visualize or “read” the differences and implications of each scenario.



Existing land use



Rendering of land use/transportation scenario

The scenarios will incorporate existing City efforts such as the Downtown Plan and efforts to improve walkability and transit access through the upgrade of streetscapes and the increased mix of building uses and infill opportunities. The three scenarios will vary by the number of new dwelling units, potential locations, proposed building types

and occupancies, and complementary or supplemental infrastructure or improvements [e.g., pedestrian street amenities]. The modeling work will yield performance indicators that include GHG emissions, VMT, trip generation, mode splits, and congestion. The deliverable will be two-dimensional plans and three-dimensional renderings with supporting documents sufficient for staff, council, and public review and web posting.

We will work with City staff and Council to select a preferred scenario that reflects a distillation or synthesis of strategies and actions for inclusion in the CAP. The preferred scenario may serve as the basis for an amendment to the City’s Housing Element and other elements of the General Plan (see Task S4, below). The other two scenarios may be used as General Plan EIR project alternatives.

The Team recognizes that the Regional Housing Needs Allocation (RHNA) represents a planning target and not a housing production target. We are aware that the State Department of Housing and Community Development (HCD) sometimes requests that no more than 50% of the housing inventory needed to meet RHNA objectives be located within mixed use development zones. We will clarify this and similar issues prior to development of the three scenarios.

A3. Finalize Land Use Inventory for Housing Element

Based on the results of the initial GHG emissions screening, ESA will meet with the City to determine the specific land use inventory to be included in the Housing Element and evaluated in its EIR. Focus will be on providing adequate land to meet the housing needs of all economic groups in the community as reflected in the RHNA, developing the specific land inventory to be evaluated in the Housing Element EIR, and providing the Planning Commission and City Council with some degree of flexibility to meet the requirements of the settlement agreement when taking final action on the Housing Element and related General Plan land use and zoning changes.

Key Task A Deliverables:

- Output of the ACMMA modeling runs, including a memo interpreting the results;
- Draft evaluation of historic jobs housing balance for staff review;
- Final evaluation incorporating staff comments on the draft evaluation.

B. Climate Action Plan

B1. Determine Appropriate CAP Scope

Based on examples of other CAPs and the range and type of analyses, planning and costs they encompass, assist City staff to develop a detailed scope of work that includes CAP elements, approach, and outline.

B2. Analysis and Adjustment of City's Baseline and Projected GHG Emissions and Targets**a. Review & Adjust ICLEI Inventories**

Undertake a detailed review of the City's baseline GHG emissions inventory prepared by ICLEI (calendar year 2005, for government operations and for community-wide emissions) for accuracy and completeness and adjust the inventory as needed to provide an accurate baseline for emissions reduction planning.

b. Projected GHG Emissions

Analyze the 2020 emissions projection developed by ICLEI, work with the City to develop reasonable realistic emissions growth projections using results from the 2005 ICLEI Inventory analysis and adjustment, including improved VMT modeling, and the best publically-available information and data.

c. Emissions Reduction Targets

Based on ARB and BAAQMD guidelines, a specific GHG emission target tailored to Pleasanton will be developed for year 2020.

B3. Evaluate Best-Suited Measures with Cost/Benefit Analysis**a. Transportation & Land Use**

In addition to the land use/transportation scenario developed earlier in the program, determine where policies and ordinances might be refined or modified to reduce VMT and tail pipe emissions, along with improving the alternative mobility opportunities and incentives to increase walking, biking, and transit access. The result will be a draft list of GHG land use and transportation emission and non-renewable resource reduction strategies, programs, policies, tools, and actions to include in the Draft CAP.

b. Energy Efficiency, Renewable Energy, and Green Building

Based on the on the recently-completed Energy Efficiency and Conservation Strategy, refine reduction strategies related to energy conservation, energy efficiency, and on-site renewable energy.

c. Water Conservation and Water Efficiency

Define opportunities to reduce GHG emissions related to the energy consumption involved in the transport, distribution, and treatment of water and wastewater through water conservation and recycling programs.



d. Waste Reduction, Recycling, and Composting

Building on waste reduction programs already in place within the City, develop an overall set of goals and strategies for reducing waste and its impact on the climate. These may include new efforts to reduce waste at the source, reduce packaging, and improve the performance of the City's existing recycling and composting collection programs.

e. Adaptation Measures

Develop specific recommendations regarding water conservation, flood protection, and maintenance of urban forests and wetlands that serve the dual purpose of adaptation and carbon sequestration, such as green roofs and tree planting to retain water and reduce heat islands.

