



## CITY COUNCIL REGULAR MEETING AGENDA

[www.covingtonwa.gov](http://www.covingtonwa.gov)

**Tuesday, June 25, 2024  
7:00 p.m.**

**Covington City Hall  
Council Chambers, 16720 SE 271<sup>st</sup> Street, Covington and  
Telephonically/Virtually via Zoom Platform**

In compliance with state law, city council special and regular meetings will be held in a hybrid format with in-person, telephonic, and virtual options for public viewing and participation.

**This regular meeting will be held in-person and virtually/telephonically as follows:**

**Join In Person:** Covington City Hall, Council Chambers, 16720 SE 271st Street, Covington, WA 98042

**Join Online:** <https://us02web.zoom.us/j/89002439681?pwd=VXBiWmVnSXdYVDJMbEJiVGg2WIRhZz09>  
Passcode: CovCouncil

**Join by Phone:** 253-215-8782  
Webinar ID: 890 0243 9681  
Passcode: 5108335955

### **CALL CITY COUNCIL REGULAR MEETING TO ORDER**

### **CALL/PLEDGE OF ALLEGIANCE**

### **APPROVAL OF AGENDA**

### **REPORTS OF COMMISSIONS**

- Economic Development Council
- Youth Council
- Arts Commission
- Equity, Cultural, and Social Justice Commission
- Human Services Commission
- Parks & Recreation Commission
- Planning Commission

### **PUBLIC COMMUNICATION - NONE**

**PUBLIC COMMENT** Speakers will state their name, address, and organization. Comments are directed to City Council, not the audience or staff. Comments are to be related to city business. Comments are not intended for conversation or debate and are limited to four minutes per speaker. For attendees participating by Zoom, click the "raise hand" button. For attendees participating by phone, dial \*9 to raise your hand. Once the City grants permission to speak, press "unmute" in Zoom or dial \*6 to "unmute" by phone.

NOTICE: Campaigning for any ballot measure or candidate at city hall or during council meetings, including public comments, is PROHIBITED by state law, RCW 42.17A.555.

### **APPROVE CONSENT AGENDA**

- C-1. Minutes: May 28, 2024 Special (Interviews) and Regular Meeting (Bates)
- C-2. Vouchers (Parker)

- C-3. Authorize City Manager to Enter into a Consultant Services Agreement with All Angles Consulting, LLC for Permit Process Improvement Services (Lyons)
- C-4. Authorize City Manager to Enter into a Professional Services Agreement with BERK Consulting, LLC, David Evans and Associates, Inc., TCA Architecture Planning, Inc., and Tree Solution, Inc. to Implement Climate Actions Related to House Bill 1181 through 2027 (Hernandez)

**NEW BUSINESS**

- 1. Discuss Offering Discounts to Covington Business Owners for Community Room Rentals (Council)
- 2. Consider Resolution Adopting New Public Works Roster and Procurement Procedures (Orthmann)

**FUTURE AGENDA ITEMS**

**COUNCIL/STAFF COMMENTS**

**PUBLIC COMMENT** See guidelines on public comments in first Public Comment section above

**EXECUTIVE SESSION – if needed**

**ADJOURN**

**Americans with Disabilities Act – reasonable accommodations provided upon request a minimum of 24 hours in advance (253-480-2400).**

**Consent Agenda Item C-1**

Covington City Council Meeting

Date: June 25, 2024

SUBJECT: APPROVAL OF MINUTES: MAY 28, 2024 CITY COUNCIL SPECIAL  
(INTERVIEWS) AND REGULAR MEETING MINUTES

RECOMMENDED BY: Krista Bates, City Clerk

ATTACHMENT(S): Proposed Minutes.

PREPARED BY: Joan Michaud, Sr. Deputy City Clerk

CITY COUNCIL ACTION: \_\_\_\_\_ Ordinance \_\_\_\_\_ Resolution  X  Motion \_\_\_\_\_ Other

**Councilmember \_\_\_\_\_ moves, Councilmember \_\_\_\_\_  
seconds, to approve the May 28, 2024 City Council Special  
(Interviews) and Regular Meeting Minutes.**

**City of Covington**  
**Special and Regular City Council Meeting Minutes**  
**Tuesday, May 28, 2024**

*In compliance with state law, these city council special and regular meetings were held in a hybrid format with in-person, telephonic, and virtual options for public viewing and participation.*

**INTERVIEWS:** The Council conducted interviews for the Youth Council and the Arts Commission from 5:20 to 7:00 p.m. Applicants interviewed: Paloma Moreno-Rivera, Alyssa Kidd, Robyn Spindola, Lidya Berhe, and Sadaf Wali.

The Regular Meeting of the City Council of the City of Covington was called to order Tuesday, May 28, 2024, at 7:00 p.m., with Mayor Wagner presiding.

**COUNCILMEMBERS PRESENT:**

Jeff Wagner, Joe Cimaomo, Jennifer Harjehausen, Elizabeth Porter, and Kristina Soltys.

**COUNCILMEMBERS ABSENT:**

Debby Hartsock and Sean Smith.

