AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
HOUSING ELEMENT UPDATE
WORK PROJECT # WC14B

THIS AGREEMENT is made and entered into as of the date of execution by the City of Encinitas, a municipal corporation, hereinafter referred to as "CITY", and Code Studio, inc. hereinafter referred to as "CONSULTANT."

RECITALS

The CITY requires outside assistance to provide the following services:

Prepare new design guidelines, zoning text and standards to define the context for infill development in support and implementation of the Housing Element Update process. In response to public concerns about development compatibility and community character, different design guideline solutions are needed to address compatibility in different contexts. New zoning text will implement standalone residential and mixed use zones that permit a maximum density of 30 units per acre.

CONSULTANT represents itself as possessing the necessary skills and qualifications to provide the services required by the CITY; and as being fully qualified to perform those services in accordance with the standard of quality ordinarily expected of competent professionals of CONSULTANT's field of expertise; and

Manjeet Ranu shall serve as the CITY's "CONTRACTOR OFFICER" for this CONTRACT.

NOW THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the CITY and CONSULTANT agree as follows:

1.0 TERM OF AGREEMENT

1.1 This AGREEMENT shall be effective on and from the day, month and year of the execution of this document by the CITY.

1.2 CONSULTANT shall commence the performance of the services in accordance with the Scope of Work section provided in Attachment "A" to this AGREEMENT and at the level of effort identified in Attachment "B" of this AGREEMENT. CONSULTANT shall continue such services until all tasks to be performed are completed, or this AGREEMENT is otherwise terminated. CONSULTANT shall complete the services and provide final data and reports no later than November 1, 2016, unless an extension of time is mutually agreed to by both parties.

2.0 CONSULTANT'S OBLIGATIONS (ATTACHMENT A)

2.1 CONSULTANT shall provide the CITY with the following services:

The specific manner in which the services are to be performed is described in Attachment "A" which is attached hereto, and incorporated herein as though fully set forth at length, collectively hereinafter referred to as "DESCRIBED SERVICES".

2.2 CONSULTANT shall perform all work required to accomplish the DESCRIBED SERVICES in conformity with applicable requirements of law: Federal, State and local.

2.3 CONSULTANT is hired to render the DESCRIBED SERVICES and any payments made to CONSULTANT are compensation fully for such services.

2.4 CONSULTANT shall maintain professional certifications as required in order to properly comply with all City, State, and Federal law.

2.5 Senior personnel identified as having key roles in the performance of this AGREEMENT may not be removed from the project without prior written consent of the CITY.

2.6 All deliverables are to be completed and delivered to the CITY by the termination date, or by the milestone or completion date or dates provided in the performance schedule mutually agreed to by the CONSULTANT and the CITY, unless an extension of time, based on good reasons and sound justification presented by CONSULTANT, is approved by the CITY.

2.7 The CONSULTANT shall perform its service under this AGREEMENT in accordance with the usual and customary professional care and with generally accepted practice in effect at the time the services are rendered. In the course of the performance of services and management of this AGREEMENT, if any work performed by the CONSULTANT does not conform to the usual and customary professional care, CITY may require CONSULTANT to re-perform the work until it conforms to said specifications and requirements, at no additional cost to the CITY.

3.0 PAYMENT FOR SERVICES (ATTACHMENT B)

3.1 Payment to CONSULTANT to render the DESCRIBED SERVICES hereunder shall be as set forth in Attachment "B" which is attached hereto and incorporated herein as though fully set forth at length.

3.2 The level of effort for the DESCRIBED SERVICES is also identified in Attachment "B."

3.3 Most travel-related expenses, such as airfare, lodging, car rental and other ground transportation will be reimbursed on a case-by-case basis for expenses incurred during travel to conduct official City-related business. Meals, excluding alcohol, are reimbursed at a rate of $15 for breakfast, $20 for lunch, $30 for dinner, and $5 for incidental expenses. A line item receipt is the preferred method; however, in event that a line item receipt can't be provided satisfactory documentation or written acknowledgement by a receiver of money for goods or services shall be provided. Any unused balance from a previous meal may be carried over to the next meal, provided that it is within the same business day. The traveler shall be responsible for excess costs and additional travel expenses.

3.4 The CITY reserves the right to trade tasks or shift around tasks to meet unanticipated project needs. The level of effort for the DESCRIBED SERVICES may be reallocated provided that the change in services is authorized in writing by the CITY, and the compensation or method of determining such compensation is stated in such written authority.

