

ECONorthwest

ECONOMICS • FINANCE • PLANNING

Phone | 503-222-6060
econw.com

KOIN Center
Suite 1600
222 SW Columbia
Portland, Oregon 97201-6616

Other Offices
Seattle | 206-823-3060
Eugene | 541-687-0051
Boise | 208-918-0617

July 2, 2020

Kevin Kreitman, City Manager
CC: John Morgan
City of Millersburg
4222 NE Old Salem Road
Albany OR 97321

RECEIVED
JUL 07 2020

BY: 

Dear Mr. Kreitman,

Per on our email conversations with John Morgan, we have enclosed the proposed scope of work for the Millersburg Housing Needs Analysis (HNA) along with our standard contract form.

Please let us know if you need anything else from us at this time.

Sincerely,

Beth Goodman, Project Director
goodman@econw.com
(541) 505-7203

Margaret Raimann, Technical Manager
raimann@econw.com
(503) 200-5097

Professional Services Agreement

This Professional Services Agreement (the "**Agreement**"), effective as of July 1, 2020 (the "**Effective Date**"), is by and between Economic Consultants Oregon, Ltd., dba ECONorthwest ("**ECONW**"), and City of Millersburg ("**Client**"). ECONW and Client will be referred to individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS, ECONW is engaged in the business of providing consultations on economic analysis; and

WHEREAS, Client wishes to retain ECONW to provide the services described in this Agreement and from time to time in separately executed statements of work, and ECONW is willing to provide the same to Client, each on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Services. ECONW will provide to Client the services (the "**Services**") set out in one or more statements of work to be agreed to in writing by the Parties (each, a "**Statement of Work**"). The initial accepted Statement of Work is attached to this Agreement as Exhibit A. Any additions or changes to the scope of the Services will be detailed in additional Statements of Work and will be deemed issued and accepted only if signed by an ECONW authorized signer and the Client Contract Manager, appointed pursuant to Section 2.1(a) and Section 3.1, respectively. The details of the method and manner for performance of the Services by ECONW are specified in the Statement(s) of Work and will be under its own control, Client being interested only in the results thereof.

2. ECONW Obligations. ECONW will:

2.1 Designate employees that it determines, in its sole discretion, to be capable of filling the following positions:

(a) Cindy O'Connell is the primary contact to act as ECONW's authorized representative with respect to all matters pertaining to this Agreement and will serve as liaison for ECONW authorized signer(s).

(b) A number of employees or contractors that it deems sufficient to perform the Services set out in each Statement of Work.

2.2 Maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent, expenses incurred, and materials used by ECONW in providing the Services.

3. Client Obligations. Client will:

3.1 Designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "**Client Contract Manager**"), with such designation to remain in force unless and until a successor Client Contract Manager is appointed.

3.2 Require that the Client Contract Manager respond promptly to any reasonable requests from ECONW for instructions, information, or approvals required by ECONW to provide the Services.

statement. ECONW may stop work at any time if Client does not make the additional deposit within ten (10) days of the date it is requested.

4.8 The balance in the account at the time of ECONW's final statement in this matter will be withdrawn by ECONW and applied to any balance due or past due including any finance charge. If after applying the balance in the deposit account there is still a balance due ECONW, Client will pay it per paragraph A above. However, if after applying the deposit balance to the final statement, there is still a balance in the deposit account ECONW will promptly return said balance to Client.

5. Limited Warranty and Limitation of Liability.

5.1 ECONW warrants that it will perform the Services:

(a) In accordance with the terms and subject to the conditions set out in the respective Statement of Work and this Agreement.

(b) In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.

5.2 ECONW's sole and exclusive liability and Client's sole and exclusive remedy for breach of this warranty will be as follows:

(a) ECONW will use reasonable commercial efforts to promptly cure any such breach; provided, that if ECONW cannot cure such breach within a reasonable time (but no more than thirty (30) days) after Client's written notice of such breach, Client may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 8.2.

(b) The foregoing remedy will not be available unless Client provides written notice of such breach within thirty (30) days of such breach.