**STAFF PRESENT:**

City Manager Regan Bolli, Covington Police Chief Adam Easterbrook, Public Works Director Don Vondran (via Zoom), Community Development Director Salina Lyons, Administrative Services Manager Kelly Thompson, Finance Director Casey Parker, City Attorney Mark Orthmann (via Zoom), IT Manager Mayson Morrissey, and City Clerk/Executive Assistant Krista Bates.

**Council Action: Councilmember Soltys moved and Councilmember Cimaomo seconded to excuse Councilmember Hartsock and Mayor Pro Tem Smith. Vote: 5-0. Motion carried.**

Mayor Wagner opened the meeting with the Pledge of Allegiance.

**APPROVAL OF AGENDA:**

The agenda was approved as presented.

**REPORTS OF COMMISSIONS:**

**Economic Development Council** – No report.

**Youth Council** – No report.

**Arts Commission** – Chair Patti Melton gave the report.

**Equity, Cultural, and Social Justice Commission** – No report.

**Human Services Commission** – Member Darius Tari gave the report.

**Parks & Recreation Commission** – Chair Laura Morrissey gave the report.

**Planning Commission** – Chair David Caudle gave the report.

**PUBLIC COMMENT:**

Mayor Wagner called for public comments.

Members of the public who spoke: Patricia Campbell and David Caudle.

There being no further comments, Mayor Wagner closed the public comment period.

**APPROVE CONSENT AGENDA:**

C-1. Minutes: May 14, 2024 Special Meeting Minutes and May 14, 2024 Regular Meeting Minutes.

C-2. Vouchers: Vouchers #47545 - #47607, including ACH payments and electronic funds transfers in the amount of \$1,042,233.37 dated May 17, 2024; and Paylocity Payroll Voucher #1019634372 - #1019634380 inclusive, plus employee direct deposits and wire transfers, in the amount of \$330,867.28, dated May 10, 2024.

C-3. Authorize City Manager to Execute Amendment 9 with Transpo Group for Additional Construction Management Services for the Covington Connector Project Phase 3B (CIP 1201).

C-4. Consider Resolution to Adopt Proposed 2025-2030 Six-Year Transportation Improvement Program.

RESOLUTION NO. 2024-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
COVINGTON, WASHINGTON, ADOPTING THE 2025–2030  
SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM.

C-5. Authorize City Manager to Execute a Street Lighting Order – Schedule 51 with Puget Sound Energy Regarding the Covington Connector Phase 3B Project (CIP 1201).

C-6. Authorize City Manager to Execute a Public Works Agreement with Rivers Edge Environmental Services, Inc. for the Channing Park Division 2 Pond Rehabilitation Project.

C-7. Authorize City Manager to Execute a Cooperative Purchasing Agreement with King County.

C-8. Authorize City Manager to Execute a Contract with Planet Technologies for Annual Microsoft 1 Year Subscription Licenses.

The consent agenda was approved as presented.

**PUBLIC HEARING**

1. Receive Public Testimony and Consider an Ordinance Adopting and Renewing Interim Zoning Regulations Related to Permanent Supportive Housing, Transitional Housing, Emergency Housing, and Emergency Shelters in Response to HB 1220.

Community Development Director Salina Lyons gave the staff report on this item.

Mayor Wagner called for public comments for the public hearing.

There being no comments, Mayor Wagner closed the public comment period for the public hearing.

ORDINANCE NO. 08-2024

AN ORDINANCE OF THE CITY OF COVINGTON, WASHINGTON, RENEWING ORDINANCE NO. 14-2023, WHICH RENEWED AND ADOPTED INTERIM ZONING REGULATIONS RELATED TO PERMANENT SUPPORTIVE HOUSING, TRANSITIONAL HOUSING, EMERGENCY HOUSING, AND EMERGENCY SHELTERS IN RESPONSE TO HB 1220; ADDING NEW SECTIONS TO CHAPTER 18.20 CMC; AMENDING CMC 18.25.030, CMC 18.31.120, AND CMC 14.30.010, FOR A PERIOD OF SIX MONTHS; ADOPTING FINDINGS OF FACT; PROVIDING FOR SEVERABILITY; HOLDING A CONCURRENT PUBLIC HEARING; AND SETTING AN EFFECTIVE DATE.

**Council Action: Councilmember Porter moved and Councilmember Harjehausen seconded to approve Ordinance No. 08-2024 renewing Interim Zoning Regulations related to HB 1220 requirements for permanent supportive housing, transitional housing, emergency housing, and emergency shelters for a period of six months. Vote: 5-0. Motion carried.**

**NEW BUSINESS:**

2. Consider Appointments to Salary Commission.

**Council Action: Councilmember Cimaomo moved and Councilmember Soltys seconded to appoint the following members to the Independent Salary Commission: Bryan LaBelle, Lisa Agron, Steven (Steve) Pand, Laura Roth, and Virginia (Gini) Cook. Vote: 5-0. Motion carried.**

3. Consider Appointments to Youth Council.

**Council Action: Councilmember Porter moved and Councilmember Harjehausen seconded to appoint Sadaf Wali to fill Position No. 11 on the Youth Council with a term expiring June 30, 2026. Vote: 5-0. Motion carried.**

**Council Action: Councilmember Harjehausen moved and Councilmember Soltys seconded to appoint Lidya Berhe to fill Position No. 12 on the Youth Council with a term expiring June 30, 2026. Vote: 5-0. Motion carried.**

4. 2023 Fourth Quarter Financial Summary and 2024 First Quarter Financial Reports.