4.0 SUBCONTRACTING (ATTACHMENT C)

4.1 If CONSULTANT subcontracts for any of the work to be performed under this AGREEMENT, CONSULTANT shall be as fully responsible to the CITY for the acts and omissions of consultant's subcontractors and for the persons either directly or indirectly employed by the subcontractors, as CONSULTANT is for the acts and omissions of persons directly employed by CONSULTANT. Nothing contained in the AGREEMENT shall create any contractual relationship between any subcontractor of CONSULTANT and the CITY. CONSULTANT shall bind every subcontractor to the terms of the AGREEMENT applicable to consultant's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CITY.

4.2 The name and location of the place of business of each subcontractor who will perform work or labor or render service to the CONSULTANT in performing this AGREEMENT are contained in Attachment "C" which is attached hereto and incorporated herein as though fully set forth at length.

4.3 In addition to the quality and performance of subcontractors, the CONSULTANT shall also be responsible for the timely deliverance of all resulting work products submitted to the CITY or presented at meetings or work sessions. CONSULTANT and CITY review of subcontractor work or services shall be factored into work program scheduling.

5.0 EQUIVALENT ITEMS (ATTACHMENT D)

This section is not applicable.

6.0 EXTRA WORK

6.1 In connection with the work covered by this AGREEMENT the CITY may, at any time during the process of the work, order other work or materials incidental thereto. If any such work and materials is not listed as a pay item with a contract unit price or if compensation is not included under the terms of the AGREEMENT, such work will be designated as Extra Work, and shall be performed by the CONSULTANT as directed. In the event the completion of specific tasks identified in the Scope of Work significantly exceeds the hours originally budgeted for under the Scope of Work, CONSULTANT, subject to prior written approval by the CITY, may bill for such additional time at the rate corresponding to the task(s) in question under the Rate Schedule.

6.2 CONSULTANT shall not perform work in excess of the DESCRIBED SERVICES without the prior, written approval of the CITY. Before any Extra Work is initiated, the CONSULTANT shall identify the kind and estimated quantities of the Extra Work to be done. Approval from funding partners may also be required. The CITY and CONSULTANT shall negotiate a change order price. If a price cannot be negotiated, then the work shall be accomplished in accordance with the unit prices established in the awarded contract. All requests for extra work shall be in a written Change Order submitted to the CITY prior to the commencement of such work.

6.3 The CITY may reject the request for Extra Work based on the role of the request relative to completing the overall work program. The City may also reject the request if work line items can be traded under the existing budget or if the request can be handled in-house with existing staff resources.

6.4 If other conditions necessitate additional services or a change in services, any increase in compensation or contract amendment must be authorized and funded in advance in accordance with the City's Purchase Order Procedure Manual. No compensation for Extra Work or any other change in the contract will be allowed unless the Extra Work or change has been authorized in writing by the CITY, and the compensation or method of determining such compensation is stated in such written authority.

7.0 VERBAL AGREEMENT OR CONVERSATION; AND DELIVERABLE CONSIDERATIONS

7.1 No verbal agreement or conversation with any officer, agent or employee of the CITY, either before, during or after the execution of this AGREEMENT, shall effect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle CONSULTANT to any additional payment whatsoever.

8.0 TERMINATION OF AGREEMENT

8.1 In the event of CONSULTANT'S failure to prosecute, deliver, or perform the DESCRIBED SERVICES, the CITY may terminate this AGREEMENT by notifying CONSULTANT by certified mail of said termination. Thereupon, CONSULTANT shall cease work and within five (5) working days: (1) assemble all documents owned by the CITY and in consultant's possession and deliver said documents to the CITY and (2) place all work in progress in a safe and protected condition. The City Manager of the CITY shall make a determination of the percentage of work which CONSULTANT has performed which is usable and of worth to the CITY. Based upon that finding, the CITY shall determine any final payment due to CONSULTANT.

8.2 This AGREEMENT may be terminated by either party, without cause, upon the giving of thirty (30) days written notice to the other party. Prior to the 30th day following the giving of the notice, the CONSULTANT shall: (1) assemble the completed work product to date, and put same in order for proper filing and closing, and deliver said product to the CITY and (2) place all work in progress in a safe and protected condition. The City Manager of the CITY shall make a determination of the percentage of work which CONSULTANT has performed which is usable and of worth to the CITY. Based upon that finding, the CITY shall determine any final payment due to CONSULTANT.

