

CITY OF SANDY, OREGON
PERSONAL SERVICES AGREEMENT

The City of Sandy, Oregon ("City") and APG/MIG ("Consultant") enter into this Agreement on May, 23, 2022 ("Effective Date").

WHEREAS, City and Consultant believe it in their respective and mutual interests to enter into a written Agreement setting out their understandings concerning Consultant's provision of planning services as described in Exhibit A.

1. Term

This Agreement shall run from the Effective Date through and including April 30, 2023, unless sooner terminated under the provisions of this Agreement or extended through an amendment.

2. Consultant's Service

The scope of Consultant's services and time of performance under this Agreement are set forth in Exhibit "A". All provisions and covenants contained in Exhibit A are incorporated by reference and are a part of this Agreement as if fully set forth. Any conflict between this Agreement and Exhibit A shall be resolved first in favor of this written Agreement. Consultant will, in the rendering of its services to City, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this Agreement. The parties may only change the scope of services through an amendment.

3. Consultant Identification

Consultant's employer identification number, as designated by the Internal Revenue Service, is 94-3116998.

4. Compensation

City agrees to pay Consultant at the times and in the amounts set out in Exhibit "A". The total amount payable will not exceed fifty-four thousand nine hundred and sixty dollars (\$54,960).

5. Project Managers

City's Project Manager is Kelly O'Neill Jr. Consultant's Project Manager is Cathy Corliss. Each party shall give the other written notification of any change in their respective Project Manager.

6. Project Information

Consultant agrees to share all project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the project. No information, news, or press releases related to the project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of City's Project Manager.

7. Duty to Inform

Consultant shall give prompt written notice to City's Project Manager if, at any time during the performance of this Agreement, Consultant becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Agreement, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Consultant shall constitute neither agreement with nor acquiescence in Consultant's statement or claim and shall not constitute a waiver of any of City's rights.

8. Consultant is Independent Contractor

Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Agreement. Consultant hereby expressly acknowledges and agrees that as an independent contractor, Consultant is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgment by Consultant shall not affect his/her independent ability (or the ability of his/her/its insurer) to assert the monetary limitations found at ORS 30.270, the immunities listed at ORS 30.265 or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS30.300).

9. Overtime

Any person employed on work under this Agreement, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC§201 to 209, shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week.

10. Indemnity and Insurance

- i. Indemnity: Consultant acknowledges responsibility for any and all liability arising out of the performance of this Agreement and shall hold City harmless from and indemnify and defend City for any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, activities or services in the course of performing this Agreement, except to the extent, liabilities caused by the City.
- ii. Liability Insurance: Consultant shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Consultant, City, its Councilors, officers, agents and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Consultant's operations, in an amount not less than Two Million dollars (\$2,000,000.00) combined single limit per occurrence. Such insurance shall name City as an additional insured.
- iii. Errors & Omissions Insurance: Consultant shall maintain professional liability insurance in the amount of not less than \$2,000,000 per claim. Consultant shall keep in force the professional liability policy for at least 24 months after the expiration of the Agreement with City. In any case, Consultant shall notify City in the event of a cancellation or reduction in limits. Unless such cancellation or reduction is immediately cured by Consultant, such cancellation or reduction constitutes a breach of this Agreement.
- iv. Workers' Compensation Coverage: Consultant certifies that Consultant has qualified for

State of Oregon Workers' Compensation coverage for all Consultant's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407, or as a self-insured employer. Consultant shall provide to City within ten (10) days after Agreement award a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Consultant is self-insured.

- v. Certificates: Consultant shall furnish City certificates evidencing the date, amount, and type of insurance required by this Agreement. All policies will provide for not less than thirty (30) days' written notice to City before they may be canceled.
- vi. Primary Coverage: The coverage provided by insurance required under this Agreement shall be primary, and any other insurance carried by City shall be excess.

11. Work is Property of City

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Consultant under this Agreement shall be the property of City.

12. Law of Oregon

The Agreement shall be governed by the laws of the State of Oregon, without regard to conflict of laws principles. Venue shall be in Clackamas County, Oregon.

13. Errors

Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

14. Extra or Changes in Work

Only the City Manager or Project Manager may authorize extra (and/or change) work. Failure of Consultant to secure authorization for extra work shall constitute a waiver of all right to adjustment in the Agreement price or Agreement time due to such unauthorized extra work and Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work.