Finance Director Casey Parker gave the staff report on this item.

5. Consider Resolution to Amend the 2024 Fee Schedule.

Administrative Services Manager Kelly Thompson gave the staff report on this item.

Councilmembers asked questions, and Ms. Thompson provided responses.

RESOLUTION NO. 2024-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
COVINGTON, WASHINGTON, AMENDING THE CITY OF  
COVINGTON FEE SCHEDULE FOR 2024 ADOPTED IN  
RESOLUTION NO. 2023-20.

**Council Action: Councilmember Cimaomo moved and Councilmember Soltys seconded to approve Resolution No. 2024-16 adopting the Amended 2024 Fee Schedule as presented. Vote: 5-0. Motion carried.**

**FUTURE AGENDA ITEMS:**

Council discussed future agenda items.

**COUNCIL/STAFF COMMENTS:**

Councilmembers and staff made comments.

**PUBLIC COMMENT:**

Mayor Wagner called for public comments from the public.

There being no comments, Mayor Wagner closed the public comment period.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at 8:15 p.m.

Prepared by:

Submitted by:

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Joan Michaud  
Sr. Deputy City Clerk

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Krista Bates  
City Clerk/Executive Assistant

**Consent Agenda Item C-2**

Covington City Council Meeting

Date: June 25, 2024

SUBJECT: APPROVAL OF VOUCHERS

RECOMMENDED BY: Casey Parker, Finance Director

ATTACHMENT(S): (Provided under separate cover.) Vouchers #47680 - #47739, including ACH payments and electronic funds transfers in the amount of \$406,191.49 dated June 14, 2024; and Paylocity Payroll Voucher #1019775798 - #1019775801 inclusive, plus employee direct deposits and wire transfers, in the amount of \$338,142.51, dated June 7, 2024.

PREPARED BY: Casey Parker, Finance Director

CITY COUNCIL ACTION: \_\_\_\_\_ Ordinance \_\_\_\_\_ Resolution  X  Motion \_\_\_\_\_ Other

**Councilmember \_\_\_\_\_ moves, Councilmember \_\_\_\_\_ seconds, to approve for payment vouchers: Vouchers #47680 - #47739, including ACH payments and electronic funds transfers in the amount of \$406,191.49 dated June 14, 2024; and Paylocity Payroll Voucher #1019775798 - #1019775801 inclusive, plus employee direct deposits and wire transfers, in the amount of \$338,142.51, dated June 7, 2024.**

## Consent Agenda Item C-3

Covington City Council Meeting

Date: June 25, 2024

SUBJECT: AUTHORIZE THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH ALL ANGLES CONSULTING, LLC FOR PROCESS IMPROVEMENT SERVICES THROUGH 2024.

RECOMMENDED BY: Salina Lyons, Community Development Director

ATTACHMENTS:

1. Consultant Services Agreement
2. Exhibit A, Scope of Work and Standard Billing Rates

PREPARED BY: Dafne Hernandez, Associate Planner

EXPLANATION:

On April 17, 2023, the Washington Legislature passed Senate Bill 5290. According to the legislation, the bill's purpose is to modernize permitting systems and set deadlines for reviewing permits. The legislature will be enforced by partial refunds on permitting fees if the mandated deadlines are not met.

This legislation's primary objective is to reduce administrative delays in housing construction by setting specific timelines for permit approvals and eliminating unnecessary regulatory hurdles. This initiative aims to expedite the development of new housing projects and reduce the costs associated with prolonged approval processes. **(Attachment 2)**

Starting January 1, 2025, counties located west of the Cascade Mountain range crest with populations greater than 150,000 as of 1996 and cities within those counties with populations of at least 20,000 must implement the new review timeline and prepare annual performance reports.

### **Annual Performance Report Requirements**

These reports must be visible on the city website and include the following information:

- Total number of complete applications received during the year; number of complete applications received during the year for which a notice of final decision was issued before the 120-day deadline
- Number of applications received during the year for which a notice of final decision was issued after the 120-day deadline
- Number of applications received during the year for which an extension of time was mutually agreed upon by the applicant and the county or city
- Variance of actual performance to the 120-day deadline
- The mean processing time and the number of standard deviations from the mean.

### **Process Improvement Workshops – Professional Services (Attachment 1)**

To comply with SB 5290's requirements, the Community Development Department seeks authorization to enter into a professional service agreement with All Angles Consulting, LLC. This agreement will facilitate improving and streamlining the city's permit processes to meet the new legislative mandates effectively.

All Angles Consulting, LLC will assist in reviewing our current subdivision and commercial land use application processes under SB 5290. The consultant will also lead the current planning team and city consultants through process improvement workshops to identify areas for improvement and implement changes to ensure compliance with the new time periods and reporting requirements.

All Angles Consulting LLC is working with the City of Bellevue on this topic and is qualified and familiar with municipal land use processes and the requirements of SB 5290.

FISCAL IMPACT:

The professional contract is for \$36,000 from the Development Services fund.

