



# Council Agenda Report

To: Mayor Silverstein and the Honorable Members of the City Council

Prepared by: Patricia Salazar, Development and Operations Manager  
Joyce Parker-Bozylinski, Contract Planner

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: September 8, 2023 Meeting date: September 25, 2023

Subject: Professional Services Agreement with Rincon Consultants, Inc.

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**RECOMMENDED ACTION:** Authorize the Mayor to execute a professional services agreement with Rincon Consultants, Inc. in the amount of \$197,493 to prepare the 2021-2029 Housing Element Update as needed to address State requirements.

**FISCAL IMPACT:** Funding for this project is included in the Adopted Budget for FY 2023-24 in Account No. 100-0000-2530-07 (Designated Housing Element) and Account No. 101-2001-5100-00 (Planning Professional Services).

**WORK PLAN:** This item was included as item 4.e. in the Adopted Work Plan for FY 2022-23. Staff continue to work on ongoing projects and normal business while the FY 2023-24 Work Plan is finalized.

**DISCUSSION:** Efforts to complete a comprehensive update of the Housing Element are underway. On January 10, 2022, the City Council adopted Resolution No. 22-67, adopting the Revised Draft Housing Element (6th Cycle) for planning period 2021-2029, which was submitted to the California Department of Housing and Community Development (HCD) on January 20, 2022. As part of the current planning period, Southern California Association of Governments (SCAG) determined that 79 new housing units of varying income levels were required to be accommodated for within the City. Subsequently, in March 2022, HCD issued a letter finding that the Revised Draft 2021-2029 Housing Element Update addresses many statutory requirements; however, revisions are necessary to comply with State Housing Element Law.

In 2020, the City had awarded an agreement to JHD Planning, LLC to prepare the 2021-2029 Housing Element Update (6<sup>th</sup> cycle) and Safety and Health Element of the General Plan. John Douglas of JHD Planning, LLC prepared the City's last two Housing Elements and the 6th Cycle Regional Housing Needs Assessment (RHNA). He is known as an industry leader with extensive experience throughout the region.

Up until February 2023, with the assistance of John Douglas, the City held a total of four public meetings, submitted the Draft and Revised Housing Element to the HCD, met with HCD, and responded to one correction letter from the HCD. Work on the Safety and Health Element had not commenced. However, due to workload and a planned retirement, the consultant terminated the agreement with the City.

Due to the urgency of this matter, in March 2023, the City solicited the assistance of Rincon Consultants, Inc. to address the HCD's comments to the 6<sup>th</sup> Cycle Housing Element Update. This decision was based on Rincon's success in assisting other jurisdictions in obtaining a certified Housing Element Update. In addition, Rincon has assisted the City on past Housing Element work.

Pursuant to Malibu Municipal Code Section 2.56.130 (Competitive Bidding – Exceptions), the City did not solicit a Request for Proposals for services pursuant to subsections (B)(3) and (B)(4). More specifically, due to the ever changing state law and direction by HCD, the ability to appropriately respond to the reviewing state agency while understanding and implementing the needs and goals of the City is a highly specialized service pursuant to section 2.56.130(B)(3). Further, pursuant to 2.56.130 (B)(4), the use of a competitive bidding process would cause unnecessary delay or expense and not likely to result in a lower price from a responsible bidder who can provide the specialized services needed.

Rincon has provided a scope of work and cost proposal to complete the project which will be completed in two phases: 1) evaluation and determination of project approach; and 2) preparation of revisions and submittal to HCD. As of the date of this report, Phase 1 has been completed and Phase 2 is in progress as well as meeting with HCD.

To begin work, the City authorized Rincon to proceed under its existing agreement for planning contract services. However, to not encumber the planning contract services agreement budget, staff is requesting that the Council enter into a new agreement with Rincon for this project.

Staff recommends that the Council authorize the agreement for the update of the 6<sup>th</sup> Cycle Housing Element Update. Later, staff will issue a Request for Proposals to update the Safety and Health Element and return with an agreement for the Council's consideration.

ATTACHMENT: Professional Services Agreement with Rincon Consultants, Inc.

## **AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into as of September 25, 2023 by and between the City of Malibu (hereinafter referred to as the "City"), and Rincon Consultants, Inc. (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

### **RECITALS**

A. The City does not have the personnel able and/or available to perform the services required under this Agreement.

B. The City desires to contract out for consulting services for certain projects relating planning services to support the 2021-2029 Housing Element Update (6<sup>th</sup> cycle planning period).

C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

NOW, THEREFORE, the City and the Consultant agree as follows:

**1.0 SCOPE OF THE CONSULTANT'S SERVICES.** The Consultant agrees to provide the services and perform the tasks set forth in the Scope of Work, attached to and made part of this Agreement, except that, to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Scope of Work may be amended from time to time by way of a written directive from the City.

