



Board of County Commissioners - Staff Report

Meeting Date: May 15, 2018

Presenter: Alex Norton

Submitting Dept: Planning

Subject: Contract Amendment to Revise Nexus Study

Statement / Purpose:

Consideration of an amendment to the contract with Clarion Associates to revise the 2013 Employee Generation (Nexus) Study to reflect the policy direction provided by the Board and Council in November.

Background / Description (Pros & Cons):

On May 1, 2017 the Board and Town Council approved a contract for an amount not to exceed \$74,763 with Clarion Associates (Craig Richardson) to provide technical assistance in updating the housing mitigation requirements in the Land Development Regulations (LDRs). At that meeting and subsequent meetings Staff informed the Board and Council that revisions to the 2013 Nexus Study costing \$15,000 - \$40,000 may be needed based on the policy direction provided by the Board and Council. The purpose of the Nexus Study is to provide the justification as to how the housing mitigation requirements in the LDRs are proportional to the housing impact generated by development.

On November 13, 2017 the Board and Council provided policy direction on updating the housing mitigation requirements in the LDRs. On March 16, 2018 draft housing mitigation requirements LDRs based on that direction were released for public review. In order to sync the Nexus Study with the draft regulations some revisions are needed to the calculations in the Nexus Study so that there is a clear explanation of how the housing mitigation requirements were derived.

Clarion Associates is not only currently under contract to provide assistance in updating the housing mitigation requirements LDRs, but also completed the 2013 Nexus Study, making Clarion the appropriate consultant to complete the required work.

Stakeholder Analysis & Involvement:

The updates to the housing mitigation requirements has been part of the Engage 2017: Housing, Parking, & Natural Resources outreach initiative. To date participation has included 6 public comment events, 2 surveys, and about 800 total participants. Staff has also presented to numerous groups and meetings about the updates.

The updates to the housing mitigation requirements will directly affect developers. Their purpose is to affect the housing goals of the community by ensuring that new development provides supply of affordable housing proportionate to the demand for affordable housing it generates as identified in Policy 5.3.a of the Comprehensive Plan. Providing affordable housing opportunities means more housing opportunities for the local workforce, which benefits business owners, volunteer organizations, and the ecosystem.

Fiscal Impact:

The contract amendment is for \$ 23,200. The contract will be paid by Teton County, but the Town of Jackson will offset 50% of the cost (\$ 11,600) consistent with the current contract. The work will be completed this fiscal year. While this work was not budgeted because the need and amount was unknown a year ago, there have been under-expenditures on other LDR updates, so no budget amendment will be required.



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Staff Impact:

The Nexus Study Update will have little additional staff impact as most of the staff work was completed as part of the update to the housing mitigation requirements LDRs. Upon completion, staff estimates that the update to the housing mitigation requirements will represent about 1,000 hours of staff resources.

Legal Review:

Gingery

Staff Input / Recommendation:

The Planning Director recommends approval of the contract amendment.

Attachments:

1. Amendment #1 to Agreement of Housing Requirements Amendment Services
2. Agreement for Housing Requirements Amendment Services (signed May 4, 2018)

Suggested Motion:

I move to execute Amendment #1 to Agreement of Housing Requirements Amendment Services between Teton County and Clarion Associates for revision of the 2013 Employee Generation (Nexus) Study in the amount of \$ 23,200.

Amendment #1 to Agreement for Housing Requirements Amendment Services

This Amendment #1 to the Agreement for Housing Requirements Amendment Services is entered into this ____ day of _____, 2018, by and between Teton County, a duly organized county of the State of Wyoming, P.O. Box 1727, Jackson, Wyoming 83001 and the City of Jackson, a Wyoming municipal corporation, P.O. Box 1687, Jackson, Wyoming 83001 (hereinafter referred to as **County/City**) and Clarion Associates, LLC, a Colorado Limited Liability Company, with its registered agent's office at 101 Market Street, Suite D, Chapel Hill, North Carolina 27516 and its principal office at 621 17th Street, Suite 2250, Denver, Colorado 80293 (hereinafter referred to as **Contractor**).