The legislation includes language that grants will be available to cities to implement the new timeline and reporting mandates. However, to date, the grants available have not applied to Covington or the grant process poses significant challenges for a city to successfully obtain. The staff has shared these challenges with the Master Builders, the bill's proponent, and the city's lobbyist.

Staff will continue to seek grant opportunities to offset the cost of this legislative mandate; however, given the January 2025 deadline, staff needs to move forward with evaluating land use processes and deadlines. Additional consultant funds may be necessary to update city codes, and staff will return with the findings from the process improvement workshops if needed.

CITY COUNCIL ACTION:     Ordinance     Resolution     Motion     Other

**Councilmember \_\_\_\_\_ moves, Councilmember \_\_\_\_\_ seconds, to approve a professional services agreement with All Angles Consulting, LLC., for process improvement services in substantial form as that attached hereto, and authorizes the city manager to execute the contract.**

REVIEWED BY: Community Development Director, Finance Director, City Attorney, City Manager



**PROFESSIONAL SERVICES AGREEMENT  
between the City of Covington and  
All Angles Consulting, LLC.**

This Professional Services Agreement (“Agreement”) is made between the City of Covington (“City”), a Washington municipal corporation, and All Angles Consulting (“Contractor”), a limited liability company, also individually referred to as a “Party” and together as the “Parties.” The Parties agree as follows:

**I. DESCRIPTION OF SERVICES.**

Contractor shall perform the following services for the City: Facilitate permit process improvements as more specifically described in Exhibit A (the “Services”), which is attached hereto and incorporated by this reference.

- A. Contractor represents that the Services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed. The Contractor warrants that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services shall begin immediately upon the effective date of this Agreement.
  
- B. The Services shall be subject, at all times, to inspection by and approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Agreement, notwithstanding the City’s knowledge of defective or non-complying performance, its substantiality, or the ease of its discovery.

**II. TERM OF AGREEMENT.**

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services specified in this Agreement, but in any event no later than December 31, 2024 (“Term”). This Agreement may be extended for additional periods of time upon the mutual written agreement of the Parties.

**III. COMPENSATION.**

The City shall pay Contractor a total amount not to exceed \$36,000 for the Services described in this Agreement. The Contractor shall provide its W-9 to the City concurrent with the execution of this Agreement. The Contractor shall invoice the City monthly based on time and materials incurred during the preceding month. The method of compensation for Contractor’s services shall be as delineated in the attached and incorporated Exhibit B. All rates and/or other methods of compensation shall remain locked at the negotiated rates throughout the Term of this Agreement. Except as otherwise provided in Exhibit B, the Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance of Services and payment under this Agreement.

If the Services do not meet the requirements of this Agreement, the Contractor will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

#### **IV. INDEPENDENT CONTRACTOR.**

The Parties intend that the Contractor shall be an independent contractor and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. The City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay, or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of this Agreement. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the Services specified in this Agreement and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the Services. The Contractor shall pay all income and other taxes due except as specifically provided in Section III of this Agreement. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. If the Contractor is a sole proprietorship or if this Agreement is with an individual, the Contractor agrees to notify the City and complete any required form if the Contractor retired under a State of Washington retirement system and agrees to indemnify any losses the City may sustain through the Contractor's failure to do so.

Even though Contractor is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

#### **V. TERMINATION.**

Either Party may terminate this Agreement, with or without cause, upon providing the other Party thirty (30) days' written notice to the addresses set forth in the signature block of this Agreement. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Contractor's records or data is not related to this project, it shall be without liability or legal exposure to the Contractor.

#### **VI. DISCRIMINATION.**

In all Contractor services, programs, activities, hiring, and employment made possible by or resulting from this Agreement, Contractor and its employees, agents, and subcontractors shall not discriminate in violation of and at all times shall comply with Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and any other applicable federal, state, or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and may result in ineligibility for further City agreements.

## **VII. INDEMNIFICATION.**

Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City; however, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

## **VIII. INSURANCE.**

- A. Insurance Term. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Services hereunder by the Contractor, its agents, representatives, or employees.
- B. No limitation. The Contractor's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- C. Minimum Scope of Insurance. The Contractor shall obtain insurance of the types and coverage described below:
  - 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
  - 2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with

respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Contractor's profession.

D. Minimum Amounts of Insurance. The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

E. Other Insurance Provision. The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage. The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Agreement before commencement of the Services.

H. Notice of Cancellation. The Contractor shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

J. City Full Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether

such limits maintained by the Contractor are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

## **IX. COMPLIANCE WITH LAWS AND CONTRACTOR'S WORK AND RISK.**

The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those Services. All Services shall be performed at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the Services.

## **X. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Contractor will be safeguarded by the Contractor. Contractor shall make such data, documents, and files available to the City upon the City's request.

## **XI. MISCELLANEOUS PROVISIONS.**

- A. Non-Waiver of Breach and Enforcement. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity, or by statute. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.
- B. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the Parties agree in writing to an alternative dispute resolution process. Each party consents to the personal jurisdiction of the state and federal courts in King County, Washington and waives any objection that such courts are an inconvenient forum. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall pay all its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by

law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Agreement.

