

AGREEMENT NO. 13,065

THIS AGREEMENT is made and entered into by and between the CITY OF PASADENA, a municipal corporation (hereinafter referred to as "the City"), the CENTER FOR ENVIRONMENTAL STRUCTURE, Berkeley, California (hereinafter referred to as "CES"), and DANIEL SOLOMON AND ASSOCIATES, San Francisco, California (hereinafter referred to as "DS") pursuant to the following facts:

A. The City wishes to review its Zoning Ordinance with respect to coverage of multi-family housing included in RM-16, RM-32 and RM-48 zones, and desires expert advice on the impact of its present ordinance and recommendations for revisions thereto, criteria for improvement of existing multi-family housing, and case study designs of revised units.

B. CES and DS (hereinafter also referred to collectively as "Consultants") are skilled and experienced in providing such services, and wish to do so in accordance with the terms and conditions set forth herein.

C. On February 23, 1987, the City's Board of Directors authorized execution of this Agreement by the City.

JUN 2 1987

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth below, the parties hereby agree as follows:

I. SCOPE OF AGREEMENT

A. This Agreement encompasses the furnishing by Consultants of all necessary and incidental services, labor, materials, equipment and transportation to review the City's Zoning Ordinance with respect to multi-family housing included in RM-16, RM-32 and RM-48 zones, recommend revisions to the Ordinance, provide criteria for improvement of existing multi-family housing, and provide case study designs for selected sites.

1. Consultants' efforts hereunder shall be performed in consultation with the City's Multi-Family Task Force. However, the Task Force is without authority to modify the terms of this Agreement.

B. Consultants will study the City of Pasadena's current Zoning Ordinance and its impact on the City, recommend criteria for improvement of existing multi-family housing, prepare a maximum of twenty-five (25) case study designs for selected sites, and provide recommendations for revisions to the Zoning Ordinance for multi-family housing, in the format of an 8 1/2" x 11" typed document, for review and use by the City.

C. The parties agree that fifty percent (50%) of the efforts contemplated by this Agreement will be performed by CES, directed by Christopher Alexander, and fifty percent (50%) will be performed by DS, directed by Daniel Solomon.

1. It is contemplated by the parties that Ms. Phoebe Wall, AIA (hereinafter referred to as "PW"), will serve as a consultant to DS in the performance of his efforts encompassed by this Agreement.

2. Notwithstanding the above, Consultants will be responsible for determining the precise division of the work encompassed by this Agreement.

3. Consultants will be jointly and severably responsible for the performance of all obligations encompassed hereunder, in consideration for the City's acceptance of the joint venture format of this Agreement.

D. Recommendations for revisions to the Zoning Ordinance or an amendment thereto, as appropriate, shall be divided into three (3) overlapping phases:

1. PRELIMINARIES (1 month)

Field study to identify the characteristics of a desirable form of multi-family housing for the City of Pasadena, and study to classify existing projects according to density, location, and neighborhood character.

2. PREPARATION OF EXAMPLES (3 months)

Prepare a maximum of 25 case-study designs, to cover the range of classifications and types of multi-family housing, with study of ordinance rules that will generate these examples. Choice of case studies and sites will be made by Consultants.

3. RECOMMENDED REVISIONS TO THE ORDINANCE (2 months)

Draft and prepare recommendations for revisions to the existing Ordinance or its amendment. This document will be a conclusion of the previous phases of work. The scope of the document will include the ordinance rules necessary to regulate these districts and will be illustrated only where necessary. The document will be supplied in an 8 1/2" x 11" camera-ready paste-up format with typed text. Three bound xerox copies will be supplied.

Both parties agree that the delivered document will be recommendations only, which may need further work before implementation or incorporation into law. This text will be delivered in three (3) copies, with an original suitable for reproduction. The draft document will be submitted to the City's designated representative, who will be responsible for coordinating all City and public responses, including responses of Task Force members, for preparation of a revised draft. Additional revisions beyond this revised draft will constitute additional services, provided such further revisions are not required because

Consultants failed to provide earlier drafts in a manner satisfactory to the City's designated representative. Consultants understand that prior authorization by the City's Board of Directors is required for any additional services.