Witnesseth

WHEREAS, the County/City entered into a contract on May 4, 2017 with the Contractor to assist with the amendment of the housing requirements in the Land Development Regulations in accord with Wyoming law; and

WHEREAS, for a not to exceed amount of \$74,763.00 the Contractor agreed to a four (4) phase work plan which included 1) Project Initiation, 2) Establish Policy Direction for Workforce/Affordable Housing, 3) Develop Alternative Housing Regulatory Approaches, and 4) Draft Revised LDR Housing Requirements/ Revise or Update Nexus Study, if appropriate; and

WHEREAS, There are numbers in the proposed regulations that do not match the numbers in the 2013 Nexus Study either because: 1) More recent federal data was used, 2) Additional relationships were calculated to implement the regulations (primary example: employees per bedroom to implement the bedroom allocation requirement), 3) Shift in fee-in-lieu methodology: the 2013 Nexus Study did not include the purchasing power of an employee in the calculation of housing need, the 2013 Nexus Study only included the purchasing power (how many employees can afford market housing) in the fee-in-lieu calculation, and

WHEREAS, the 2013 Nexus Study needs to be updated. In the 2017 Contract within the Phase 4 Workplan description, the agreement states that any revisions to the nexus study would be an add-on to this contract.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions set forth herein.

1. The County/City agree to go beyond the not to exceed amount of \$74,763.00 and pay the Contractor an additional not to exceed amount of \$23,200.00 based on hours of work and invoices submitted to update the 2013 Nexus Study
2. It is understood by the parties that that the revisions/updates to the 2013 Nexus Study will be targeted, discrete revisions, not a complete update of the study.
3. The original term of the 2017 Contract was for the Contractor to complete all tasks prior to August 31, 2018. It is agreed that the Contractor needs no further time extension to complete the update/revision to the 2013 Nexus Study.

APPROVAL AND EXECUTION

IN WITNESS WHEREOF the Parties have executed this Agreement on this ____ day of _____, 2018.

TETON COUNTY, STATE OF WYOMING

Mark Newcomb, Chair, Board of Teton County Commissioners

Attest:

Sherry L. Daigle, Teton County Clerk

CITY OF JACKSON

Pete Muldoon, Mayor

Attest:

Sandy Birdyshaw, City Clerk

CLARION ASSOCIATES, LLC

Craig Richardson, Managing Member and Registered Agent

CONTRACT

AGREEMENT FOR HOUSING REQUIREMENTS AMENDMENT SERVICES

This Agreement for Services ("Agreement") is entered into this 4 day of May, 2017, (hereinafter referred to as the "Effective Date" of the Agreement) by and among Teton County, a duly organized county of the State of Wyoming, P.O. Box 1727, Jackson, Wyoming 83001 and the City of Jackson, a Wyoming municipal corporation, P.O. Box 1687, Jackson, Wyoming 83001 (hereinafter collectively referred to as "**County/City**") and Clarion Associates LLC, a Colorado Limited Liability Company, with its registered agent's office at 101 Market Street, Suite D, Chapel Hill, North Carolina 27516, and its principal office at 621 17th Street, Suite 2250, Denver, Colorado 80293 (hereinafter referred to as "**Contractor**").

Witnesseth

WHEREAS, the County/City desires to hire a consultant to assist with the amendment of the housing requirements in the Land Development Regulations in accord with Wyoming law; and

WHEREAS, Contractor has skill and experience in writing and advising on housing requirements, including legal analysis and review; and

WHEREAS, the County/City desires to hire Contractor and Contractor desires to provide housing requirement amendment services including legal analysis and review for the County/City Land Development Regulations.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions set forth herein.

Article 1. Statement of Work

Contractor shall provide housing requirement services including legal analysis and review to the County/City as more fully described in Exhibit A – Work Plan ("Scope of Work") which is hereby incorporated herein by reference as if fully set forth herein.

Article 2. Timetable

Contractor shall complete the Scope of Work in Article 1 within fourteen (14) months of the date of a written notice to proceed from the County/City, and in accordance with Exhibit A – Work Plan. The time of performance may be extended by mutual agreement of the parties.