**2.0 TERM OF AGREEMENT.** This Agreement will become effective on April 4, 2023, and will remain in effect for a period of two years from said date unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

**3.0 CITY AGENT.** The City Manager, or his or her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or his or her designee, has the authority to provide that approval or authorization.

**4.0 COMPENSATION FOR SERVICES.** The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule. The cost of services shall be for a total amount not to exceed \$197,493.00. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or his or her designee.

4.1 The Consultant shall submit to the City, by no later than the 10<sup>th</sup> day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Consultant all uncontested amounts set forth in the Consultant's bill within 30 days after it is received.

**5.0 CONFLICT OF INTEREST.** The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

5.2 If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

## **6.0 GENERAL TERMS AND CONDITIONS.**

**6.1 Termination.** Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

**6.2 Non-Assignability.** The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

**6.3 Non-Discrimination.** The Consultant shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.4 Insurance.** The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

(a) Workers Compensation Insurance as required by law. The Consultant shall require all subcontractors similarly to provide such compensation insurance for their respective employees.

(b) Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.

2) Name and list as additional insured the City, its officers and employees.

3) Specify its acts as primary insurance.

4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."

5) Cover the operations of the Consultant pursuant to the terms of this Agreement.

**6.5 Indemnification.** Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Consultant's legal counsel unacceptable, then Consultant shall reimburse the City its costs of defense, including without

limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement. Notwithstanding the above, Consultant shall only be liable and responsible for any costs or damages in proportion to its liability and determined by a court of competent jurisdiction.

**6.6 Compliance with Applicable Law.** The Consultant and the City shall comply with all applicable laws, ordinances and codes of the federal, state, county and city governments, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

**6.7 Independent Contractor.** This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between the City and the Consultant.

6.7.1. The Consultant shall be an independent contractor, and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

**6.8 Copyright.** No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

**6.9 Legal Construction.**

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

**6.10 Counterparts.** This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

**6.11 Final Payment Acceptance Constitutes Release.** The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

**6.12 Corrections.** In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

**6.13 Files.** All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

**6.14 Waiver; Remedies Cumulative.** Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

**6.15 Mitigation of Damages.** In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**6.16 Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**6.17 Attorneys' Fees.** The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

**6.18 Entire Agreement.** This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

**6.19 Notices.** Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

**CITY:** Steve McClary  
City Manager  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265-4861  
TEL (310) 456-2489 x 226  
FAX (310) 456-2760

**CONSULTANT:** Deanna Hansen  
Vice President/Principal  
Rincon Consultants, Inc.  
250 East 1st Street, Suite 1400  
Los Angeles, California 90012  
TEL (213) 297-2108  
EMAIL [dhansen@rinconconsultants.com](mailto:dhansen@rinconconsultants.com)



**6.20 Warranty of Authorized Signatories and Acceptance of Facsimile or Electronic Signatures.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered physically or by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

**7.0 GENERAL TERMS AND CONDITIONS. (City and Consultant initials required at EITHER 7.1 or 7.2)**

**7.1 Disclosure Required.** By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a “consultant” for the purposes of the California Political Reform Act because Consultant’s duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3(a) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City’s Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City’s Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant’s disclosure obligations in accordance with the City’s Conflict of Interest Code.

City Initials \_\_\_\_\_  
Consultant Initials DH

**7.2 Disclosure not Required.** By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a “consultant” for the purpose of the California Political Reform Act because Consultant’s duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City’s Conflict of Interest Code.

City Initials \_\_\_\_\_  
Consultant Initials DH

This Agreement is executed on \_\_\_\_\_, at Malibu, California, and effective as of April 4, 2023.

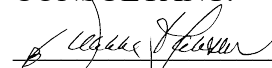
CITY OF MALIBU:

\_\_\_\_\_  
BRUCE SILVERSTEIN, Mayor

ATTEST:

\_\_\_\_\_  
KELSEY PETTIJOHN, City Clerk  
(seal)

CONSULTANT:



By: DEANNA HANSEN

Vice President/Principal

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE

TREVOR RUSIN, City Attorney



**Rincon Consultants, Inc.**

180 North Ashwood Avenue  
Ventura, California 93003  
805-644-4455

March 30, 2023  
Rincon Project No. 23-14425

Richard Mollica, Planning Director  
City of Malibu  
Planning Department  
23825 Stuart Ranch Road  
Malibu California 90265  
Via email: [rmollica@malibucity.org](mailto:rmollica@malibucity.org)

**Subject: Proposal for City of Malibu 6<sup>th</sup> Cycle Housing Element Update Work Plan**

Rincon Consultants is pleased to submit this proposal to assist the City of Malibu (City) with planning services to support the 6<sup>th</sup> Cycle Housing Element update. We have assembled a team of highly skilled planning and housing professionals with extensive experience with both the technical and policy aspects of Housing Element updates requirements. We are proud of our team's ability to work effectively with City staff, decision-makers, and the California Department of Housing and Community Development (HCD) to develop innovative approaches and solutions to prepare a substantially compliant Housing Element.