E. Meetings; Workshops:

1. As part of the obligations to be performed by Consultants pursuant to this Agreement, and compensated as part of Consultants' fixed fee (see Article III, Consideration, Paragraph A), at least one of the Consultants (or, if agreed upon by the City's designated representative, Phoebe Wall) shall attend the following meetings and/or workshops as required by the City:

(a) Twelve meetings with the Task Force, subcommittees of the Task Force, and or individual members of the Task Force.

(b) Two presentation meetings with the City's Board of Directors.

2. Additionally, at least one of the Consultants (or, if agreed upon by the City's designated representative, Phoebe Wall) shall attend eight public meetings which will include five (5) day-long workshops with public groups and three evening meetings, one each with Planning Commission, Cultural Heritage Commission, and Community Development Commission. Consultants shall be paid for attending and participating in these meetings in accordance with Article III, Consideration, Paragraph B.

3. In the event the City desires Consultants to attend additional meetings or workshops, Consultants' fee therefore shall be subject to separate negotiation and approval by the City's Board of Directors.

II. CITY'S RESPONSIBILITIES

A. The City shall designate a representative as the focal point for communications pursuant to this Agreement. This representative shall be Paul Gleye. In the event Paul Gleye leaves the employ of the City, or is transferred to other duties, the City shall appoint another representative. The City's designated representative shall meet with Consultants during each phase to review and approve the work as it progresses. A review schedule shall be established at the time of the signing of this Agreement. All comments, criticisms and suggestions regarding the project shall be made through the City's designated representative in writing or by way of a marked-up draft. The City's designated representative does not possess authority to modify the provisions of this Agreement or to authorize additional services.

B. The City shall use its best efforts to make available to Consultants such information as is reasonably required by Consultants to accomplish their efforts hereunder, which information may include, but may not be limited to, the following:

1. Detailed information regarding housing types, housing economics, and construction costs, as may be available from the City's Multi-Family Task Force.

2. Maps, drawings, and other data about the City.

3. Cost estimates for case-study prototypes.

C. The City will also cooperate with Consultants with respect to meetings, visits, and arrangements pertaining to permits and coordination with City or County agencies which may become involved in the efforts contemplated hereunder.

D. The City agrees to provide its participation and all available information in a timely manner so as not to delay Consultants in accomplishing their efforts as contemplated herein. City consultants, staff, and Multi-Family Task Force members will be accessible to Consultants as necessary. Additionally, the City agrees that there will be no major revisions to the planning concept after commencement of the phase I.D.3. efforts discussed above.

E. Paul Gleye shall serve as a liason between Task Force and the Consultants. In case of any complex matter, he will consolidate and communicate the Consultants' views to the Task Force after discussing the matter with the two (2) Consultants. Any successor City Representative shall fulfill the same role.

III. CONSIDERATION

A. In consideration for the timely and satisfactory performance of Consultants' efforts encompassed by this Agreement, other than those efforts addressed in Paragraphs B. and C., below, the City shall pay Consultants a total fixed fee of One Hundred Twenty-four Thousand Dollars (\$124,000.00) in accordance with the Payment Schedule set forth in Article IV, below.

B. In consideration for Consultants' attendance and participation in the meetings described in Article I, Scope of Agreement, Paragraph E.2., the City shall pay Consultants' a total amount not to exceed Nineteen Thousand Dollars (\$19,000.00) at a rate of Two Thousand, Three Hundred Seventy-five Dollars (\$2,375.00) for each meeting attended.