5.3 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 5.1, ALL SERVICES ARE PROVIDED "AS IS" AND ECONW HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, AND ECONW SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

6. Intellectual Property.

6.1 All data or materials that are proprietary to Client must be designated and clearly marked as such ("**Customer Materials**"). Client retains sole ownership of, and copyright in, the Customer Materials, but will grant to ECONW a nonexclusive license to use the same solely for the matter that is the subject of the analysis or report.

6.2 All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product, and other materials that are delivered to Client under this Agreement or prepared by or on behalf of the ECONW in the course of performing the Services, including any items identified as such in the

the completion of the Services under all Statements of Work, unless sooner terminated pursuant to Section 8.2 or Section 8.3.

8.2 Either Party may terminate this Agreement and/or any Statement of Work upon written notice, effective immediately, if: (a) a petition under any bankruptcy law is filed by or against the other Party; (b) a receiver is appointed for the other Party's assets; (c) the other Party becomes insolvent or takes advantage of any insolvency or any similar statute; or (d) the other Party is in material breach of this Agreement or such Statement of Work, and such breach remains uncured for thirty (30) days after written notice of the breach.

8.3 Notwithstanding anything to the contrary in Section 8.2, ECONW may terminate this Agreement before the expiration date of the Term on written notice if Client fails to pay any amount when due hereunder: (a) and such failure continues for thirty (30) days after Client's receipt of written notice of nonpayment; or (b) more than once in any twelve (12) month period.

8.4 Notwithstanding anything to the contrary in Sections 8.2 and 8.3, either Party may terminate the Agreement by giving at least thirty (30) days written notice of intent to terminate, specifying the reason, and effective termination date.

8.5 If this Agreement is terminated pursuant to Sections 8.2, 8.3, or 8.4, ECONW will receive compensation as specified in Section 4 for all work completed up to the effective date of the termination.

8.6 The rights and obligations of the parties set forth in this Section 8 and in Sections 5.3, 6, 7, 9, 10, 11, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

9. Limitation of Liability.

9.1 IN NO EVENT WILL ECONW BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT ECONW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

9.2 IN NO EVENT WILL ECONW'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO ECONW PURSUANT TO THE APPLICABLE STATEMENT OF WORK GIVING RISE TO THE CLAIM.

10. Employee Protection. Client agrees that it will not directly or indirectly solicit for employment or independent consulting employees of ECONW during the Term of this Agreement and for a period of 6 months after the termination of this Agreement. If Client does improperly recruit or solicit an employee during such period and as a result the employee becomes a direct employee or independent contractor for Client, Client agrees to pay ECONW a sum equal to 100% of that employee's full base annual salary as of the date of the employee's departure from ECONW.

11.6 Assignment. Neither Party may assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the other Party's prior written consent. ECONW may, without Client's consent, assign this Agreement to an Affiliate or as part of a change of control.

11.7 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

11.8 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party will have authority to contract for or bind the other Party in any manner whatsoever. ECONW retains absolute discretion in the manner and means of carrying out the Services, and Client will have no obligation to direct or control the working conditions of ECONW's employees or subcontractors.

11.9 No Exclusivity. Subject to its obligations under this Agreement, nothing in this Agreement will be interpreted as preventing ECONW from performing services or creating deliverables for third parties even if they are similar to the services provided to Client under this Agreement.

11.10 Choice of Law.

(a) This Agreement and all related documents are governed by, and construed in accordance with, the laws of the State of Oregon, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Oregon.

(b) Any legal suit, action, or proceeding arising out of this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Oregon in each case located in the city of Portland and County of Multnomah, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein will be effective service of process for any suit, action, or other proceeding brought in any such court.

11.11 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

11.12 Force Majeure. Neither Party will be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by acts of God, flood, fire, explosion, war, terrorism, invasion, riot, other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, or national or regional emergency, in each case, provided that such event is outside the reasonable control of the affected Party.