The scope of work described below is based on Rincon's experience preparing 6<sup>th</sup> Cycle Housing Element updates for multiple jurisdictions, taking into account a reasonable, likely course of action. Unforeseen or unusual circumstances that may occur could alter the scope of work and require additional coordination, data gathering, and analysis.

## **Project Understanding**

On January 10, 2022, the City Council adopted Resolution No. 22-67 adopting the Revised Draft Housing Element, which was submitted to the California Department of Housing and Community Development (HCD) on January 20, 2022. HCD provided a comment letter dated March 22, 2022 with a list of revisions necessary to comply with state housing law. The City is seeking consultant services to revise the draft 6<sup>th</sup> Cycle Housing Element update to address HCD's comments. Rincon has obtained the March 22, 2022 HCD letter and previous letter dated October 22, 2021. Based on a preliminary review of the HCD letter, while some comments will be relatively simple to address, extensive revisions would be required to obtain compliance, including a substantial revision to the Assessment of Fair Housing, site inventory suitability, and public participation, among other items.

Absent a thorough review of the 6<sup>th</sup> Cycle Draft Housing Element update, supporting materials, and a dialogue with HCD staff, it is difficult to provide an accurate estimate of the level of effort needed to achieve HCD support. Therefore, in order to adequately determine the level of effort involved to revise the draft Housing Element update, Rincon proposes a two-phase scope of work: Phase 1 would involve review of the HCD comment letter and relevant City documents, meeting with HCD staff to clarify ambiguities, coordination with City staff, and the preparation of a work plan to achieve a substantially compliant Housing Element update. Phase 2 would involve execution of the Housing Element update. This proposal details a scope of work, cost estimate, and timeline for Phase 1.



## **Scope of Work**

### **Task 1 Document Review**

Rincon will review the draft 6<sup>th</sup> Cycle Housing Element update, HCD comment letters, the Sites Inventory spreadsheet provided by the City on March 29, 2023, and previous community engagement efforts to familiarize ourselves with the project status. We will also review the City of Malibu General Plan, Local Coastal Program, including the Local Implementation Plan, and Malibu Municipal Code to evaluate compliance with state law..

#### **Deliverables**

- Deliverables will be provided as part of task 3.

#### **Timeframe**

Document review will be completed within two weeks of receipt of all materials.

### **Task 2 Meeting with HCD staff**

Rincon will schedule and facilitate a meeting with HCD staff to review the HCD comment letter and clarify HCD expectations. Rincon will draft a list of questions for City review prior to the meeting, and if needed, will attend a meeting with City staff to review and finalize questions.

#### **Deliverables**

- List of questions (MS Word)
- Meeting notes (PDF)

#### **Timeframe**

Rincon will initiate contact with HCD to schedule a meeting within one business day of notice to proceed.

### **Task 3 Housing Element Update Work Plan Report**

Rincon will prepare a report outlining deficiencies, additional analysis and engagement efforts, if any, and recommended revisions. The report will identify description of the scope of work, a cost estimate, and realistic timeframes and steps needed to complete the recommended analysis needed to address HCD comments. The report will also include a matrix that lists each comment from the two HCD comment letters and a description of the level of effort involved to address each comment. This task will include a meeting with City staff to review and refine the work plan as needed.

#### **Deliverables**

- Work plan report (PDF) with comment matrix
- Meeting with City staff (Virtual)

#### **Timeframe**

- Rincon will submit work plan report within four weeks following a meeting with HCD.



## Task 4 Project Management

Throughout the project duration, Rincon will coordinate internally and with City staff. Rincon's project manager will communicate with City staff via email, telephone calls, and videoconferencing (as needed) for clear communication and project understanding. Rincon will prepare invoices with status reports documenting progress.

### Deliverables

- Virtual meetings, prearranged phone calls, email communication

### Timeframe

- Ongoing

## Assumptions

- City staff will provide access to materials and documents needed to conduct a thorough review.
- Timeframes for deliverables may shift based on availability of City and HCD staff for scheduling meetings.
- Meetings will take place virtually.
- One meeting with HCD staff will be two hours in duration.
- Meetings and phone calls with City staff would not exceed a total of three hours.

## Project Team

The proposed team has the experience and availability needed to complete the scope of work within the proposed timeframes outlined above. Other Rincon staff not listed below may provide additional technical expertise as needed or assist in the event of unforeseen staffing shortages.

Name	Classification	Role
Emily Green	Senior Professional I	Lead reviewer
Lisa Gordon	Senior Professional I	Project Manager, Point of Contact
Lilly Rudolph	Senior Supervisor Professional II	Technical advisor
Brenna Weatherby	Principal I	Quality assurance/quality control, contract oversight

### Brief Biographies of Project Team

#### Emily Green | Lead Analyst



Emily has 10 years of experience in urban planning and community development, with a focus on housing elements, public engagement, and CEQA and NEPA analysis and compliance for long-range plans and public sector initiatives. For the past two years, she has worked almost exclusively on management and technical support for housing element and general plan updates and CEQA compliance for jurisdictions across the state. Emily currently serves as the Project Manager for Housing Element Updates for the cities of Bakersfield and Banning.