C. In addition, the City shall reimburse Consultants for Reimbursable Expenses listed below, following receipt by the City of invoices and satisfactory supporting documentation. Total Reimbursable Expenses shall not exceed Twenty-seven Thousand, Four Hundred Dollars (\$27,400.00) without additional prior authorization by the City's Board of Directors. Expense reimbursements shall be paid separately and equally to CES and DS, and each firm shall have an individual ceiling of Thirteen Thousand, Seven Hundred Dollars (\$13,700.00) for their respective Reimbursable Expenses, unless otherwise agreed upon in writing. Prior to the execution of this Agreement, the City issued

Purchase Order No. 22758 to DS for \$400.00 to cover reimbursable travel expenses. This amount shall be deducted from the total amount of Reimbursable Expenses authorized by the City's Board of Directors.

1. All authorized travel to and from Pasadena, including air tickets, ground transportation and hotel expenses for overnight stays.

2. All reproductions of drawings or documents, including but not limited to blueprints, photographic prints and photocopies as needed for preparation of the draft document.

3. Mailing and postage charges, excluding Federal Express and overnight mail. (The City will provide Consultants with an express mail charging number for use in the performance of this Agreement.)

4. Mileage charges for local travel required hereunder, with mileage charged at \$.27/mile, but not to duplicate expenses reimbursed pursuant to subparagraph 1., above.

5. Materials for any models or construction mockups made by the Consultants to study the design.

6. Costs required for the reproduction of copies and illustrations for the draft ordinance booklet.

7. Long distance telephone charges.

D. Additional Services: Subject to prior approval by the City's Board of Directors, the City may

require Consultants to perform additional services,
such as:

1. Special presentations, press conferences, boards of appeals, and/or similar matters, including time and materials.

2. Presentation models, photography of models for use in the draft document or other presentation, including prints, slides, etc., as requested by the City.

3. Seeking community approval, including time and materials.

4. Subsequent revisions to the ordinance, including costs of word-processing services and reproduction.

E. In the event the City's Board of Directors authorizes additional services, Consultants shall be compensated at the following rates:

Christopher Alexander (of CES)	--	\$85.00 per hour
CES Staff	--	\$55.00 per hour
Daniel Solomon	--	\$85.00 per hour
DS Staff	--	\$55.00 per hour
Reimbursable Expenses	--	Actual costs to be reimbursed as authorized by the City's Board of Directors.

F. Prior to the execution of this Agreement, the City issued Purchase Order No. 23555 in the amount of \$12,500.00 to CES and Purchase Order No. 23556 in the amount of \$12,500.00 to DS encompassing the efforts contemplated

in this Agreement. All payments made pursuant to these Purchase Orders shall be deducted from the initial payments to these parties until satisfied.

IV. PAYMENT SCHEDULE

A. In consideration for the satisfactory performance of Consultants' services hereunder, the City agrees to pay Consultants, in accordance with Paragraph B., below, the total fee specified above in Article III, Paragraph A., in accordance with the following payment schedule, subject to deduction pursuant to Article III, Paragraph F., above:

1. Upon execution of this Agreement by City (subject to deduction for purchase orders already paid)	-- \$56,000
2. Payment (to be invoiced July 1, 1987)	-- \$17,000
3. Payment (to be invoiced August 1, 1987)	-- \$17,000
4. Payment (to be invoiced September 1, 1987)	-- \$17,000
5. Payment upon delivery of recommended revisions to the ordinance and all other deliverable documents	- <u>\$17,000</u>
TOTAL	\$124,000

B. CES and DS shall submit separate invoices to the City for the amounts due under this Agreement for services and Reimbursable Expenses. Said invoices shall be submitted to the City on the first day of each month,

and shall be paid by the City on or before the fifteenth day of that month.

C. Each payment specified above will be divided into two separate checks, written for equal amounts, one to CES and one to DS, as follows:

1. Upon execution of this Agreement, and subject to deduction pursuant to Article III, Paragraph F, one check to CES for \$28,000.00 (\$15,500.00 after deductions) and one check to DS for \$28,000.00 (\$15,500 after deductions).

2. Payments 2 through 5, above, shall each be paid by separate checks, one to CES for \$8,500.00 and one to DS for \$8,500.00.

D. Consultants accept and agree to the above-specified division of their fees hereunder, and release the City from any and all liability, claims, loss, damages, costs, or expenses arising out of the above-specified division of fees.