EXHIBIT A

INITIAL STATEMENT OF WORK

1. Services. See attached Scope of Work on the next page.
2. Schedule. This work is to be completed by June 2021.
3. Fees.
 - a. Cost Estimate: ECONW will bill CLIENT on a time-and-expenses basis for labor as detailed in the rate table below. ECONW will bill CLIENT for direct expenses at cost, including but not limited to, postage, telephone, photocopies, reports, data, computer search, travel, and meals. The total of time and expenses will not exceed \$23,500 (twenty-three thousand and five hundred dollars) without written authorization.
 - b. Rate Table: The hourly labor rates for performing the Services are as follows:

i. Senior Project Director	\$240 - 275/hr
ii. Project Director	\$165 - 250/hr
iii. Project Manager	\$140 - 190/hr
iv. Technical Manager	\$135 - 165/hr
v. Associate	\$120 - 140/hr
vi. Senior Analyst	\$95 - \$105/hr
vii. Analyst	\$85/hr
viii. Administrative	\$55/hr
 - c. ECONW reserves the right to increase the hourly labor rates for staff annually.
 - d. The preceding budget estimate provided to Client by ECONW is based on the information available to ECONW at the time the estimate is prepared. Such information includes, but is not limited to, Client's initial description of the required analysis, Client's representations concerning the availability of necessary supporting material or information, Client's proposed schedule for making information available to ECONW, and the deadlines initially proposed by Client for ECONW's report. Variation or change in any of these factors will materially impact ECONW's actual time and expenditures. The actual time and expenditures spent on the work by ECONW may be less than or greater than the figures in ECONW's estimate. Client acknowledges that ECONW's budget estimate is not a commitment or a bid to perform the work for the amount of the estimate.

We will work with City staff to develop the key assumptions necessary for the housing needs analysis. Where possible and appropriate, we recommend consideration of “safe harbor” assumptions described in OAR 660-024.

Our approach to developing the HNA will be to gather demographic, socioeconomic, and housing data from sources such as: the U.S. Census and American Community Survey, existing plans and studies, and City data about recent development (e.g., building permit data). The study will include a review of recent development activity that focuses on housing types, as well as any housing projects in the development pipeline.

We will “ground-truth” the analysis with City staff, focusing on issues such as recent trends in demographics, housing development, housing affordability, and housing density and mix.

Task 2 Consultant Deliverables:

- Draft housing needs analysis, as part of the housing needs analysis report

Task 3: Buildable Lands Inventory (BLI)

This task will result in a comprehensive inventory of residential buildable lands. We will coordinate with City staff to obtain the required GIS data coverages, and the general structure of the buildable land inventory (supply) will be based on the DLCD workbook, *Planning for Residential Growth – A Workbook for Oregon’s Urban Areas*, which specifically addresses residential lands. We will also consider the definitions and requirements in OAR 660-008, and OAR 660-024 that pertain to buildable lands inventory, and will work with the City to determine which Goal 14 “safe harbors” are applicable and whether the City wants to use them.

Figure 1 shows a conceptual framework for constraint and classification in a typical buildable land inventory. The framework has two dimensions: development status (indicated by the presence or absence of improvements) and constraining conditions. Lands with constraints can be prohibitively constrained by commitment to a specific use (e.g., streets or parks) or protected (e.g., wetlands) or partially constrained. Lands with prohibitive constraints have no development capacity; those that are partially constrained have partial development capacity.

Figure 1. Framework for land and constraint classification in a buildable land inventory.

			Presence of Improvements	
			Developable	Developed
Constraining Conditions	Prohibitively constrained	Committed	No Capacity	
		Protected	No Capacity	
	Partially Constrained		Partial Capacity	Potential Infill/ Redevelopment Capacity
	Unconstrained		Full Capacity	

Cost Estimate and Proposed Schedule

The product of the project is a Housing Needs Analysis for the Millersburg UGB that is compliant with Goal 10 and OAR 660-008, and OAR 660-024.

The cost estimate for completing the work is \$22,000.

This estimate does not include any in-person meetings. If needed, meetings with decision makers would add about \$1,500 for preparation, attending the meeting, and follow up.

We estimate that the project would take about nine months to complete. We recommend starting the project when it is clear that Millersburg's revisions to its zoning ordinance, zoning map, and Comprehensive Plan map will be adopted by the City Council. It is essential that we begin work on the project with the updated Comprehensive Plan and zoning maps.