B4. Community Engagement

a. Develop Community Engagement Plan and Project Web Site

Develop and launch a multi-faceted approach to community engagement involving print and interactive media, including an interactive project website that supports the engagement effort

b. Prepare and Hold Public Workshops for Residents and Businesses

Prepare, direct, and hold three public workshops to present the CAP outline and draft conservation/GHG reduction measures. Gather input and ideas, and identify issues related to the CAP.

B5. Prepare Climate Action Plan

a. Administrative Draft CAP

Prepare and submit an Administrative Draft of the full CAP, including a program for monitoring the effectiveness of programs and policies, for review and comment by City staff. Deliverable = 10 printed copies plus electronic version.

b. Public Draft CAP

Revise the Administrative Draft, and then prepare the Public Draft CAP for public and City Council review. Collect public comments sent through email, the project web site, and possibly other City channels. Work with the City to address all comments by the public and by the City Council. Deliverable = 10 printed copies plus electronic version.

c. Complete Final Climate Action Plan

At the conclusion of the public comment period, assemble all written and oral comments, summarizing issues raised in the comments and how these issues are addressed in the revised (Final) CAP. Revise the Draft CAP to incorporate

comments and new information, and prepare a Final CAP. Deliverable = 10 printed copies plus electronic version.

B6. Meetings

a. Project Kick-off Meetings

Attend a project kick-off meeting with City staff and appropriate stakeholders to establish roles and responsibilities, to ensure thorough understanding of project goals, collect needed documents, and receive an update on General Plan update and Housing Element litigation and settlement agreements.

Attend transportation emissions modeling kick-off meeting with City staff to discuss the methodology, the process by which the ESA team will apply the forecasting tools, data needs and other items as applicable.

b. Additional Project Meetings

In addition to project kick-off meetings, attend four in-person meetings to: discuss Best-Suited Measures and Evaluation Criteria Task, plan community-wide workshops, present the CAP to the City Council and receive comments, and present the final CAP to the City Council.

c. Public Hearings

In addition to other meetings specified in the scope of work, attend up to 4 public hearings at the Planning Commission and City Council (note: public hearings are budgeted in tasks D1 and D2).

Key Task B Deliverables:

- Report on analysis and adjustment of 2005 city operations and community-wide GHG emissions inventories, for City review and comment (Task B2);
- A CAP Development Memo, for review by City staff and for presentation at community workshops, that identifies and describes potential GHG emission reduction programs, policies, and measures for GHG emission reduction and climate change adaptation, including both community-wide actions and municipal government actions (Task B3). The Memo will include full descriptions of draft measures, organized by conceptual strategy, to include estimated costs and benefits, strategies for implementation, and funding sources. Measures will be ranked as high, medium, and low priority based on cost and effectiveness; ESA will deliver one (1) electronic version of the CAP Development Memo and associated full descriptions of draft measures in Word, Excel, or other manipulative format, and one electronic version in a PDF format.
- Community Engagement (Task B4):
 - Interactive project website, maintained by Town-Green;
 - Facilitate 3 interactive workshops to review plan details and gather feedback;

- Prepare presentation format and materials, and promote the events with City staff;
- Present the Draft Measures from Task 3 at the workshops;
- Invite a featured speaker that will attract the public;
- Community survey ready for web, email, and print distribution;
- Promotional flyer for web, email, and print distribution;
- Public workshop agendas, promotional and presentation materials;
- Public workshop participant materials (questionnaire, idea forms, etc.);
- Post the results on the project website;
- Workshop summary memos
- An Administrative Draft CAP, as described above, prepared for review by City staff. ESA will deliver ten (10) bound copies (double-sided), one (1) electronic version in Word, Excel, or other manipulative format, and one (1) electronic version in a PDF format (broken down by section).
- A Public Draft CAP, as described above, for public review and comment. ESA will deliver ten (10) bound copies (double-sided), one (1) electronic version in Word, Excel, or other manipulative format, and one (1) electronic version in a PDF format (broken down by section).
- If necessary, assisting City staff with presenting the Public Draft CAP at a City Council meeting.
- Administrative draft Final CAP delivered electronically to City, in a printable format, staff for 14-day review.
- Final Climate Action Plan, 10 bound hard copies and electronic versions (PDF for web posting and manipulative version).
- Attend City Council Meeting to present Final CAP.