9.0 COVENANTS AGAINST CONTINGENT FEES

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this AGREEMENT, and that CONSULTANT has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this AGREEMENT. For breach or violation of this warranty, the CITY shall have the right to terminate this AGREEMENT without liability or, at the CITY'S discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

10.0 OWNERSHIP OF DOCUMENTS

10.1 All work products including listed deliverables, plans, studies, sketches, drawings, reports and specifications as herein required and prepared and paid for by CITY under this AGREEMENT are the property of the CITY, whether or not the CITY proceeds with the project for which such documents are prepared.

10.2 If the CITY reuses such documents for any reason other than for the project for which they are prepared, without CONSULTANT'S prior written authorization which shall not be unreasonably withheld, the CITY waives any claim against CONSULTANT for such unauthorized use and will indemnify and hold CONSULTANT harmless from any claim or liability for injury or loss allegedly arising from the CITY'S unauthorized use of such documents.

11.0 STATUS OF CONSULTANT

CONSULTANT shall perform the services provided for herein in a manner of CONSULTANT'S own choice, as an independent contractor and in pursuit of CONSULTANT'S independent calling, and not as an employee of the CITY. CONSULTANT shall be under control of the CITY only as to the result to be accomplished and the personnel assigned to the project. However, CONSULTANT shall confer with the CITY.

12.0 HOLD HARMLESS

12.1 CONSULTANT agrees to indemnify and hold the CITY and CITY'S officers, officials, employees and agents harmless from, and against any and all liabilities, claims, demands, causes of action, losses, damages and costs, including all costs of defense thereof, arising out of, or in any manner connected directly or indirectly with, any negligent acts or omissions of CONSULTANT or CONSULTANT'S agents, employees, subcontractors, officials, officers or representatives. Except as otherwise provided in this Section, upon demand, CONSULTANT shall, at its own expense, defend CITY and CITY'S officers, officials, employees and agents, from and against any and all such liabilities, claims, demands, causes of action, losses, damages and costs.

12.2 CONSULTANT'S obligation herein does not extend to liabilities, claims, demands, and causes of action, losses, damages or costs that arise out of the CITY'S intentional wrongful acts, CITY'S violations of law, or the CITY'S sole active negligence.

13.0 ASSIGNMENT OF CONTRACT

CONSULTANT is without right to and shall not assign this AGREEMENT or any part thereof or any monies due hereunder without the prior written consent of the CITY which shall not be unreasonably withheld.

14.0 INSURANCE

14.1 PROVIDER shall obtain, and during the term of this CONTRACT shall maintain, policies of automobile liability, general liability and property damage insurance from an insurance company authorized to be in business in the State of California. Each such policy shall be in an amount of not less than one million dollars ($1,000,000) for each occurrence, and shall be endorsed with the following language:

A. The CITY and CITY's officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of the acts and omissions by or on behalf of PROVIDER.

B. The policy shall be considered primary insurance as respects the CITY and CITY's officers, officials, employees, agents, and volunteers. Any insurance maintained by the CITY, including any self-insured retention the CITY may have, shall be considered excess insurance only and shall not contribute with it.

C. The insurer shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

D. The insured waives all rights of subrogation against the CITY and CITY's officers, officials, employees, agents and volunteers.

E. Provide that the policy shall remain in full force during the full term of this CONTRACT and shall not be canceled, voided, terminated, reduced, or allowed to expire without thirty (30) days prior written notice from the issuance company.

14.2 PROVIDER shall obtain, and during the term of this CONTACT shall maintain, a policy of professional liability insurance that shall:

A. Be from an insurance company authorized to be in business in the State of California;

B. Be in an insurable amount of not less than $1,000,000 for each occurrence; and

C. Provide that the policy shall remain in full force during the full term of this CONTRACT and shall not be canceled, terminated, or allowed to expire without thirty (30) days prior written notice to the CITY from the insurance company.

14.3 Before PROVIDER shall employ any person or persons in the performance of the CONTRACT, PROVIDER shall procure a policy of Worker's Compensation Insurance as required by the Labor Code of the State of California.

14.4 Prior to commencement of work under this CONTRACT, PROVIDER shall furnish to the CONTRACT OFFICER proof of the insurance required in this Section.

14.5 Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the CITY's option, PROVIDER shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

14.6 PROVIDER shall provide certificates of insurance with original endorsements to CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the CITY on or before commencement of performance of this CONTRACT. Current certification of insurance shall be kept on file with the CITY at all times during the term of this CONTRACT.