Article 3. Compensation and Payment

The County/City agrees to pay Contractor, as full compensation for all services provided hereunder, not to exceed, seventy-four thousand, seven hundred, sixty-three dollars and no cents (**\$74,763.00**), in accordance with Exhibit B – Compensation Schedule. Contractor shall present an appropriate voucher to the Clerk of Teton County by the 15th day of every month with a detailed breakdown of work performed by hourly unit. The Contractor shall be paid per hour, by phase. The County/City will provide Planning Staff from the County and City respectively to assist with certain phases as outlined in Exhibit A – Work Plan. It is understood and agreed that the total compensation and reimbursement to be paid for the professional services rendered under this Agreement shall not exceed the sum of \$74,763.00. Contractor may invoice County/City on a monthly basis for the percent of work completed on each task, and County/City will pay Contractor within 30 days of receipt of the invoice, as long as the work is completed to County/City's reasonable satisfaction. By mutual agreement, the County/City and Contractor may reallocate the budget among project tasks if the total budget amount remains unchanged. The County/City may examine all records of Contractor during reasonable hours for a period up to and including one (1) year after termination of this contract in order to audit and verify the aforesaid charges.

Article 4. Term and Termination Without Cause

The terms of this Agreement shall commence on the Effective Date of this Agreement and shall expire on August 31, 2018. Contractor or County/City may terminate this agreement at any time with or without cause by giving thirty (30) days written notice to the other of its intent to terminate this Agreement; provided, however, that all compensation earned or costs incurred prior to such termination shall be payable to Contractor. The provisions of Article 8 shall survive termination or expiration hereof.

Article 5. Place of Performance

Contractor shall be responsible for maintaining its own office facilities and will not be provided with either office facilities or secretarial support by the County/City. The Contractor shall supply at its own expense, all materials, supplies, equipment, and tools required to accomplish the work that is agreed to be performed in accordance with this Agreement.

Article 6. Independent Contractor Status

It is understood and agreed the Contractor will provide the services under this Agreement on a professional basis and as an independent contractor and that during the performance of the services under this Agreement, Contractor's employees will not be considered employees of the County/City within the meaning or the applications of any federal, state, or local laws or regulations including, but not limited to, laws or regulations covering unemployment insurance, old age benefits, worker's compensation, industrial accident, labor, or taxes of any kind. Contractor's employees

shall not be entitled to benefits that may be afforded from time to time to County/City employees, including without limitation, vacation, holidays, sick leave, worker's compensation and unemployment insurance. Further, the County/City shall not be responsible for any such withholding or paying of taxes or social security.

Article 7. Trademark and Trade Name

This Agreement does not give either Party any ownership rights or interest in the other Party's trade name or trademarks.

Article 8. General Provisions

A. Entire Agreement

This Agreement represents the entire and sole agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior negotiations, understanding, representation, or consulting agreements whether written or oral. This Agreement cannot be modified, changed, or amended, except in writing signed by the Parties.

B. Waiver

The failure of either Party to require performance by the other of any provision hereof shall in no way affect the right to require performance at any time thereafter, nor shall the waiver of a breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy available at law or in equity.

C. Relationship

Nothing herein contained shall be construed to imply a joint venture, partnership, or principal-agent relationship between Contractor and the County/City; and neither Party shall have the right, power, or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed in writing.

D. Assignment and Delegation

Neither Party shall assign or delegate this Agreement or any rights, duties, or obligations hereunder without the express written consent of the other. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, legal representatives, and assignees of the Parties hereto.

E. Severability

If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as provided above, as the case may be.

F. Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wyoming, without giving effect to the principles of conflict of laws thereof. The Parties hereto irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the jurisdiction of, the courts of the County of Teton, State of Wyoming, or the United States of America for the District of Wyoming. This Agreement was negotiated by both Parties hereto. As such, this Agreement shall not be construed against or in favor of any Party by virtue of which party drafted the Agreement or any portion thereof.