- C. Written Notice. All communications regarding this Agreement shall be sent to the Parties at the email and/or physical addresses listed on the signature page of the Agreement, unless notified to the contrary in writing. Email notice shall become effective at the date and time it is received by the City. Any physical written notice shall become effective three (3) business days after the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be later specified in writing pursuant to this Section.
- D. Assignment. Any assignment of this Agreement by either Party without the written consent of the non-assigning Party shall be void.
- E. Interpretation and Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.
- F. Entire Agreement. The written provisions and terms of this Agreement, together with any attached Exhibits, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement. Any provision of this Agreement that is declared invalid, inoperative, null and void, or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- G. Public Records Act. The Contractor acknowledges that the City is a public agency subject to the Public Records Act codified in Chapter 42.56 RCW, and documents, notes, emails, and other records prepared or gathered by the Contractor in its performance of this Agreement may be subject to public review and disclosure, even if those records are not produced to or possessed by the City of Covington. As such, the Contractor agrees to cooperate fully with the City in satisfying the City's duties and obligations under the Public Records Act.
- H. City Business License Required. Prior to commencing the tasks described in Section I, Contractor agrees to provide proof of a current City of Covington business license pursuant to Chapter 5.10 of the Covington Municipal Code.
- I. Counterparts and Signatures by Fax or Email. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement. Further, upon executing this Agreement, either party may deliver the signature page to the other by fax or email and that signature shall have the same force and effect as if the Agreement bearing the original signature was received in person.

**IN WITNESS, the Parties below execute this Agreement, which shall become effective on the last date entered below. All acts consistent with the authority of this Agreement and prior to its effective date are ratified and affirmed, and the terms of the Agreement shall be deemed to have applied.**

[Signature Page Follows]

<p><b>CONTRACTOR:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: _____</p> <p>Its: _____  <i>(title)</i></p> <p>DATE: _____</p>	<p><b>CITY OF COVINGTON:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: Regan Bolli</p> <p>Its: City Manager</p> <p>DATE: _____</p>
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<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CONTRACTOR:</b></p> <p>All Angles Consulting, LLC.  10208 Old Hwy 99 SE  Olympia WA 98501  1-360-810-2568 (telephone)  <a href="mailto:jennifer@considerallangles.com">jennifer@considerallangles.com</a></p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF COVINGTON:</b></p> <p>Salina Lyons, Community Development Director  City of Covington  16720 SE 271<sup>st</sup> Street, Suite 100  Covington, WA 98042  (253) 480-2400 (telephone)  <a href="mailto:slyons@covingtonwa.gov">slyons@covingtonwa.gov</a></p>
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# ATTACHMENT 2

## EXHIBIT A

The Contractor shall do or provide the following Services:

**Background:** City of Covington Department of Community Development has asked for facilitation for permitting process improvement to help achieve requirements of Washington State Bill 5290.

**Purpose of Work:** This work should achieve the following objectives:

1. Initial discovery of current processes and timelines. This may include interviews with internal staff, consultants, select development community customers, data review, and process outlines.
2. Facilitation (virtual) of 2 processes related to permitting for subdivisions and commercial. This includes current and future state design. This may include a series of 2-3 hour sessions (likely 4-5 sessions for each process to develop future state design and an implementation plan)
3. Administrative support to ensure implementation of new processes is complete, documentation happens

<b>Task</b>	<b>Estimated Hours</b>	<b>Cost</b>	<b>Timeline</b>
Initial Discovery	20	\$4800	06/01/2024-7/31/2024
Facilitation of processes	80	\$19200	08/01/2024-9/30/2024
Administrative Support	100	\$12000	01/01/2024-12/31/2024
Totals	200 hours		8/01/2023-12/31/2024
	<b>Total estimated cost: \$36,000</b>		

**EXHIBIT B**  
**COMPENSATION**

Method of Compensation:

Hourly rate

In consideration of the Contractor performing the Services, the City agrees to pay the Contractor an amount calculated on the basis of the hourly labor charge rate schedule for Contractor's personnel as shown below:

Facilitator Services to be billed at \$240/hour, administrative support to be billed at \$120/hour, billed monthly at end of each month, with terms Net 30.

## Consent Agenda Item C-4

Covington City Council Meeting

Date: June 25, 2024

SUBJECT: AUTHORIZE THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH BERK CONSULTING, LLC., DAVID EVANS AND ASSOCIATES, INC., TCA ARCHITECTURE PLANNING, INC., AND TREE SOLUTION, INC. TO IMPLEMENT CLIMATE ACTIONS RELATED TO HOUSE BILL 1181 THROUGH 2027.