15.0 DISPUTES

15.1 If a dispute should arise regarding the performance of this AGREEMENT, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute between persons operating under the provisions of the AGREEMENT, shall be reduced to writing by the complaining party. A copy of such documented dispute shall be forwarded to the other party involved along with recommended methods of resolution. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.

15.2 If the dispute is not resolved, the aggrieved party shall send to the CITY'S Manager a letter outlining the dispute for Manager's resolution.

15.3 If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may then seek remedies available to them at law.

16.0 NOTICES

16.1 Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail.

16.2 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CITY and the proper person to receive any notice on the CITY'S behalf is:

Manjeet Ranu, AICP
Deputy Director of Planning and Building
City of Encinitas
505 S. Vulcan Avenue
Encinitas, CA 92024
(760) 633-2712

16.3 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of CONSULTANT and the proper person to receive any notice on the CONSULTANT'S behalf is:

Lee D. Einsweiler
Principal
1200 East 11th Street #107
Austin, Texas 78702
(512) 478-2200

17.0 ATTORNEYS' FEES

In the event that one party incurs expenses, including attorneys' fees and costs, in enforcing the provisions of this AGREEMENT, such prevailing party shall be entitled to recover from the other party reimbursement for those costs including reasonable attorneys' fees.

18.0 CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

CONSULTANT certifies that CONSULTANT is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this AGREEMENT.

19.0 CONSULTANT'S AWARENESS AND COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990

CONSULTANT certifies that CONSULTANT is aware of the requirements of the Americans with Disabilities Act of 1990 (42 USC §§ 12101) and has complied with and will comply with these requirements, included but not limited to verifying compliance of their contractors, consultants, agents, and employees.

CONSULTANT	CITY
Code Studio, inc.	City of Encinitas
by _____ 1/14/14	by _____ 2/6/15
Lee D. Einsweiler President Date	~~Gus Vina~~ L.A. Watt City Manager Date

ATTACHMENT "A"
HOUSING ELEMENT UPDATE
WORK PROJECT # WC14B
(Manner of Performing the Services)

CONSULTANT shall perform the services in the following manner. All deliverables/documents may be submitted in electronic format unless specified below.

[Scope of Work attached]

Assumptions

We have made the following assumptions in preparing this scope of work. These assumptions are based on Winter's previous work for the City, along with the materials available for review on the web.

- Code Studio will be responsible for preparation of the new zone text and illustrations, based on prior work by Winter and discussions with City staff.
- Winter & Company will be responsible for the preparation of new design guidelines, also based on their prior work.
- There will be two new basic zones -- one for more dense residential development (presumed to be something like a new R-30 zone), plus one for mixed use development with more dense housing option included.
- The new zones will allow development that may exceed the City's current height limit of 2 stories. This will require adoption of the new zones by referendum.
- Concise design guidelines will be developed based on the results of the community feedback process. They will expand on the design principles set forth in the previous work effort. The guidelines will illustrate principles for compatible new construction.
- The new zones will be relatively simple, focusing on the form and building and parking placement, while the design guidelines will provide the nuances that help ensure projects are acceptable to the community, in spite of their additional height and intensity.
- The prior work effort by Winter resulted in descriptions and analysis of special community characteristics that exist in the five communities. This work may provide a basis for varying the zone standards and design guidelines across the City.
- The new zones and guidelines are intended to be highly illustrated, user-friendly, clear and understandable.
- The new material (zones and guidelines) will be developed as a standalone document using InDesign software for ease of illustration and document management.
- The zones and guidelines must be developed in a very short period of time, relying on the prior work by Winter and the City as a basis for the new zones and guidelines. Therefore, the City will be responsible for any outreach to the community, as well as for taking the new zones and guidelines through the formal adoption process.

Scope of Work

TASK 1. PROJECT UNDERSTANDING

1.1: Document Review

» Review existing relevant documents to provide a basis for understanding of the project requirements.

1.2: Web Conference with Staff

» Discuss project schedule and unresolved questions about the new zones and design guidelines.

» Anticipated issues include content questions about zones, allowed uses and development standards, and format issues about new material.

TASK 2. ZONES/GUIDELINES APPROACH

2.1. Preliminary Zone Metrics

» Prepare preliminary approach (initial organization and standards) for new zones. Extract initial metrics from prior Encinitas modeling by Winter.