C. CEQA Documentation

C1. Housing Element EIR

ESA's approach to the CEQA documentation for the Housing Element and related changes to General Plan land use and zoning designations is intended to support the City's settlement of the Superior Court Writ of Mandate in the Housing Element lawsuit.

ESA will prepare an EIR, pursuant to CEQA *Guidelines* Section 15163 for the Housing Element and related land use and zoning revisions. The EIR will analyze the revised

Housing Element and associated General Plan and zoning revisions needed to provide an adequate inventory of land for the development of housing for all economic segments of the community. Because the Housing Element will precede the CAP by about six months, this EIR will be more programmatic than the EIR Supplement that will be subsequently prepared to address the CAP and General Plan revisions incorporating provisions of the CAP. The Housing EIR will be based on initial work undertaken for the CAP demonstrating the GHG reductions that can be achieved with more of a balance between local jobs and housing. Specifically, the Housing Element EIR will include the following:

- Project Description, including a clear description of the number and type of housing units specified in the amended Housing Element, as well as the accompanying revisions to General Plan land use designations and zoning;
- A discussion of the independent utility of the Housing Element and associated land use and zoning revisions separate from the CAP and its associated General Plan revisions;
- A summary of the community-wide GHG inventory developed in the CAP. This will be presented in the Environmental Setting;
- Initial analysis of GHG and criteria air pollutant emissions impacts resulting from development of new housing pursuant to the Housing Element;
- Analysis of impacts to noise, recreation and open space, traffic, biological resources, and public services and utilities resulting from the Housing Element and accompanying revisions to General Plan land use designations and zoning;
- Analysis of the potential for growth-inducing impacts, both within the City and in surrounding areas;
- A calculation of the GHG emissions reduction expected from implementation of the Housing Element and associated land use revisions. Because the CAP will not be completed prior to public release of the Housing element EIR, generalized mitigation measures in the form of performance standards consistent with the GHG reduction goals contained in the draft CAP will be used;
- Description and analysis of alternatives, including:
 - At least one alternative that, when compared to the current General Plan, would avoid or reduce significant GHG, air quality, and health impacts, reduce VMT, provide an inventory of land for the development of housing consistent with the City's RHNA figures, improve jobs-housing balance within the City and the fit between wage levels and housing costs;
 - At least one alternative that contemplates full buildout without a housing cap; and
 - No project alternative.
- Analysis of cumulative impacts of implementation of the proposed Housing Element and associated land use and zoning revisions, along with implementation of the City's General Plan as it will likely be revised in relation to the CAP;

- The EIR will include, as an appendix, a discussion of how the Housing Element and associated land use and zoning revisions respond to General Plan Amendment and the Supplement itself respond to the Housing element lawsuit and settlement agreement.

Key CEQA Deliverables:

- Draft and final Notice of Preparation;
- Attendance and presentation at one public scoping meeting;
- Draft and final revised Project Description;
- Administrative Draft EIR Supplement;
- Screencheck Draft EIR Supplement;
- Draft EIR for public review;
- Attendance and presentation at two public hearings on the Draft EIR;
- Administrative Draft Final EIR, including Response to Comments and Mitigation Monitoring and Reporting Program;
- Screencheck Final EIR;
- Final EIR;
- Attendance and presentation at Certification Hearing;
- Administrative Record¹ (electronic).

a. Initial Study/Notice of Preparation

Prepare an Initial Study/NOP for the Housing Element, including substantiation that the EIR for the Housing Element has independent utility and is appropriately separated from the EIR that will be prepared for the CAP and General Plan Amendment.

b. Administrative Draft EIR

Prepare and submit an Administrative Draft of the Housing Element EIR for City staff review.

Deliverable = 3 printed copies plus electronic version.

c. Draft EIR for Public Review

Revise the Administrative Draft EIR, and then prepare the Draft EIR for public review.

Deliverable = 25 printed copies plus 50 compact disc (electronic) versions.