RECOMMENDED BY: Salina Lyons, Community Development Director

ATTACHMENT(S):

1. BERK, Inc. Professional Services Agreement
  - a. Exhibit A – BERK, Inc. Scope of Work and Budget
  - b. Exhibit B – Cascadia Scope of Work and Budget
2. DEA, LLC. Professional Service Agreement
  - a. Exhibit A – DEA, LLC Scope of Work and Budget
3. Tree Solution Inc. Professional Service Agreement
  - a. Exhibit A – Tree Solutions, Inc., LLC Scope of Work and Budget
4. TCA Professional Service Agreement
  - a. Exhibit A – TCA, LLC Scope of Work and Budget

PREPARED BY: Dafne Hernandez, Associate Planner

On April 23, 2024, the City Council approved the Department of Commerce (DOC) 2023-2025 Climate Planning Grant to implement climate actions related to Housing Bill 1181 (HB 1181). This grant will fund the adoption of Comprehensive Plan policies and development regulations necessary for climate-resilient strategies. Covington must complete the Climate Planning Grant deliverables by June 2025, with \$410,100 allocated in commerce grant funds.

Community Development intends to enter into four Professional Service Agreements to implement climate actions associated with HB 1181. The city currently has agreements with BERK Consulting, LLC., David Evans and Associates, INC., TCA Architecture Planning, Inc., and Tree Solution, Inc.

- David Evans & Associates (DEA) has provided on-call transportation support services to the Community Development Department since 2012.
- BERK Consulting, Inc. has offered on-call planning support services to the city since 2016.
- TCA Architecture Planning, Inc. has been the city's on-call architectural and design consultant since December 2019.
- Tree Solutions, Inc. has provided on-call arborist services since 2023.

### Grant Projects/Scopes

The Climate Planning Grant scope of work is divided into four deliverables, each with associated consultant work:

1. Greenhouse Gas (GHG) Reduction Plan and Climate Resilience Sub-Element (Mandatory)
  - Consultant Team: Community Development, Parks, Public Works, Berk Consulting, David Evans and Associates (city's traffic engineering firm)

2. Public Tree Assessment Program (Inventory, Maintenance, and Education)
  - o Consultant Team: Community Development, Parks, Public Works, Berk Consulting, Tree Solutions (city’s arborist)
3. Non-Motorized Plan (Wayfinding, Multimodal Routes, Infrastructure Needs, and Costs)
  - o Consultant Team: Community Development, Parks, Public Works, Berk Consulting, David Evans and Associates (city’s traffic engineering firm)
4. Downtown Heat Island/Streetscape Mitigation (Beautification, Landscaping Requirements)
  - o Consultant Team: Community Development, Public Works, Berk Consulting, Tree Solutions, and TCA (city’s architectural firm)

**Grant Funding per Consultants**

In January 2024, Commerce notified Covington that the total \$500,000 allocation was unavailable for the 2023-2025 biennium budget, but they would cover the \$410,100 of deliverables mentioned above that will need to be completed by the end of 2025. Therefore, Covington augmented the scope of work through 2025 and intends to apply for the remaining \$89,900 in the next biennium cycle to complete the listed projects listed above (1-4).

Staff will use the 2023-2025 \$410,100 commerce grant to augment the consultant teams formed to complete the above deliverables. BERK Consulting, the city’s long-range planning consultant, will provide project management assistance and subject matter expertise for the scoped activities. Their costs and the consultant team’s costs are fully reimbursable through the grant. The city’s budget will absorb city staff time to complete the work.

<b>Consultant</b>	<b>Budget Through 06/30/2025</b>	<b>Budget After 06/30/2025</b>	<b>Total</b>
BERK	\$128,140	\$29,860	\$158,000
• Cascadia (subcontractor)	\$63,000		\$63,000
DEA	\$130,000		\$130,000
Tree Solutions	\$75,000	\$35,000	\$110,000
TCA	\$13,960	\$25,040	\$39,000
<b>Total all Consultants</b>	<b>\$410,100</b>	<b>\$89,900</b>	<b>\$500,000</b>

**FISCAL IMPACT:**

In August 2023, the Department of Commerce sent a letter to the Mayor stating that \$500,000 in climate grant funding was reserved for Covington. The Community Development Long Range team allocated \$2,500 to Berk Consulting to assist with facilitating the scopes of work for climate-related actions to submit with the climate grant request. The climate grant funds are available based on the biennium from 2023-2025 and 2025-2027, aligned with the HB 1181 implementation requirement by 2027.

On June 13, 2024, staff contacted Commerce to verify that we would receive the remaining \$89,900 in the next biennium budget (2025-2027). The feedback from Commerce below indicates that that is the intent. However, given the November 2024 ballot measure, Initiative 2117, to overturn the 2021 Washington Climate Commitment Act (CCA), the identified grant funding could be at risk and unavailable. Should the remaining \$89,900 not be available to Covington, the current scope of work within the \$410,100 awarded grant is set up to ensure compliance with HB 1181.

The Downtown Heat Island/Streetscape Mitigation (TSI/TCA) is an implementation action to address the city's need to improve landscaping in the downtown. This task is in addition to meeting the HB 1181 requirements to achieve the baseline GHG goals. If the second half of the funding is not available, then there is a chance that the Downtown Heat Island/Streetscape Mitigation scope may not move forward, or the city can revise the scope and evaluate other funding opportunities.

However, to facilitate the coordination of the grant deliverables and the ideal grant funding scenario, the staff requests that the contracts be approved through the end of 2027.