2.2. Preliminary Guidelines

» Prepare preliminary table of contents and organization for new guidelines based on prior work by Winter.

2.3: Web Conference with Staff

» Discuss and confirm approach with staff prior to drafting more complete zones and guidelines.

TASK 3. ZONES/GUIDELINES DRAFTING

3.1: Zones Drafting

» Draft new zones, to include allowed uses, dimensional and form standards, parking standards and any design standards required for appropriate transitions to existing adjacent development.

3.2: Guidelines Preparation

» Draft concise set of companion design guidelines to extend new zone concepts, with a focus on compatibility with existing adjacent development and quality urban design, not to exceed 30 pages. Guidelines to address neighborhood transitions, street edge, architectural character and site design.

3.3: Staff Working Session

» Half-day staff work session covering both zones and guidelines, coordinated with a scheduled trip to Los Angeles, in order to reduce cost.

3.4: Final Zones/Guidelines

» Revised zones and design guidelines, modified to incorporate changes agreed upon during staff working session.

Optional Components

The following components are not anticipated as part of the base project due to the anticipated budget and timeline. These elements would enhance the project, and the consultant team welcomes the opportunity to complete this work following completion of the final zones and guidelines.

Design Review Process

» New design review procedure with a focus on appropriately handling the discussion of these more intense new projects with the community.

Specific Plan Amendments

» New zones may be appropriate for use in an existing Specific Plan area, and revisions to the Specific Plan may be required to implement the new zones.

Training

» Training for review staff and any boards or commissions anticipated to be involved in application of the new zones and guidelines.

ATTACHMENT "B"
HOUSING ELEMENT UPDATE
WORK PROJECT # WC14B
(Payment For Services)

The CITY shall pay CONSULTANT for the DESCRIBED SERVICES as follows:

The CITY hereby agrees to pay the CONSULTANT, as full compensation for the CONSULTANT'S services upon this project, a basic fee not to exceed $49,990. Additional fees for Extra Work, if any, are to be computed and paid as provided in Section 6.0 of this AGREEMENT.

[Estimated Project Fee and Budget Schedule attached]

Reimbursable expenses for tasks will be paid on a monthly basis as the expenses are incurred by the CONSULTANT. Payment shall be made by the CITY to the CONSULTANT upon the receipt of an invoice itemizing the number of hours worked by task and work elements performed for the period covered by the invoice and/or incurred expenses. Direct costs associated with this project are included in the basis of compensation.

The total amount for each task as specified in the Estimated Project Fee and Budget Schedule (attached) shall not be exceeded except as provided in Section 6.0 of this AGREEMENT. Monthly progress payments will be made as follows: After commencement of work under this AGREEMENT and at expiration of each month of work thereafter, CONSULTANT will verify all work performed on a form acceptable to the City Manager. CITY and CONSULTANT will work together to ensure monthly invoicing is accompanied by satisfactory documentation of expenses.

The CITY will retain ten percent (10%) from the amounts invoiced until satisfactory completion of work and the final invoice has been processed. A partial payment computed by multiplying the basic fee by this percentage shall then become due and payable, provided however, that no more than ninety percent (90%) of the total fee will be paid during the performance of this AGREEMENT. The balance of said fee shall become due and payable upon completion of all duties under this agreement, final approval of the project by the City Manager, and delivery to the City Manager of all material and documents defined as property of the CITY by Section 10.0 of this AGREEMENT. All services shall be performed to the satisfaction of the City Manager and CITY shall not be liable for any payment under this AGREEMENT for services which are unsatisfactory and which have not been approved by the City Manager.

Budget Estimate

		Code Studio		Winter & Company			TOTAL
		Hours	Cost	Hours	Cost	Expenses	
Task 1. Project Understanding							
1.1	Document Review	8	$1,440	4	$570	--	$2,010
1.2	Web Conference with Staff	4	$720	4	$570	--	$1,290
		12	$2,160	8	$1,140	--	$3,300
Task 2. Zones/Guidelines Approach							
2.1.	Preliminary Zone Metrics	12	$2,160	10	$1,230	--	$3,390
2.2	Preliminary Guidelines	--	--	10	$1,230	--	$1,230
2.3.	Web Conference with Staff	4	$720	4	$570	--	$1,290
		16	$2,880	24	$3,030		$5,910
Task 3. Zones/Guidelines Drafting							
3.1.	Zones Drafting	132	$14,880	--	--	--	$14,880
3.2	Guidelines Preparation	--	--	128	$12,040	--	$12,040
3.3.	Staff Working Session	16	$2,880	16	$2,280	$320	$5,280
3.4.	Final Zones/Guidelines	40	$4,780	40	$3,600	--	$8,580
		188	$22,540	184	$17,920	$320	$40,780
		216	$27,580	216	$22,090	$320	**$49,990**