¹ City staff will be responsible for inclusion of staff reports, public hearing notices and minutes, and other materials prepared by the City. ESA will provide an electronic copy of all documents, communications, and references used in the preparation of the EIR.

d. Response to Comments

Prepare written responses to all comments received on the EIR during the public review period, along with a mitigation monitoring and reporting program (MMRP) for staff review. Revise the responses to comments and MMRP, and prepare a proposed Final EIR.

e. Mitigation Monitoring and Reporting Program; Final EIR

Revise the responses to comments and MMRP, and prepare a proposed Final EIR for use by the Planning Commission and City Council during public hearings.

Deliverable = 25 printed copies plus 50 compact disc versions.

C2. CAP/General Plan Amendment EIR

ESA's approach to the CEQA documentation for the CAP and proposed General Plan Amendment incorporating the provisions of the CAP is intended to accomplish the following objectives:

- Meet the requirement for a qualifying CAP under the BAAQMD's draft CEQA Guidelines; and
- Respond to the Attorney General's lawsuit on the General Plan Update EIR and the resulting settlement agreement.

ESA will prepare a Supplement to the General Plan Update EIR, pursuant to CEQA *Guidelines* Section 15163. The EIR Supplement will analyze the General Plan revisions and additions carried over from the CAP into the General Plan Amendment. Because the General Plan Amendment and the CAP will have consistent goals and measures, the EIR Supplement will adequately address both documents simultaneously. The Supplement will add new information, new analysis, and new alternatives to the existing General Plan Update EIR in relation to GHG and City programs to reduce future emissions. Specifically, the EIR Supplement will include the following:

- Changes to the Project Description, reflecting new policies and programs set forth in the General Plan Amendment and the CAP;
- A discussion of the independent utility of the General Plan Amendment and the CAP separate from the Housing Element and associated land use and zoning revisions;
- A summary of the community-wide GHG inventory developed in the CAP. This will be presented as new information in the Environmental Setting;
- Analysis of GHG and criteria air pollutant emissions impacts resulting from policies and programs included in the amended General Plan Update;
- Supplemental analysis of impacts to noise, recreation and open space, traffic, biological resources, and public services and utilities resulting from the General Plan Amendment;
- Analysis of the potential for growth-inducing impacts, both within the City and in surrounding areas;

- A calculation of the GHG emissions reduction expected from implementation of the measures specified in the CAP and the General Plan Amendment, and any additional specific, enforceable, and effective mitigation measures needed to meet the City's GHG reduction goals;
- Description and analysis of alternatives, including:
 - At least one alternative that, when compared to the current General Plan, would avoid or reduce significant GHG, air quality, and health impacts, reduce VMT, provide an inventory of land for the development of housing consistent with the City's RHNA figures, improve jobs-housing balance within the City and the fit between wage levels and housing costs, and other land use changes (e.g., complete neighborhoods, transit friendly densities) to reduce vehicle miles traveled and total auto related trips;
 - At least one alternative that contemplates full buildout without a housing cap; and
 - No project alternative.
- The EIR Supplement will include, as an appendix, a discussion of how the General Plan Amendment and the CAP respond to the previous comments of the State Attorney General on the Draft and Final EIR, the Attorney General's lawsuit, and the settlement agreement.
- Analysis of cumulative impacts of implementation of the CAP and the General Plan Amendment, along with the Housing Element and associated land use and zoning revisions;
- Mitigation measures identified in the Final EIR Supplement, including additions or adjustments to policies and programs, will be incorporated into the final versions of the CAP and the General Plan Amendment to ensure consistency between all three documents.

Key CEQA Deliverables:

- Draft and final Notice of Preparation; ESA assumes that the City will be responsible for distribution of the NOP and other CEQA documents and public notices;
- Attendance and presentation at one public scoping meeting;
- Draft and final revised Project Description;
- Administrative Draft EIR Supplement;
- Screencheck Draft EIR Supplement;
- Draft EIR Supplement for public review;
- Attendance and presentation at two public hearings on the Draft EIR;
- Administrative Draft Final EIR Supplement, including Response to Comments and Mitigation Monitoring and Reporting Program;
- Screencheck Final EIR;
- Final EIR; and
- Administrative Record² (electronic).

² City staff will be responsible for inclusion of staff reports, public hearing notices and minutes, and other materials prepared by the City.

a. Initial Study/Notice of Preparation

Prepare an Initial Study/NOP for the Climate Action Plan and General Plan Amendment, including substantiation that the EIR has independent utility and is appropriately separated from the EIR prepared for the Housing Element.

b. Administrative Draft EIR

Prepare and submit an Administrative Draft of the Climate Action Plan and General Plan Amendment EIR for City staff review.