CITY COUNCIL ACTION: \_\_\_\_\_ Ordinance \_\_\_\_\_ Resolution  X  Motion \_\_\_\_\_ Other

- **Councilmember \_\_\_\_\_ moves, Councilmember \_\_\_\_\_ seconds, to approve Professional Services Agreements with BERK Consulting, LLC., David Evans and Associates, INC., TCA Architecture Planning, Inc., and Tree Solution, Inc. to implement Climate Actions related to state legislation in substantial form as that attached hereto, and authorizes the city manager to execute the contract.**

REVIEWED BY: Finance Director, City Attorney, City Manager, Community Development Director



**PROFESSIONAL SERVICES AGREEMENT  
between the City of Covington and  
BERK Consulting, Inc.**

This Professional Services Agreement (“Agreement”) is made between the City of Covington (“City”), a Washington municipal corporation, and BERK Consulting, Inc. (“Contractor”), a limited liability company, also individually referred to as a “Party” and together as the “Parties.” The Parties agree as follows:

**I. DESCRIPTION OF SERVICES.**

Contractor shall perform the following services for the City: Climate Grant, as more specifically described in Exhibit A (the “Services”), which is attached hereto and incorporated by this reference.

- A. Contractor represents that the Services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed. The Contractor warrants that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services shall begin immediately upon the effective date of this Agreement.
- B. The Services shall be subject, at all times, to inspection by and approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Agreement, notwithstanding the City’s knowledge of defective or non-complying performance, its substantiality, or the ease of its discovery.

**II. TERM OF AGREEMENT.**

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services specified in this Agreement, but in any event no later than December 31, 2027 (“Term”). This Agreement may be extended for additional periods of time upon the mutual written agreement of the Parties.

**III. COMPENSATION.**

The City shall pay Contractor a total amount not to exceed \$221,000 for the Services described in this Agreement. The Contractor shall provide its W-9 to the City concurrent with the execution of this Agreement. The Contractor shall invoice the City monthly based on time and materials incurred during the preceding month. The method of compensation for Contractor’s services shall be as delineated in the attached and incorporated Exhibit A. All rates and/or other methods of compensation shall remain locked at the negotiated rates throughout the Term of this Agreement. Except as otherwise provided in Exhibit A, the Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance of Services and payment under this Agreement.

If the Services do not meet the requirements of this Agreement, the Contractor will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

#### **IV. INDEPENDENT CONTRACTOR.**

The Parties intend that the Contractor shall be an independent contractor and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. The City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay, or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of this Agreement. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the Services specified in this Agreement and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the Services. The Contractor shall pay all income and other taxes due except as specifically provided in Section III of this Agreement. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. If the Contractor is a sole proprietorship or if this Agreement is with an individual, the Contractor agrees to notify the City and complete any required form if the Contractor retired under a State of Washington retirement system and agrees to indemnify any losses the City may sustain through the Contractor's failure to do so.

Even though Contractor is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

#### **V. TERMINATION.**

Either Party may terminate this Agreement, with or without cause, upon providing the other Party thirty (30) days' written notice to the addresses set forth in the signature block of this Agreement. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Contractor's records or data is not related to this project, it shall be without liability or legal exposure to the Contractor.

#### **VI. DISCRIMINATION.**

In all Contractor services, programs, activities, hiring, and employment made possible by or resulting from this Agreement, Contractor and its employees, agents, and subcontractors shall not discriminate in violation of and at all times shall comply with Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and any other applicable federal, state, or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and may result in ineligibility for further City agreements.

## **VII. INDEMNIFICATION.**

Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City; however, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

## **VIII. INSURANCE.**

- A. Insurance Term. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Services hereunder by the Contractor, its agents, representatives, or employees.
- B. No limitation. The Contractor's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- C. Minimum Scope of Insurance. The Contractor shall obtain insurance of the types and coverage described below:
  - 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
  - 2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with

respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Contractor's profession.

D. Minimum Amounts of Insurance. The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

E. Other Insurance Provision. The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage. The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Agreement before commencement of the Services.

H. Notice of Cancellation. The Contractor shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

J. City Full Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether

such limits maintained by the Contractor are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

## **IX. COMPLIANCE WITH LAWS AND CONTRACTOR'S WORK AND RISK.**

The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those Services. All Services shall be performed at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the Services.

## **X. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Contractor will be safeguarded by the Contractor. Contractor shall make such data, documents, and files available to the City upon the City's request.

## **XI. MISCELLANEOUS PROVISIONS.**

- A. Non-Waiver of Breach and Enforcement. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity, or by statute. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.
- B. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the Parties agree in writing to an alternative dispute resolution process. Each party consents to the personal jurisdiction of the state and federal courts in King County, Washington and waives any objection that such courts are an inconvenient forum. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall pay all its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by

law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Agreement.