**Lisa Gordon | Project Manager**

Lisa has over 15 years of experience in managing complex entitlement projects and specific plans, as well as preparing and implementing general plans, housing elements and development codes in Southern California. In her previous position as the Planning Manager of the City of Menifee, she worked on the City's first general plan and housing element, as well as updates to the housing element, preparation of annual housing element reports, and applying new and evolving state housing laws to entitlement projects. Her local government experience provides practical knowledge regarding implementation of the element after adoption.

**Lilly Rudolph | Technical Advisor**

Lilly is responsible for managing current planning assignments and long-range planning documents for municipal planning agencies. She has processed complex residential, mixed-use, and commercial projects in Ventura, Malibu, Grover Beach, Guadalupe, Berkeley, and in Santa Barbara County. She has extensive current planning experience with the City of Malibu and is intimately familiar with the City Local Implementation Plan and the Malibu Municipal Code. She is currently managing 6<sup>th</sup> Cycle Housing Element updates for the City of Simi Valley and City of Fullerton.

**Brenna Weatherby | Principal in Charge**

Brenna has over 20 years of experience in city planning, long range community planning, discretionary permit processing, and environmental analyses throughout California. She is currently leading housing element updates, public engagement efforts, and associated environmental analysis in the cities of Corona, Banning, Santa Clarita, Monterey Park, Temple City, San Gabriel, Bakersfield, Palo Alto, Pleasant Hill, and St. Helena. Her experience with housing assessment and needs analysis, and creating housing goals, policies, and quantified objectives, allows her to develop creative solutions for communities facing complex housing challenges.

**Schedule**

We estimate that this work can be completed in five weeks, assuming staff is available to answer any critical questions or to provide additional data, as needed, and pending HCD staff availability. Rincon anticipates preparation of a proposal and cost estimate for Phase 2 based on the findings of the Draft 6th cycle Housing Element Work Plan Report.



## Cost Estimate

The estimated budget for this assignment would be \$12,138.00. Billing rates are pursuant to the Agreement for Professional Services between the City and Rincon dated September 26, 2022. We are prepared to initiate work immediately upon execution of a contract and receipt of a notice to proceed.

Task	Cost Estimate
Task 1 Document Review	\$2,365
Task 2 Meeting with HCD Staff	\$2,080
Task 3 Recommendations Report	\$6,463
Task 4 Project Management	\$1,230
Project Total	\$12,138

We appreciate the opportunity to assist the City of Malibu. This proposal is valid for 30 days and is fully negotiable to meet the City's needs for this assignment. If you have any questions about this proposal, please contact Lilly Rudolph at 805-947-2847 or [ludolph@rinconconsultants.com](mailto:ludolph@rinconconsultants.com), or Emily Green at 619-880-5426 or [egreen@rinconconsultants.com](mailto:egreen@rinconconsultants.com).

Sincerely,

**Rincon Consultants, Inc.**

Lilly Rudolph, MPA, AICP  
Senior Program Manager

Kimiko Lizardi  
Principal, Environmental and Long Range  
Planning



**Rincon Consultants, Inc.**

180 North Ashwood Avenue  
Ventura, California 93003  
805-644-4455

June 21, 2023  
Rincon Project No. 23-14425

Richard Mollica, Planning Director  
City of Malibu  
Planning Department  
23825 Stuart Ranch Road  
Malibu California 90265  
Via email: [rmollica@malibucity.org](mailto:rmollica@malibucity.org)

**Subject: Proposal for City of Malibu 6<sup>th</sup> Cycle Housing Element Update**

Rincon Consultants appreciates the opportunity to submit this proposal in coordination with Veronica Tam and Associates (VTA) to assist the City of Malibu with revising the adopted 6<sup>th</sup> Cycle Housing Element update. Work related to this project will be performed pursuant to Rincon's Agreement for Professional Planning Services dated September 26, 2022.

We have assembled a team of highly skilled planning and housing professionals with extensive experience with both the technical and policy aspects of Housing Element updates. We are proud of our team's ability to work effectively with City staff, decision-makers, and the California Department of Housing and Community Development (HCD) to develop innovative approaches and solutions to prepare a substantially compliant Housing Element that is also consistent with the City's General Plan vision to "protect that environment and lifestyle, and to preserve unaltered natural resources and rural characteristics" of the city.

Enclosed is a scope of work that describes scope of work services, followed by a cost estimate, and a project schedule. Rincon's scope of services is fully negotiable to ensure the proposal meets the City's needs for this work effort.