V. CITY'S RIGHT OF REVIEW

A. The City reserves the right to review Consultants' work in progress. All work shall be performed in a timely manner, and in a manner satisfactory to the City's designated representative.

VI. TERMINATION

A. The City shall have the right to terminate this Agreement at any time, without cause, by providing thirty (30) days prior written notice to Consultants. The City will

pay Consultants for work satisfactorily performed prior to the effective date of termination.

B. In the event either party fails to satisfactorily perform this Agreement, the other party may terminate this Agreement provided the defaulting party has been given thirty (30) days following written notice specifying in detail its failure to satisfactorily perform, in which to cure such failure to perform and fails to so cure its unsatisfactory performance. Such termination shall be without further liability to the defaulting party.

VII. INVOICING AND INSPECTION OF RECORDS

All invoices submitted to the City by Consultants shall contain breakdowns of the amounts invoiced. All invoices for Reimbursable Expenses shall specify the date, nature, and amount of each item included, and may be in the form of a bill, invoice, payroll, or formal demand. Supporting documentation shall accompany all invoices submitted by Consultants hereunder. Invoices shall be submitted to the City's Director of Finance, who shall examine and audit the same. If the City's Director of Finance, or his/her authorized representative, requires further information to substantiate and/or process such invoices, Consultants agree to supply acceptable back-up documentation upon the City's reasonable request for the same.

VIII. AFFIRMATIVE ACTION

Consultants shall comply with City's Affirmative Action in Contracting Ordinance (Chapter 4.09 of the Pasadena Municipal Code), the rules and regulations promulgated thereunder, and Attachment No. 1, "Equal Opportunity Employment Practices Provisions."

IX. CONFLICT OF INTEREST

In executing this Agreement, Consultants certify that no member, officer or employee of Consultants is an officer or employee of the City of Pasadena.

X. PASADENA BUSINESS LICENSE

Consultants shall be required to obtain and pay all costs associated with any business license required by Title 5 of the Pasadena Municipal Code.

XI. ASSIGNMENT OF RIGHTS IN ANTI-TRUST ACTIONS

Consultants shall assign and require each subcontractor, if any, to assign all rights to the City as required by California Government Code Section 4552:

"In accepting a contract with a public body, the contractor (Consultants) agrees to assign all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the

Business and Professions Code), arising from purchases of goods, materials, or services by the contractor for sale to the public body. Such assignment shall be made and become effective at the time the public entity tenders final payment to the contractor (Consultants)."

XII. AMENDMENT

This Agreement may be modified only by written amendment signed by Consultants and the duly authorized representative of the City.

XIII. ATTORNEYS' FEES

In the event a legal action is commenced to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover its necessary costs and reasonable attorneys' fees.

XIV. NON-ASSIGNMENT

This Agreement, and the rights and duties hereunder, are not assignable either in whole or in part by Consultants without the prior written consent of the duly authorized representative of City.

XV. INDEPENDENT CONTRACTOR

Consultants shall perform the services hereunder solely as independent contractors, shall furnish such services in their own manner and method, shall be solely

responsible for the employment, direction, compensation and discharge of all persons assisting Consultants in the performance of services hereunder, and shall save the City harmless from all matters relating to the payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and under no circumstances or conditions shall any agent, servant, or employee of Consultants be considered an employee of City.

XVI. INDEMNIFICATION

A. The Consultants, individually and collectively, hereby agree to indemnify and hold harmless the City, its boards, commissions, committees, officers, agents and employees from and against any and all liability, loss, costs, expenses, attorneys' fees, damages, or claims for damage for personal injury, including death or property damage, which may arise directly or indirectly from the negligent or otherwise wrongful acts, errors or omissions, including professional negligence, of Consultants or any of them, or their employees, agents or subcontractors related to the performance of this Agreement. The Consultants agree to and shall defend the City and its boards, commissions, committees, officers, agents and employees from any suits or actions at law or in equity based upon the aforesaid negligent or otherwise wrongful acts, errors or omissions.