G. Paragraph Headings

The paragraph headings set forth in this Agreement are for the convenience of the Parties, and in no way define, limit, or describe the scope or intent of the Agreement and are to be given no legal effect.

H. Indemnity

Contractor agrees to protect, defend, indemnify and hold the County/City and its officers, employees, and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, and claims arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action in connection with or arising directly or indirectly out of its performance on the Scope of Work hereof caused by the negligence or willful misconduct of the Contractor.

I. Declaration by Independent Contractor

The Contractor declares and states that it has complied with all federal, state, and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this agreement.

J. Third Party Beneficiary

The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such.

K. Governmental Immunity

County/City do not waive its governmental immunity by entering into this Agreement, and fully retain all immunities and defenses provided by law with respect to any action based on or arising out of this Agreement.

L. Ethics and Standards

Consultant shall conform to all federal, state, local and applicable laws and regulations, and to the highest business ethics in performing its obligations in accordance with the terms of this Agreement.

M. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Article 9. Notice

For purposes of this Agreement, any notice shall be deemed properly sent and received when sent by certified mail with return receipt requested to the parties at the following addresses until or unless changed by one Party giving written notice of such change of address to the other Party:

Teton County
ATTN: Alex Norton
P.O. Box 1727
Jackson, WY 83001

Clarion Associates LLC
ATTN: Craig Richardson, Registered Agent
101 Market Street, Suite D
Chapel Hill, NC 27516

APPROVAL AND EXECUTION

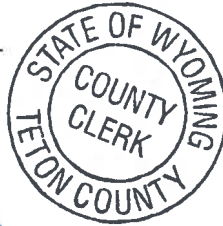
IN WITNESS WHEREOF the parties have executed this agreement on this 4 day of May, 2017.

**BOARD OF COUNTY COMMISSIONERS:
TETON COUNTY, STATE OF WYOMING**



Mark Newcomb, Chair

Attest:





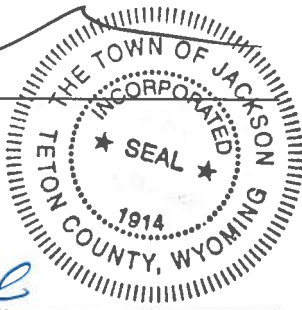
Sherry L. Daigle, Teton County Clerk

CITY OF JACKSON:



Mayor Pete Muldoon

Attest:





Sandy Birdyshaw, City Clerk 5-1-2017

CLARION ASSOCIATES LLC:



Craig Richardson, Managing Member and Registered Agent

EXHIBIT A: WORK PLAN

The work plan consists of four phases. They are outlined in detail below.

Phase 1: Project Initiation

In Phase 1, Contactor, with assistance from the Teton County/Town project manager, will obtain all relevant data, studies, plans, regulations, and reports necessary to review current workforce/affordable and general housing conditions, and how the County/Town is regulating the impact of development on housing. This data may include but is not limited to local housing data, employment data, real estate data, codes, ordinances, regulations, plans, and studies.

Contractor will then review this material to independently evaluate current conditions, and the regulatory environment in which the provision of workforce/affordable housing occurs today. From this evaluation, key problems will be identified, along with implicit assumptions about the provision of workforce/affordable housing, and a list of key workforce/affordable housing policy questions that must be answered by the Board of County Commissioners and Town Council in order to inform the housing revision of the housing requirements in the LDRs.

Phase 1: Project Initiation – Responsibilities and Deliverables

CONTRACTOR

- Review all relevant data, studies, plans, regulations, reports, and related documents
- Evaluate current conditions, and the regulatory environment in which the provision of workforce/affordable housing occurs
- Identify key problems, implicit assumptions about provision of workforce housing, and list key workforce/affordable housing policy questions

COUNTY/TOWN STAFF

- Send copies of all relevant data, studies, plans, regulations, reports, and related documents to Contractor
- Review and comment on key problems, implicit assumptions about provision of workforce housing, and list key workforce/affordable housing policy questions prepared by Contractor

TRIPS: None

COMPLETED: mid-May, 2017

Phase 2: Establish Policy Direction for Workforce/Affordable Housing

Initially in Phase 2, Contractor will assist County/Town staff and the Public Engagement Consultant in developing presentation materials for public workshops and online engagement exercises to educate the public about the current housing conditions, and the key elements of the current housing requirements in the LDRs. These materials will be used for the community meetings conducted by Teton County/Town staff and the Public Engagement Consultant.