15. Successors and Assignments

- i. Both City and Consultant bind themselves and any partner, successor, executor, administrator, or assign to this Agreement.
- ii. Neither City nor Consultant shall assign or transfer their interest or obligation hereunder in this Agreement without the written consent of the other party. Except for subconsultants identified in Exhibit A, Consultant must seek and obtain City's written consent before subcontracting any other part of the work required of Consultant under this Agreement. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall

be void.

16. Records

- i. Consultant shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least three years after City makes final payment on this Agreement and all other pending matters are closed.
- ii. Consultant shall allow City (or any of its authorized representatives) to audit, examine, copy, take excerpts from or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

17. Breach of Agreement

- i. Consultant shall remedy any breach of this Agreement within the shortest reasonable time after Consultant first has actual notice of the breach or City notifies Consultant of the breach, whichever is earlier. If Consultant fails to remedy a breach in accordance with this paragraph, City may terminate that part of the Agreement affected by the breach upon written notice to Consultant, may obtain substitute services in a reasonable manner, and may recover from Consultant the amount by which the price for those substitute services exceeds the price for the same services under this Agreement.
- ii. If the breach is material and Consultant fails to remedy the breach in accordance with this paragraph, City may declare Consultant in default and pursue any remedy available for a default.
- iii. Pending a decision to terminate all or part of this Agreement, City unilaterally may order Consultant to suspend all or part of the services under this Agreement. If City terminates all or part of the Agreement pursuant to this paragraph, Consultant shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Agreement and later orders Consultant to resume those services, Consultant shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
- iv. To recover amounts due under this paragraph, City may withhold from any amounts owed by City to Consultant, including but not limited to, amounts owed under this or any other Agreement between Consultant and City.

18. Mediation/ Trial without a jury

Should any dispute arise between the parties to this Agreement concerning their respective obligations of either or the terms hereof, it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. Any litigation arising under or as a result of this Agreement shall be tried to the court without a jury. Each party agrees to be responsible for payment of its own professional fees, including attorneys' fees in both mediation and litigation.

19. Termination for Convenience

The City may terminate all or part of this Agreement at any time for its own convenience by written notice to Consultant. Upon termination under this paragraph, Consultant shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier, plus Consultant's reasonable costs actually incurred in closing out the Agreement. Consultant is not entitled to special or consequential damages upon termination, including lost profits.

20. Intellectual Property

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Agreement shall vest in the City. Consultant shall execute any assignment or other documents necessary to effect this paragraph. Consultant may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Consultant shall transfer to the City any data or other tangible property generated by Consultant under this Agreement and necessary for the beneficial use of intellectual property covered by this paragraph.

21. Payment for Labor or Material

Consultant shall make payment promptly, as due, to all persons supplying to Consultant labor or material for the prosecution of the work provided for in this Agreement. (ORS 279B.220)

22. Contributions to the Industrial Accident Fund

Consultant shall pay all contributions or amounts due the Industrial Accident Fund from Consultant incurred in the performance of this Agreement and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 279B.220)

23. Income Tax Withholding

Consultant shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. (ORS279B.220)

24. Payment of Claims by the City

If Consultant fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Consultant or a subcontractor by any person in connection with this Agreement as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Consultant pursuant to this Agreement. The City's payment of a claim under this Paragraph shall not relieve Consultant or Consultant's surety, if any, from responsibility for those claims.

25. Hours of Labor

Consultant shall pay employees for overtime work performed under the terms of this Agreement in accordance with ORS 653.010 to ORS 653.261 and the Fair labor standards Act of 1938. (29 USC §§ 201 *et. seq.*)

26. Workers' Compensation

Consultant is a subject employer that will comply with ORS 656.017. Consultant warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Consultant shall indemnify City for any liability incurred by City as a result of Consultant's breach of the warranty under this Paragraph. (ORS 279B.230)

27. Medical Care for Employees

Consultant shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of Consultant's employee(s), all sums which Consultant agrees to pay for such services and all monies and sums which Consultant collected or deducted from the wages of employees pursuant to any law or contract for the purpose of providing or paying for such service. (ORS 279B.230)

28. Modification

Any modification of the provisions of this Agreement shall be reduced to writing and signed by authorized agents of City and Consultant.