## **Project Understanding**

On January 10, 2022, the City Council approved Resolution No. 22-67 adopting the Revised Draft Housing Element, which was submitted to HCD on January 20, 2022. HCD provided a comment letter dated March 22, 2022 with a list of revisions necessary to comply with state housing law. Rincon provided consultant services to determine the best approach to address HCD's comments on the adopted 6<sup>th</sup> cycle Housing Element. As part of this work, also referred to as Phase 1 of this project, Rincon facilitated a meeting with HCD and City staff and delivered a letter outlining the suggested approach to revise the Housing Element.

Phase 2 involves the preparation of revisions to the adopted Housing Element to address HCD comments. We anticipate that no additional California Environmental Quality Act (CEQA) documentation will be necessary as part of this project because future revisions would not affect the City's previous determination that the project is exempt from CEQA.





## Scope of Work

The scope of work described below is based on the Rincon team's experience both preparing and revising previously drafted 6<sup>th</sup> cycle Housing Element updates, taking into account a reasonable, likely course of action. The scope of work also builds upon our extensive planning experience in Malibu, previous review of HCD comment letters and relevant City documents, and feedback provided by HCD staff during our April 27, 2023 meeting. Unforeseen or unusual circumstances that may occur could alter the scope of work and require additional coordination, data gathering, and analysis. Rincon cannot guarantee the response of the decision-making agencies or the outcome of their actions nor can Rincon guarantee if and/or when HCD will find the Housing Element to be substantially compliant with state law. This scope of work is not intended to offer or constitute legal advice. It is recommended that City staff consult the City Attorney regarding any legal questions related to the Housing Element update.

### Task 1 Project Management

The Rincon team will provide project management support, including up to 25 biweekly meetings for working sessions, timeline and status updates, and hearing preparation, quality control, and internal team coordination. As part of this task, Rincon's project manager and Veronica Tam will conduct 30-minute virtual biweekly meetings with City staff to proactively identify project issues, identify potential solutions, and coordinate with the team and City staff on the best course of action. Rincon will prepare and maintain a detailed project schedule to be used throughout the life of the project, highlighting key milestones and work product delivery dates. Rincon will also create a SharePoint site for Rincon, VTA, and City staff to efficiently share documents.

#### Deliverables

- Attendance at up to 25 half-hour biweekly calls, along with brief agendas and action items/assignments
- Monthly invoices
- Development and ongoing maintenance of project timeline

### Task 2 Housing Element Update

The Rincon team will revise the adopted Housing Element, building on work completed by the previous consultant team. Revisions will be limited to addressing comments contained in the letters from HCD dated October 22, 2021 and March 2, 2022, direction from City staff, compliance with new state law, and any other feedback received from HCD, with the goal of retaining existing content and analysis in the adopted Housing Element to the extent feasible. All revisions made to the adopted Housing Element will be shown as tracked changes.

#### Task 2.1 Data Gaps Analysis

The Rincon team will review and assess the adopted Housing Element, associated technical information, data available from regional and state governments, and other pertinent information in accordance with HCD guidance to identify data gaps. During this review, the Rincon team will identify and outline any data deficiencies/gaps, additional analysis and engagement efforts, if any, needed to support completion of the 6<sup>th</sup> cycle Housing Element. The Rincon team will provide a formal data request to help the City in compiling necessary data and documents within one week of the kick-off meeting.



### **Deliverable**

- List of data needs (MS Word or Excel, via the project SharePoint site), regularly updated to reflect received data

### **Task 2.2 Review of Past Accomplishments**

The Rincon team will revise the existing Review of Past Accomplishments section in response to HCD's comment letters, in compliance with State Housing Element law and HCD's Completeness Review Checklist. This section will be revised to include details of current City program outcomes accomplished during the 5<sup>th</sup> housing cycle and an assessment of the effectiveness of the City's current programs relevant to the needs of special housing needs groups. Rincon will submit a draft, red-lined revised Review of Past Accomplishments section to the City for review. Rincon will respond to one round of consolidated City comments on the updates to the revised Review of Past Accomplishments section and will incorporate revisions in the Revised Adopted Housing Element (Task 2.9).

### **Deliverable**

- Red-lined revised Review of Past Accomplishments (MS Word)

### **Task 2.3 Revise Housing Needs Assessment**

The Rincon team will revise the existing Housing Needs Assessment section in response to HCD's comment letters, in compliance with State Housing Element law and HCD's Completeness Review Checklist. Rincon will revise the Housing Element to analyze the housing access and needs of extremely low-income households, pursuant to HCD's comment letter. Rincon will submit a draft, red-lined revised Housing Needs Assessment section to the City for review. Rincon will respond to one round of consolidated City comments on the updates to the revised Housing Needs Assessment section and will incorporate revisions in the Revised Adopted Housing Element (Task 2.9).

### **Deliverable**

- Red-lined revised Housing Needs Assessment, and findings incorporated into other relevant sections (MS Word)

### **Task 2.4 Revise Housing Resources and Site Inventory**

The Rincon team will revise the Housing Resources section and the Site Inventory in response to HCD's comment letter, in compliance with State Housing Element law and HCD's Completeness Review Checklist. Efforts will largely be focused on removing unnecessary sites in the existing site inventory and providing additional supporting analysis of remaining sites.