Next, and building on the team's independent evaluation conducted in Phase 1, and County/Town staffs' synthesis of "a community generated list of issues with the current housing requirements in the LDRs," from the community meetings, Contractor will prepare *Policy Directions: Workforce/Affordable Housing*. It will summarize:

- Current housing conditions, and the regulatory environment in which the provision of workforce/affordable housing occurs today in the County/Town;
- The implicit assumptions made in the current housing requirements about the provision of workforce/affordable housing;
- Key problems with the current housing requirements identified by the community and Contractor; and
- Policy direction (answers to question) that must be provided by the Board of County Commissioners and Town Council upon which the revision to the housing requirements in the LDRs will be based.

It is expected that the *Policy Directions* document will be 15-20 pages in length, and where relevant, not only identify problems and concerns with the current housing requirements, but gaps in the current initiatives that might be filled to further strengthen the ability of the community to provide workforce/affordable housing.

After release of *Policy Directions: Workforce/Affordable Housing*, Contractor will conduct a series of public forums and meetings with the public, stakeholders, Board of County Commissioners and Town Council (as directed by Teton County/Town project manager) over a two day trip to Jackson, to gain input and policy direction on the key policy questions that need to be answered to revise the housing requirements in the County/Town LDRs. Contractor will prepare presentation materials for those meetings.

Phase 2: Establish Policy Direction for Workforce/Affordable Housing– Responsibilities and Deliverables

CONTRACTOR

- Assist County/Town staff and Public Engagement Consultant develop presentation materials for public workshops
- Prepare *Policy Directions: Workforce/Affordable Housing*
- Conduct series of meetings on *Policy Directions* document
- Receive direction

COUNTY/TOWN STAFF

- Work with Contractor in developing presentation materials for public workshops; conduct community meetings with Public Engagement Consultant
- Review and provide consolidated written comments on draft *Policy Directions: Workforce/Affordable Housing*
- Distribute *Policy Directions* document
- Organize meetings

**TRIPS: One two-day trip
COMPLETED: end of June, 2017**

Phase 3: Develop Alternative Housing Regulatory Approaches

Based upon the policy direction provided by the Teton County Board of County Commissioners and the Jackson Town Council to *Policy Directions: Workforce/Affordable Housing*, Contractor will prepare *Workforce/Affordable Housing Regulatory Approaches*. It will outline alternative approaches to the current housing requirements in the LDRs (where appropriate), based upon the team's knowledge of:

- The existing regulatory framework;
- The legal environment;
- The County/Town's institutional capacity to administer different approaches;
- The policy direction in the Comprehensive Plan and the Housing Action Plan;
- The implications of the alternative regulations to key stakeholders, including developers, new business owners, individual property owners, the business community, conservation advocates, and citizens needing workforce/affordable housing options;
- The success of the alternative in other communities;
- Whether the alternative will require an update to the *2013 Employee Generation by Land Use Study* ;
- The political climate;
- Best practices related to housing mitigation nationally; and
- The policy direction provided by the County/Town in Phase 2.

After release of *Workforce/Affordable Housing Regulatory Approaches*, Contractor will conduct a series of public forums and meetings with the public, stakeholders, Board of County Commissioners and Town Council (as directed by the Teton County/Town project manager) to gain input and direction on the appropriate alternative approach for the revised housing requirements in the County/Town LDRs. The public forums and meetings will be conducted over three days during one trip to Jackson. Contractor will prepare presentation materials for those meetings. The goal of those meetings will be to present and discuss the alternative approaches and recommendations, and ultimately receive direction on the most appropriate approach for workforce/affordable housing mitigation for the County/Town.