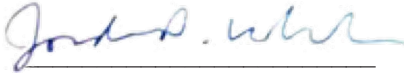

29. No Waiver of Legal Rights

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

30. Integration

This Agreement contains the entire agreement between City and Consultant and supersedes all prior written or oral discussions or agreements regarding the same subject.

[SIGNATURES ON FOLLOWING PAGE]

<p>City of Sandy, Oregon</p>  <hr/> <p>Jordan Wheeler City Manager</p>	<p>Consultant</p>  <hr/> <p>Catherine Corliss Principal</p>
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We understand that the City of Sandy is seeking assistance with a comprehensive audit of its Development Code to address the state requirement to provide clear and objective standards for housing as well as other requirements. MIG | APG's long history of assisting other cities to audit and update their development codes provides a solid understanding of issues associated with this project.

We are very familiar with the requirements of ORS 197.307 related to clear and objective standards for housing (including accessory dwelling units). The fact that it is no longer limited to certain types of housing (i.e., all housing is "needed housing") and the Warren v. Washington County decision have created a sense of urgency. One of the challenges for this project will be to amend the design standards (such as those in Section 17.90.150) to be clear and objective while ensuring the resulting standards are not unreasonably strict but still produce the desired outcomes. We have a great deal of experience working through these issues, and will work with the City to identify solutions and approaches that work well within the structure of the Sandy Development Code (SDC). Our goal for this and all code amendment projects is to improve the overall functionality and user-friendliness of the code.

Similarly, other recent LUBA rulings have highlighted the need for development codes to provide adequate references to other plans. We have been working with other jurisdictions to implement these requirements. In addition, we suggest that the project also evaluate the Sandy Development Code for compliance with the following recent legislation:

- » SB458 (2021) – Middle Housing Land Divisions
- » HB2583 (2021) - Elimination of Occupancy Limits based on Familial Relationship
- » SB8 (2021) - Affordable Housing on Non-Residential Lands Requirement
- » HB2006 (2021) - Emergency Shelters
- » HB2008 (2021) - Affordable Housing on Religious Properties

- » HB3261(2021) - Hotel/Motel Conversions to Emergency Shelters or Affordable Housing
- » HB2306 (2019) - Residential building permits upon substantial completion

We believe that our team has the right combination of skills and the depth of experience to achieve the City's goals for this project. We have successfully completed a number of similar code audit and update projects and generally recommend the following approach to the tasks and work products. As noted previously, we believe a successful audit should lead to an action plan or work program to enable the City to successfully move forward with the next steps. The tasks suggested in this section reflect that philosophy.

A number of factors could influence the suggested tasks, schedule, and estimated cost, including providing opportunities for additional public outreach. If selected, we would be happy to work with the City to identify the full scope of services needed. However, for the schedule and budget provided below, we have kept the scope streamlined by assuming just the basic tasks. We have also assumed that all meetings will take place online but would be happy to attend in person if that is the City's preference and additional resources are available.

Project Tasks and Deliverables

TASK	DESCRIPTION
Task 1	<p>This task would extend throughout the entire project. In addition to monthly status meetings with the City Project Manager (and other City staff if desired by the City), there will be ongoing project coordination via phone and email on an as-needed basis.</p> <p>» Deliverables: Monthly meetings and ongoing coordination.</p>
Task 2	<p>During this task MIG APG will review the Sandy Development Code and prepare an annotated outline of the draft audit report for the City Project Manager’s approval. This step will help ensure that the audit format and level of detail will meet the City’s needs.</p> <p>» Deliverable: Annotated outline of audit report</p>
Task 3	<p>As primary users of the Sandy Development Code, City staff (planning, public works, etc.) will be able to provide insight into the areas of overlap as well as sharing their perspective on areas of the code that have historically been challenging to interpret. Given that MIG APG proposes holding a facilitated worksession with City staff to discuss code issues, MIG APG will prepare an agenda in advance of the meeting and a summary following the meeting noting key points/direction.</p> <p>» Deliverables: Project worksession 1 with City staff and meeting summary</p>
Task 4	<p>Following Task 3, MIG APG will complete the draft audit of the Sandy Development Code for City staff review. The format of the report will be based on the audit outline approved in Task 2. The schedule provides time for staff review. Comments on the audit will be incorporated during Task 5.</p> <p>» Deliverable: Draft audit report</p>
Task 5	<p>While staff review of the draft audit is underway, MIG APG will prepare an initial working draft of a recommended package of code amendments for City staff review. In some cases, identifying a clear and objective alternative to an existing discretionary standard will be obvious, but in many cases, there will be multiple solutions to the problem. Where there are options, MIG APG will identify them and note their potential advantages and disadvantages.</p> <p>» Deliverable: Draft audit report with recommended package of code amendments</p>
Task 6	<p>For this task, MIG APG will prepare for and facilitate a meeting with City staff to discuss draft recommended package of code amendments, focusing on outstanding issues and options. MIG APG will prepare a summary of the meeting, noting key points/direction. In addition, the team will prepare materials for and facilitate a joint worksession with the City Council and Planning Commission. Given the nature of the project, this worksession is likely to be relatively long (e.g., 2 – 3 hours).</p> <p>» Deliverables: Project worksession 2 with City staff and meeting summary and joint project worksession with City Council and Planning Commission</p>