Rincon will submit a draft, red-lined revised Housing Resources section and a draft revised Site Inventory to the City for review. Rincon will respond to one round of consolidated City comments on the updates to the revised Housing Resources section, figures, and the site inventory and will incorporate revisions in the Revised Adopted Housing Element (Task 2.9). In addition, Rincon assumes the following:

- No edits or corrections to parcel or base data will be necessary.
- Rincon will rely on SCAG and/or County data if City data is not available or adequate.
- Rincon can rely on the sites identified in the existing 6<sup>th</sup> cycle Adopted Housing Element. While we may recommend removing previously identified sites, no new sites will be added.



## **Deliverables**

- Revised Housing Resources analysis, and findings incorporated into other relevant sections (MS Word)
- Revised Site Inventory (Excel)

### **Task 2.5 Revise Housing Constraints Analysis**

The Rincon team will revise the existing Housing Constraints analysis in response to HCD's comment letter and to comply with State Housing Element law and HCD's Completeness Review Checklist. This analysis must contain a review of factors that may potentially constrain the development of new housing and the improvement and preservation of existing housing in Malibu. The Housing Element should be revised to fully analyze the impact of the development standards contained in the Malibu Local Coastal Program (LCP) and Malibu Municipal Code (MMC) and fees, and processing and permitting procedures on residential development. The Rincon team will identify constraints to housing development, particularly for special needs populations, and updates necessary to comply with applicable laws and regulations. Rincon will submit a draft, red-lined revised Housing Constraints section to the City for review. Rincon will respond to one round of consolidated comments and will incorporate revisions in the Revised Adopted Housing Element (Task 2.9).

## **Deliverable**

- Revised Housing Constraints analysis, and findings incorporated into other relevant sections (MS Word)

### **Task 2.6 Revise Assessment of Fair Housing**

The Rincon team will revise the existing Assessment of Fair Housing in response to HCD's comment letter and to comply with State Housing Element law and HCD's Completeness Review Checklist. The Assessment of Fair Housing discusses new Housing Element law (Government Code Section 65583), which requires jurisdictions to examine barriers to fair housing and ensure housing programs are implemented in a manner to affirmatively further fair housing. Data will be updated as needed using HCD's Affirmatively Furthering Fair Housing (AFFH) data viewer, and the latest data from SCAG, pre-certified by HCD in April 2021. Rincon will submit a draft, red-lined revised Assessment of Fair Housing section to the City for review. Rincon will address one round of consolidated City comments on the revised Assessment of Fair Housing in the Revised Adopted Housing Element (Task 2.9).

## **Deliverables**

- Revised Assessment of Fair Housing (MS Word)
- Additional programs for inclusion in the Housing Plan

### **Task 2.7 Revise Housing Plan**

The Rincon team will revise the existing Housing Plan in response to HCD's comment letter and to be consistent with State Housing Element law and HCD's Completeness Review Checklist. All programs are to be reviewed to ensure they are specific, contain concrete actions, discrete timeframes, measurable outcomes, and responsible agencies. Based upon the analysis and research conducted in the previous tasks, the Rincon team will revise existing goals, policies, and programs and will identify and recommend new programs, if necessary. Any new programs or implementation measures would be based on our professional opinion of revisions necessary to obtain compliance with State Housing



Element law. Rincon will submit a draft, red-lined revised Housing Plan to the City for review. The Rincon team will address one round of consolidated City comments and will incorporate revisions in the Revised Adopted Housing Element (Task 2.9).

#### **Deliverable**

- Revised Housing Plan (MS Word)

#### **Task 2.8 Revise Description of Public Participation**

The Rincon team will revise the description of public participation conducted to date, the time allowed for input, and how input received was considered and incorporated. Rincon may recommend that additional outreach should be taken to meet HCD requirements. Rincon will submit a list of recommended additional engagement activities to the City. The revised description of public participation will be reviewed by the City as part of the review of the Revised Adopted Housing Element (Task 2.9).

#### **Deliverable**

- List of recommended supplemental public engagement efforts (MS Word and pdf), if necessary

#### **Task 2.9 Revised Adopted Housing Element**

The Rincon team will prepare an updated Revised Adopted Housing Element based on analysis, research, and comments/discussions from the previous tasks. Rincon will submit a draft, red-lined Revised Adopted Housing Element. Rincon will respond to one round of consolidated comments on the Revised Adopted Housing Element. We will incorporate staff comments in the Public Review version of the Revised Adopted Housing Element. It is anticipated that the Revised Adopted Housing Element will have a public review period of seven days prior to submittal to HCD. Following public review, Rincon will compile public comments received during the seven-day public review period, and edit the document pursuant to City staff direction. Prior to formal submittal, the Rincon team will arrange a virtual meeting with HCD staff to review the revisions and to seek preliminary feedback and will make further revisions accordingly. Rincon will electronically submit the Housing Element to HCD for a 60-day formal review.