Deliverable = 3 printed copies plus electronic version.

c. Draft EIR for Public Review

Revise the Administrative Draft EIR, and then prepare the Draft EIR for public review.

Deliverable = 25 printed copies plus 50 compact disc (electronic) versions.

d. Response to Comments

Prepare written responses to all comments received on the EIR during the public review period, along with a mitigation monitoring and reporting program (MMRP) for staff review. Revise the responses to comments and MMRP, and prepare a proposed Final EIR.

e. Mitigation Monitoring and Reporting Program; Final EIR

Revise the responses to comments and MMRP, and prepare a proposed Final EIR for use by the Planning Commission and City Council during public hearings.

Deliverable = 25 printed copies plus 50 compact disc (electronic) versions.

Budget and Timeline

The attached **Table 1** shows our revised project budget. The price differences from previously submitted budgets are due to an added second EIR process for the Housing Element and additional tasks supporting City staff in the development of the Housing Element.

Additional meetings (attendance by two ESA team personnel, travel expenses) beyond those included in the above scope will be billed at the rate of \$1,250 per meeting.

The attached chart shows our anticipated timeline for completion of the City of Pleasanton Housing Element, Climate Action Plan, and CEQA documentation. The timeline assumes a start-date for the contract of August 1, 2010, with completion of the entire project by the end of 2011.

The timeline includes assumptions about City staff review of administrative draft documents. Workshops, public meetings, and City Council meetings will be scheduled as the project progresses. We are happy to work with the City to revise this timeline if desired.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____ 20__ , between the CITY OF PLEASANTON, a municipal corporation ("City"), and "Environmental Science Associates, a California corporation" whose address is, 225 Bush Street, Suite 1700 San Francisco, CA 94104-4207 and telephone number is 415-962-8494, ("Consultant").

RECITALS

A. Consultant is qualified and experienced in providing Planning and Environmental analysis services for the purposes specified in this Agreement.

B. City finds it necessary and advisable to use the services of Consultant for the purposes provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

1. **Consultant's Services.** Consultant shall diligently perform the services and furnish the materials, reports, drawings, and related materials described in Exhibit "A", Scope of Work, attached and incorporated to the extent consistent with this Agreement.
2. **City Assistance.** In order to assist Consultant in this work, City shall provide, if necessary, Existing City records and documents required to complete the project.
3. **Staff.** Consultant shall assign Jeff Caton to serve as Project Director , who may not be replaced without written consent of City.
4. **Term.** Time is of the essence. Consultant shall begin work August 2, 2010. The work as described in Exhibit "A", Scope of Work, shall be completed by December 30, 2011.
5. **Compensation.** For the services to be rendered, City shall pay Consultant for services rendered pursuant to this Agreement, as described more particularly in Attachment "1," which is attached and incorporated to the extent consistent with this Agreement. Payment shall be made on a monthly basis upon receipt and approval of Consultant's invoice. Total compensation for services and reimbursement for costs shall not exceed \$ 323,448.00 unless the parties agree pursuant to section 8.

a. Invoices submitted to City must contain a brief description of work performed, percentage of work completed, percentage of contract time used, percentage of contract amount expended and City reference number _____. Payment shall be made within thirty (30) days of receipt of Consultant's invoice.

b. Upon completion of work and acceptance by City, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

6. **Sufficiency of Consultant's Work.** . By executing this Agreement, Consultant warrants that all services will be performed in a competent, professional and satisfactory manner. Should Consultant discover any latent or unknown conditions, it shall immediately inform City and proceed only at its own risk until instructed by City.

7. **Ownership of Work.** All reports, work data, plans, drawings, specifications, designs, photographs, images, works of authorship and all other documents completed or partially completed by Consultant in the performance of this Agreement ("materials") shall become the property of City. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. Consultant shall keep materials confidential and shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

8. **Changes.** City may request changes in the scope of services to be provided by Consultant. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

9. **Consultant's Status.** In performing the obligations set forth in this Agreement, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees and are not agents or employees of City.