TASK	DESCRIPTION
Task 7	<p>Following staff worksession 2, MIG APG will revise the draft audit report and recommended package of code amendments. This draft of the report will be available for Planning Commission and City Council review in advance of Task 8.</p> <p>Deliverable: Final draft audit report and recommended package of code amendments</p>
Task 8	<p>In the final task, MIG APG will prepare for and present the final draft audit and recommended package of code amendments to the Planning Commission and City Council. Following the City Council presentation, MIG APG will make final refinements to the audit and recommended package of code amendments as needed based on input from the PC and Council.</p> <p>Deliverable: Presentations and participation at one Planning Commission and one City Council meeting; final audit report and recommended package of code amendments</p>

Project Timeline

A number of factors will influence the schedule. The schedule below, does not include any public outreach opportunities other than the Planning Commission and City Council presentations. However, we would be happy to provide additional support for public outreach as-needed on a time-and-materials basis and to work with the City to adjust the schedule accordingly.

Tasks	Months								
	1	2	3	4	5	6	7	8	9
Task 1: Monthly mtgs; ongoing coordination	[Blue bar spanning months 1-9]								
Task 2: Annotated outline of audit report	[Blue bar]								
Task 3: Project worksession 1		●							
Task 4: Draft audit report; staff review		[Blue bar]							
Task 5: Draft report with code amendments				[Blue bar]					
Task 6: Project worksession 2						●			
Task 7: Final draft report							[Blue bar]		
Task 8: PC/CC meetings; final report								●	● [Blue bar]

2. Cost Proposal

We are proposing to complete the tasks on a time-and-materials basis. Similar to the timeline, a number of factors will also influence budget, including any additional public engagement efforts.

If selected, we will work closely with City staff to identify the appropriate budget needed for each task and can shift hours between tasks to better focus our time in areas that are City priorities.

Tasks	MIG APG Staff			Labor Total	Travel Cost*	Total Cost
	C. Corliss	K. Rogers	Planner			
Hourly Rate	\$220	\$130	\$100			
Task 1: Monthly mtgs; ongoing coordination	18	18	8	\$7,100	\$0	\$7,100
Task 2: Annotated outline of audit report	8	14	12	\$4,780	\$0	\$4,780
Task 3: Project worksession 1	6	8		\$2,360	\$0	\$2,360
Task 4: Draft audit report; staff review	10	28	24	\$8,240	\$0	\$8,240
Task 5: Draft report with code amendments	22	40	36	\$13,640	\$0	\$13,640
Task 6: Project worksession 2 with staff and Joint PC/CC worksession (including preparation and materials)	12	24		\$5,760	\$0	\$5,760
Task 7: Final draft report	12	32	28	\$9,600	\$0	\$9,600
Task 8: PC/CC meetings; final report	6	12	6	\$3,480	\$0	\$3,480
Project Total	94	176	114	\$54,960	\$0	\$54,960

*Cost proposal assumes that all meetings will take place online. If selected, we would be happy to work with the City to adjust the budget to provide in-person meetings if that is the City's preference.