Phase 3: Develop Alternative Housing Regulatory Approaches – Responsibilities and Deliverables

CONTRACTOR

- Prepare *Workforce/Affordable Housing Regulatory Approaches*
- Conduct two series of meetings on *Regulatory Approaches* document, as outlined in Phase 3

COUNTY/TOWN STAFF

- Review and provide written consolidated comments on *Regulatory Approaches* document
- Distribute *Regulatory Approaches* document to public

- Organize meetings

TRIPS: One, three day trip

COMPLETED: mid-December, 2017

Phase 4: Draft Revised LDR Housing Requirements/Revise or Update Nexus Study, If Appropriate

Based on the direction provided in Phase 3 about the most appropriate approach for the County/Town's workforce/affordable housing mitigation requirements in the LDRs, Contractor will prepare a draft of the revisions to the current housing requirements in the Teton County/Town LDRs.

Depending upon the approach directed, this may require a two-step process in Phase 4, as revisions/updates to the *2013 Employee Generation by Land Use Study* (nexus study) may be necessary, before preparing draft revisions to the LDRs. With that said, Contractor suggests that in evaluating whether revisions/updates are needed to the nexus study, a common sense approach be taken. We would suggest revisions/updates should only be undertaken only if they are truly necessary – especially given that the fundamental purpose of the nexus study is to demonstrate “essential nexus” and “rough proportionality” requirements are met in accordance with the law. With that said, and with the caveat that we cannot make a final recommendation of whether the nexus study will need revisions/updates until the conclusion of Phase 3, Contractor suggests that if revisions/updates are necessary, they would be targeted, discrete revisions, not a complete update of the study – meaning the revisions/updates should be completed in three months or less. Any revisions to the nexus study would be an add-on to this contract.

Draft revisions to the housing requirements in the Teton County/Town LDRs will be prepared either (1) after the revisions/updates to the nexus study, if revisions/updates are required, or (2) after receiving direction on *Workforce/Affordable Housing Regulatory Approaches* (if revisions/updates to the nexus study are not required). Once the draft revisions to the Teton County/Town LDR housing requirements are completed, they will be forwarded to the Teton County/Town project manager for staff review and comment. Subsequently, Contractor will conduct a conference call with staff to receive comments and reach consensus about revisions to the draft LDRs and then make the mutually agreed upon changes. The revised draft changes to the LDR housing requirements will then be provided to the Teton County/Town project manager, for public review.

After release of the public review draft of the revised LDR housing requirements, Contractor will conduct one series of public forums and meetings with the public, stakeholders, Board of County Commissioners and Town Council (as directed by the

Phase 4: Draft Revised LDR Housing Requirements/Revise or Update Nexus Study, If Appropriate – Responsibilities and Deliverables

CONTRACTOR

- Prepare draft revised LDR housing requirements
- Revise draft revised LDR housing requirements, based on mutually agreed changes with staff
- Revise/update nexus study, if appropriate
- Conduct meetings on draft revised LDR housing requirements
- Conduct meetings on draft revised/updated nexus study, if appropriate

COUNTY/TOWN STAFF

- Review and provide written consolidated comments on draft revised LDR housing requirements
- Distribute draft revised LDR housing requirements
- Organize meetings

TRIPS: one, two day trip

COMPLETED:

Three months after completion of Phase 3, if no nexus study revisions

Six months after completion of Phase 3, if nexus study revisions

Teton County/Town project manager) to gain input and direction on the revised draft LDR housing requirements. The public forums and meetings will be conducted over two days. Contractor will prepare presentation materials for those meetings. It is assumed Teton County/Town staff and the Public Engagement Consultant will conduct follow-up meetings on the drafts.

EXHIBIT B: COMPENSATION SCHEDULE

Project Phase		Cost
Phase 1:	Project Initiation	\$9,410.00
Phase 2:	Establish Policy Direction for Workforce/Affordable Housing	\$17,488.00
Phase 3:	Develop Alternative Housing Regulatory Approaches	\$26,657.00
Phase 4:	Draft Revised LDR Housing Requirements/Revise or Update Nexus Study, If Appropriate	\$21,208.00
TOTAL		\$74,763.00