Billing rates for the team are as follows:

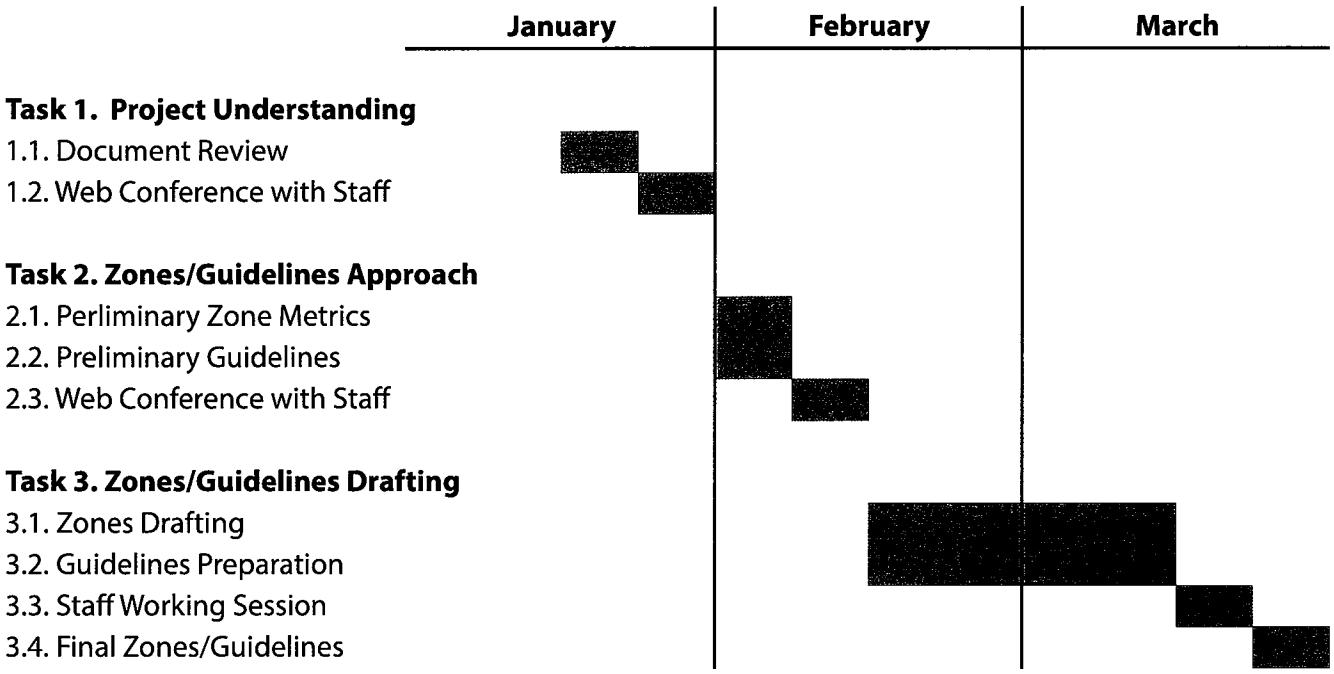
Code Studio	Hourly Rate
Principal	$195
Project Manager	$165
Associate	$110
Graphics	$75

Winter & Company	
Principal	$175
Senior Urban Designer	$110
Graphics	$70

Optional Components

	Code Studio		Winter & Company			TOTAL
	Hours	Cost	Hours	Cost	Expenses	
Task A. Design Review Process	24	$4,440	24	$3,160	--	$7,600
Task B. Specific Plan Amendments	24	$4,200	40	$6,320	--	$10,520
Task C. Training	20	$3,900	48	$6,580	$3,500	$13,980
	68	$12,540	120	$16,060	$3,500	**$32,100**

Estimated Schedule



ATTACHMENT "C"
HOUSING ELEMENT UPDATE
WORK PROJECT # WC14B
(Subconsultants)

Winter & Company
1265 Yellow Pine Avenue
Boulder, CO 80304
(303) 440-8445