Dec. 8, 2022

Jordan Wheeler
City of Sandy, Oregon
39250 Pioneer Boulevard
Sandy, OR 97055

Subject: Additional Services for Sandy Clear and Objective Code Project
Dear Mr. Wheeler:

Per the suggestion of the City's Development Services Director, MIG|APG is requesting an amendment to our contract for the Sandy Clear and Objective Code Project to cover the cost of additional services that were not included in our original scope of work and cost estimate. The additional services are detailed below and in the table on the next page. The cost of additional services is \$15,358.

Additional Services:

- Review and comment on draft code amendments prepared by staff (Design Standards in Industrial Zones (Sec. 17.90.130) and standards for self-service storage facilities [multiple sections])
- Additional City Council and staff work sessions (one each virtual)
- Travel for in-person attendance at three Planning Commission/City Council meetings
- Review/Amend Dark Skies Ordinance (Municipal Code Ch. 15.30)
- SDC Amendments to implement the following state legislation:
 - SB 8/HB 2008/HB 3261 (affordable housing and emergency shelters)
 - HB 2583 (removing occupancy limits based on familial/non-familial relations)
 - HB4064 (Manufactured Dwellings)

In addition, the amendment would extend the contract until June 30, 2022, consistent with the revised project schedule.

If these changes are satisfactory to the City, please sign and return the attached Authorization for Additional Services. Please don't hesitate to let me know if you have any questions or need any additional information. Thank you for your consideration.

Sincerely,

Cathy Corliss, AICP
Principal

cc: Kelly O'Neill, Jr., Development Services Director, City of Sandy

Additional Services for Sandy Clear and Objective Code Project

Cost Estimate for Additional Services

	C. Corliss	K. Rogers	B. Crawford	Labor Total	Travel Cost*	Total Cost
Additional Services	\$220	\$130	\$100			
Additional Services Completed						
Review draft code amendments (Des stdns Industrial Zones & self-service storage)		6		\$780	\$0	\$780
City Council Intro Meeting on 10/17 (prep and attend virtual meeting)	2.5	2.5		\$875	\$0	\$875
Additional Staff work session on 11/1 (attend virtual meeting)	2	2	2	\$900	\$0	\$900
Future Additional Services						
Travel for in-person attendance (3 mtgs)*	5.5	5.5		\$1,925	\$218	\$2,143
Review/Amend Dark Skies Ordinance	2	14		\$2,260	\$0	\$2,260
SB 8/HB2008/HB3261 Implementation (based on Hillsboro template)	5	20		\$3,700	\$0	\$3,700
HB2583 (definition of family- minor correction only)		3		\$390	\$0	\$390
HB2583 (with evaluation of impacts on Congregate Housing, etc.)	5	18		\$3,440	\$0	\$3,440
HB4064 (Manufactured Dwellings)	1	5		\$870	\$0	\$870
All Add Services - Total	23	76	2	\$15,140	\$218	\$15,358
* Original cost proposal assumed that all meetings will take place online. Mileage charged at \$0.625 per mile.						



AUTHORIZATION FOR ADDITIONAL SERVICES (AAS)

PROJECT

NAME: Sandy Clear and Objective Code Project

DATE: 12/5/2022

PROJECT

LOCATION: Sandy, Oregon

PROJECT # 019159.00

CONTRACT DATE: May 23, 2022

AAS# 1

CLIENT: City of Sandy, OR

ADDRESS: 39250 Pioneer Boulevard, Sandy, OR 97055

MIG hereby confirms authorization to proceed with additional services, based on the following:

Additional or Expanded Item in Scope of Services:

Additional amendments to the Sandy Development Code beyond what was included in the original scope of services. See attached letter.

Change in Fee:

	Original Fee:	<u>\$54,960</u>
Previous Authorizations for Additional Services:		<u>-</u>
	Current Adjusted Fee:	<u>-</u>
Proposed Authorization for Additional Services:		<u>\$15,358</u>
	New Adjusted Fee:	<u>\$70,318</u>

Payment Schedule(if changed): _____

Adjustment to Project Schedule: End date June 30, 2022

Approvals by Original Contract Signatories:

MIG, Inc.

Client: City of Sandy, OR


Signature and Title


Signature and Title CITY MANAGER

Date: 12/8/2022

Date: 12/8/2022