B. The City hereby agrees to indemnify, and shall hold harmless the Consultants, their officers, agents, representatives and employees, from and against any and all liability, loss, costs, expenses, attorneys' fees, damages or claims for damages for personal injury, death, property damage or property injury, including claims for "taking" or diminution of value, which may arise directly or indirectly from the City's adoption of any law, rule, regulation, practice or requirement (provided such liability, loss, costs, expenses, attorneys' fees, damages or claims are not encompassed by Paragraph A, above), or directly or indirectly from the City's negligent or otherwise wrongful acts, errors or omissions related to this Agreement. The City agrees to and shall defend Consultants and their officers, agents and employees from any suits or actions at law or in equity based solely upon the aforesaid negligent or otherwise wrongful acts, errors or omissions.

XVII. NOTICES

All notices required by this Agreement shall be given to City and Consultants in writing, by first-class mail, postage prepaid, addressed as follows:

City: City of Pasadena
100 North Garfield Avenue
P.O. Box 7115
Pasadena, CA 91109-7215

CES: Center for Environmental Structure
2701 Shasta Road
Berkeley, California 94708
Attention: Mr. Christopher Alexander

DS: Daniel Solomon and Associates
84 Vandewater Street
San Francisco, California 94133
Attention: Mr. Daniel Solomon

Any notice so mailed shall be deemed to have been given as of the time said notice is deposited in the mail.

XVIII. CONSTRUCTION

A. Governing Law

This Agreement and the rights and obligations of the parties hereunder shall be interpreted and construed in accordance with the laws of the State of California.

B. Jurisdiction

The parties hereby agree to jurisdiction by the courts of Los Angeles County for all disputes arising hereunder.

C. Severability; No Waiver

In the event any provision of this Agreement is found to be unenforceable, such provision shall be deemed severable, and shall not affect the enforceability or validity of the remaining provisions. The City's waiver of any breach or failure to enforce any obligation of this Agreement shall not constitute a waiver of any subsequent breaches.

D. Entire Agreement

This Agreement, and the documents referenced herein, constitutes the entire Agreement between the parties, and supersedes all prior and contemporaneous representations, agreements and understandings of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above-written by their respective officers duly authorized in that behalf.

DATED: June 3 1987

CITY OF PASADENA

ATTEST:

Pamela S. Swift
Pamela S. Swift
City Clerk
6/9/87

By *Judith A. Weiss*
Judith A. Weiss
Assistant to the City Manager

CENTER FOR ENVIRONMENTAL
STRUCTURE

By *Christopher Alexander*
Christopher Alexander

Its *President*

DANIEL SOLOMON AND ASSOCIATES

By *Daniel Solomon*
Daniel Solomon

Its Owner

APPROVED AS TO FORM:

Cynthia R. Gist
Cynthia R. Gist
Deputy City Attorney

CRG: jr:tz
LXD:PH&DS-1/3

ATTACHMENT NO. 1

EQUAL OPPORTUNITY EMPLOYMENT

PRACTICES PROVISIONS

- A. Contractor certifies and represents that, during the performance of this contract, the contractor and each subcontractor will adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religious creed, color, national origin, ancestry, handicap, sex, or age.
- B. Contractor agrees that it will, in all solicitations or advertisements for applicants for employment placed by or on behalf of the contractor, state that it is an "Equal Opportunity-Affirmative Action Employer" or that all qualified applicants will receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, handicap, sex or age.
- C. Contractor agrees that it will, if requested to do so by the city, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their membership in a protected class.
- D. Contractor agrees to provide the city with access to and, if requested to do so by city, through its awarding authority or affirmative action officer, provide copies of all of its records pertaining or relating to its employment practices, to the extent such records are not confidential or privileged under state or federal law.
- E. Contractor agrees to recruit vigorously and encourage businesses owned by persons who are members of a protected class to bid on its subcontracts.
- F. Nothing contained in this contract shall be construed in any manner as to require or permit any act which is prohibited by law.