10. **Labor Code/Prevailing Wages.** To the extent applicable, Consultant shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and payment of prevailing wages as determined by Director of the California Department of Industrial Relations. Consultant shall post, at each job site, a copy of the prevailing rate of per diem

wages. Consultant shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor.

11. **Termination of Convenience of City.** The City may terminate this Agreement at any time by mailing a notice in writing to Consultant. The Agreement shall then be deemed terminated and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the work actually completed at the time the notice of termination is received.

12. **Non-Assignability.** The Consultant shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

13. **Indemnity and Hold Harmless.** Consultant shall defend, indemnify, and hold harmless, the City and its officers, agents and employees from and against all claims, losses, damage, injury, and liability for damages arising from, or alleged to have arisen from, errors, omissions, negligent or wrongful acts of the Consultant in the performance of its services under this Agreement, regardless of whether the City has reviewed or approved the work or services which has given rise to the claim, loss, damage, injury or liability for damages. This indemnification shall extend for a reasonable period of time after completion of the project as well as during the period of actual performance of services under this Agreement. The City's acceptance of the insurance certificates required under this Agreement does not relieve the Consultant from its obligation under this paragraph.

14. **Insurance.** During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense the following insurance coverage with insures with an A.M. Best's rating of no less than A:VII:

a. **General Liability and Bodily Injury Insurance.** Commercial general liability insurance with limits of at least \$1,000,000 combined limit for bodily injury and property damage that provides that the City, its officers, employees and agents are named additional insureds under the policy. The policy shall state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary insurance for work performed by Consultant and its subconsultants, and that no other insurance effected by City or other named insured will be called on to cover a loss.

b. **Automobile Liability Insurance.** Automobile liability insurance with limits not less than \$1,000,000 per person/per occurrence.

c. **Workers' Compensation Insurance.** Workers' Compensation Insurance for all of Consultant's employees, in strict compliance with State laws,

including a waiver of subrogation and Employer's Liability Insurance with limits of at least \$1,000,000.

If services are for legal, medical, architectural, engineering, surveying or geotechnical work, check this box, and Consultant must provide:

d. Professional Liability Insurance. Professional liability insurance in the amount of \$1,000,000.

e. Certificate of Insurance. Consultant shall file a certificate of insurance with the City prior to the City's execution of this Agreement, and prior to engaging in any operation or activity set forth in this Agreement. The Certificate of Insurance shall provide in writing that the insurance afforded by this Certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. In addition, the insured shall provide thirty (30) days prior written notice to the City of any suspension, cancellation, reduction of coverage or in limits, or voiding of the insurance coverage required by this agreement. The City reserves the right to require complete certified copies of policies.

f. Waiver of Subrogation. The insurer agrees to waive all rights of subrogation against the City, its officers, employees and agents.

g. Defense Costs. Coverage shall be provided on a "pay on behalf" of basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusions.

h. Subcontractors. Consultant shall include all subcontractors as insured under it's polices or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited naming additional insured's.

15. Notices. All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Consultant: Jeff Caton
Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco, CA 94104-4207

To City: City Manager
City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566

16. Conformance to Applicable Laws. Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

17. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Consultant's engaging in any operation or activity set forth in this Agreement, Consultant shall obtain a City of Pleasanton business license, which must be kept in effect during the term of this Agreement. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

18. **Records and Audits.** Consultant shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit.

19. **Confidentiality.** Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

20. **Conflicts of Interest.** Consultant covenants that other than this Agreement, Consultant has no financial interest with any official, employee or other representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner or degree by the performance of Consultant's services under this Agreement. If such an interest occurs, Consultant will immediately notify the City.

21. **Waiver.** In the event either City or Consultant at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

22. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue in the applicable court or forum for Alameda County.

23. **Attorney's Fees.** The prevailing party in any action brought to enforce or construe the terms of this Agreement may recover from the other party its reasonable costs and attorney's fees expended in connection with such an action.

24. **No Personal Liability.** No official or employee of City shall be personally liable to Consultant in the event of any default or breach by the City or for any amount due Consultant.

25. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

THIS AGREEMENT executed the date and year first above written.

CITY OF PLEASANTON

CONSULTANT

By: _____
Nelson Fialho, City Manager

By _____
Ellen Cross, Vice President

ATTEST:

Karen Diaz, City Clerk

APPROVED AS TO FORM:

Jonathan Lowell, City Attorney