#### **Deliverables**

- Red-lined Revised Adopted Housing Element (Word)
- Red-lined Public Review version of the Revised Adopted Housing Element (Word and PDF)
- Revised Adopted Housing Element for HCD Review, including response to public comments (Word and PDF)
- Updated HCD comment and response matrix (Word and PDF)
- Electronic submittal of Housing Element (PDF) and Site Inventory (Excel) to HCD

#### **Task 2.10 HCD Review and Revision**

Upon receipt of HCD comments following the 60-day review, the Rincon Team will update the Revised Adopted Housing Element pursuant to any additional HCD comments and will prepare the document for City Council review and readoption. The Rincon team will arrange and facilitate one (1) two-hour meeting with HCD staff to discuss comments and review revisions. The Rincon team will submit a draft,



red-lined Revised Adopted Housing Element. The Rincon team will respond to one round of consolidated comments on the Revised Adopted Housing Element prior to the City Council meeting.

### **Deliverables**

- Revised Adopted Housing Element (Word and PDF)

### **Task 3 City Council Meeting**

Veronica Tam and Rincon's project manager will present the Housing Element at one City Council meeting and respond to questions as directed by City staff. The Rincon team's participation will be conducted virtually. Additional public hearings will be billed on a time and materials basis, per Rincon's billing rates in effect at the time the service is provided.

### **Deliverables**

- Power Point presentation

### **Task 4 Post-Readoption HCD Review**

#### **Task 4.1 Post-Readoption Submittal to HCD**

After readoption of the Revised Housing Element (Task 3), the Housing Element must be resubmitted to HCD for an additional 60-day formal review. We estimate a cost of \$3,434 (16 hours of professional staff time) to revise the document pursuant to City Council direction prior to resubmittal to HCD. It is assumed that Rincon will submit the Revised Housing Element electronically and City staff will submit a hard copy of the Housing Element to HCD. City staff will provide Rincon with the adoption resolution and any related ordinances to include as part of the electronic submittal to HCD.

#### **Task 4.2 Certification**

HCD may require multiple subsequent rounds of review of the Housing Element prior to certification; therefore, the exact level of effort required for this task is unknown at this time. For the purpose of this proposal, the Rincon Team estimates an additional \$9,170 (39 hours of professional staff time) to address any additional HCD comments, which includes one virtual meeting with HCD to discuss comments. If comments received are more extensive than originally anticipated, and additional time is required to address HCD comments, a scope and cost amendment will be needed. Additional labor will be provided on a time and materials basis billed at rates in effect at that time. Included in this task is budget related to document finalization and an additional electronic submittal to HCD.

### **Deliverables**

- Electronic submittal of documentation to HCD for certification

## **Assumptions**

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). The City would be responsible for printing all hard copy documents.
- All meetings, including the City Council meeting, will be conducted virtually.



In the event that services extend beyond the expiration date of August 30, 2024, Rincon reserves the right to negotiate hourly rates pursuant to a contract amendment.

We appreciate the opportunity to assist the City of Malibu. This proposal is valid for 30 days and is fully negotiable to meet the City's needs for this assignment. If you have any questions about this proposal, please contact Lilly Rudolph at 805-947-2847 or [lrudolph@rinconconsultants.com](mailto:lrudolph@rinconconsultants.com).

Sincerely,

**Rincon Consultants, Inc.**

A handwritten signature in blue ink, reading "Lilly Rudolph".

Lilly Rudolph, MPA, AICP  
Senior Program Manager

A handwritten signature in black ink, reading "Brenna Weatherby".

Brenna Weatherby  
Principal



Cost Estimate

Rincon will complete the work program described herein for a cost not to exceed \$181,333. Any additional tasks not identified herein will be completed only upon authorization and in accordance with the rates shown in the table below. The estimated cost indicates an estimated contingency of 20 percent.

Rincon Labor Classification→				Principal II	Principal I	Senior Supervisor II	Senior Professional I	Professional IV	Professional II	Senior GIS Specialist	GIS/CADD Specialist II	Production Specialist	Clerical
Tasks	Labor Cost	Direct Expense	Hours	\$295	\$285	\$258	\$208	\$184	\$153	\$164	\$146	\$105	\$95
Task 1 Project Management													
Project Management	\$27,706		124		15	30	70			4			5
Task Subtotal	\$27,706		124		15	30	70			4			5
Task 2 Housing Element Update													
2.1 Data Gaps Analysis	\$4,660					10	10						
2.2 Review of Past Accomplishments	\$3,510		17		1		15					1	
2.3 Revise Housing Needs Assessment	\$3,566		19		1		2	15				1	
2.4 Revise Housing Resources and Site inventory	\$12,091		63		1	3	25	25			7	2	
2.5 Revise Housing Constraints Analysis	\$7,737		40		1	3	12	20			2	2	
2.6 Revise Assessment of Fair Housing	\$17,715		93		1	5	20	60			5	2	
2.7 Revise Housing Plan	\$14,464		75			3	25	45				2	
2.8 Revise Description of Public Participation	\$3,636		17			2	15						
2.9 Revised Adopted Housing Element	\$15,573		75		2	20	25	20			3	5	
2.10 HCD Review and Revision	\$12,260		56		3	20	25				5	3	
Task Subtotal	\$95,212		455		10	66	174	185			22	18	
Task 3 City Council Meeting													
Public Hearings	\$4,999	\$340	21		3	8	10						
Task Subtotal	\$4,999	\$340	21		3	8	10						
Task 4 Post-Readoption HCD Review													
4.1 Post-Readoption Submittal to HCD	\$4,036		21		1	5	4	6				5	
4.2 Certification	\$9,468		44		3	12	24					5	
Task Subtotal	\$9,468		44		3	12	24	6				5	



Rincon Labor Classification→				Principal II	Principal I	Senior Supervisor II	Senior Professional I	Professional IV	Professional II	Senior GIS Specialist	GIS/CADD Specialist II	Production Specialist	Clerical
Tasks	Labor Cost	Direct Expense	Hours	\$295	\$285	\$258	\$208	\$184	\$153	\$164	\$146	\$105	\$95
Task 5 VTA (Subconsultant)		\$23,000											
Task Subtotal		\$23,000	644										
Subtotal	\$ 137,385	\$ 23,340	600		31	116	278	191		4	22	23	5
Contingency		\$20,608											

Direct Cost Detail	Cost
Vehicle Costs	\$340
Contingency	\$20,608
Subconsultant Fee	\$23,000
Direct Costs Subtotal	\$43,948

Summary	Cost
Professional Fees Subtotal	\$137,385
Direct Costs Subtotal	\$43,948
Total	\$181,333

**Professional Services.** Professional Services are based on Rincon's standard fee schedule and labor classifications pursuant Rincon's Agreement for Professional Planning Services and amendment(s) in effect at the time work is performed. The above is provided as an estimate of Rincon's effort per task. Rincon may reallocate budget between staff and tasks, as long as the total contract price is not exceeded.

**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.



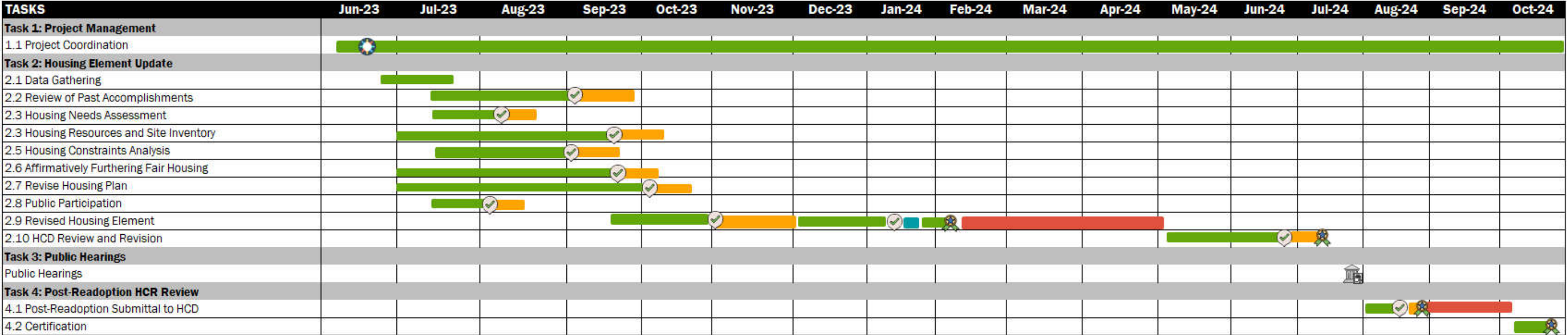


Project Schedule

The Rincon team is prepared to begin the work program described in this proposal immediately upon authorization to proceed. As depicted on the following chart, Rincon proposes to adhere to a schedule that allows the Revised Adopted Housing Element to be submitted for HCD review within about 7 months from the kickoff meeting and readoption of the Housing Element update within approximately 13 months.

Task/Deliverable	Timeline
Rincon submits administrative draft sections to City for review	October 27, 2023
Public Review	January 16-24, 2024 (assuming 7-day public review)
Submittal of updated draft housing element to HCD	February 8, 2024
Readoption of housing element	Late July/early August 2024
Submittal of readopted housing element to HCD to obtain compliance with State Housing Element Law	August 2024

Schedule



Key			
<div></div>	City review	<div></div>	Draft Deliverable
<div></div>	Public Review	<div></div>	City Council
<div></div>	HCD Review	<div></div>	Final Deliverable
<div></div>	Rincon Draft	<div></div>	Meeting