- C. Written Notice. All communications regarding this Agreement shall be sent to the Parties at the email and/or physical addresses listed on the signature page of the Agreement, unless notified to the contrary in writing. Email notice shall become effective at the date and time it is received by the City. Any physical written notice shall become effective three (3) business days after the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be later specified in writing pursuant to this Section.
- D. Assignment. Any assignment of this Agreement by either Party without the written consent of the non-assigning Party shall be void.
- E. Interpretation and Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.
- F. Entire Agreement. The written provisions and terms of this Agreement, together with any attached Exhibits, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement. Any provision of this Agreement that is declared invalid, inoperative, null and void, or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- G. Public Records Act. The Contractor acknowledges that the City is a public agency subject to the Public Records Act codified in Chapter 42.56 RCW, and documents, notes, emails, and other records prepared or gathered by the Contractor in its performance of this Agreement may be subject to public review and disclosure, even if those records are not produced to or possessed by the City of Covington. As such, the Contractor agrees to cooperate fully with the City in satisfying the City's duties and obligations under the Public Records Act.
- H. City Business License Required. Prior to commencing the tasks described in Section I, Contractor agrees to provide proof of a current City of Covington business license pursuant to Chapter 5.10 of the Covington Municipal Code.
- I. Counterparts and Signatures by Fax or Email. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement. Further, upon executing this Agreement, either party may deliver the signature page to the other by fax or email and that signature shall have the same force and effect as if the Agreement bearing the original signature was received in person.

**IN WITNESS, the Parties below execute this Agreement, which shall become effective on the last date entered below. All acts consistent with the authority of this Agreement and prior to its effective date are ratified and affirmed, and the terms of the Agreement shall be deemed to have applied.**

[Signature Page Follows]

<p><b>CONTRACTOR:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: _____</p> <p>Its: _____  <i>(title)</i></p> <p>DATE: _____</p>	<p><b>CITY OF COVINGTON:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: Regan Bolli</p> <p>Its: City Manager</p> <p>DATE: _____</p>
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<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CONTRACTOR:</b></p> <p>Lisa Grueter  BERK Consulting, Inc.  2200 Sixth Avenue, Suite 1000  Seattle, WA 98121  206-493-2367 (telephone)  <a href="mailto:lisa@berkconsulting.com">lisa@berkconsulting.com</a></p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF COVINGTON:</b></p> <p>Salina Lyons, Community Development Director  City of Covington  16720 SE 271<sup>st</sup> Street, Suite 100  Covington, WA 98042  (253) 480-2400 (telephone)  <a href="mailto:slyons@covingtonwa.gov">slyons@covingtonwa.gov</a></p>
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# Scope/Budget for Covington: Climate Element & Implementation

## Scope of Work – Through June 2025

Tasks, Steps, Deliverables	Description	Scope Assumptions
<b>Task 1</b>	<b>Engagement</b>	
Step 1.1	Develop an engagement workplan to support work funded through this grant. Create a schedule for engagement activities and determine roles and responsibilities for implementation.	
Deliverable 1.1	Engagement Workplan	
Step 1.2	Form a staff and consultant Climate Policy technical team that will provide input on deliverables funded through this grant. Facilitate their meetings.	Five meetings are assumed.
Step 1.3	Develop and maintain a storymap to collect comments about climate issues in specific locations in the City.	
Step 1.4	Conduct interviews with representatives of underrepresented/overburdened communities to inform development of Comprehensive Plan climate resilience and GHG reduction policy, Non-motorized Plan, and Downtown Landscaping Plan.	
Deliverable 1.2	Summary of Interviews	
Step 1.5	Conduct public engagement consistent with City practices. This may include creating a project webpage, asking for public input via surveys and pop up outreach, holding public meetings including but not limited to the Planning Commission and Equity, Cultural, Social, and Justice Commission, and notifying planning partners on the SEPA distribution list.	
Deliverable 1.3	Summary of Public Engagement	

Tasks, Steps, Deliverables	Description	Scope Assumptions
<b>Task 2</b>	<b>Climate Element</b>	
Step 2.1	Conduct GHG emissions inventory	See Cascadia Consulting Group scope, Attachment A.
Deliverable 2.1	Report on GHG emissions inventory findings	See Cascadia Consulting Group scope, Attachment A.
Step 2.2	Set GHG reduction targets	See Cascadia Consulting Group scope, Attachment A.
Step 2.3	Develop GHG Reduction Sub-element, including goals and policies	See Cascadia Consulting Group scope, Attachment A.
Deliverable 2.2	GHG Reduction Sub-element	See Cascadia Consulting Group scope, Attachment A.
Step 2.4	Develop Climate Resilience Sub-Element, including goals and policies, using the City's 2023 climate vulnerability assessment report as a starting point	Four virtual legislative meetings are assumed.
Deliverable 2.3	Memo and Final GHG and Resilience Sub-Elements for Adoption	
<b>Task 3</b>	<b>HB 1181 Updates to Other Elements</b>	
Step 3.1	Conduct assessment of updates needed to Transportation, Land Use, Capital Facilities, Utilities, and Parks Elements for compliance with HB 1181	Three virtual legislative meetings are assumed.
Deliverable 3.1	List of recommended updates per element for compliance with HB 1181	
Step 3.2	Conduct multimodal transportation modeling, research, mapping, and policy analysis for Transportation Element	DEA scope is under separate agreement, BERK time facilitates effort.
Step 3.3	Draft updates to Transportation Element	DEA scope is under separate agreement, BERK time facilitates effort.
Deliverable 3.2	Non-motorized Plan and VMT Policies for Transportation Element	DEA scope is under separate agreement, BERK time facilitates effort.

Tasks, Steps, Deliverables	Description	Scope Assumptions
Step 3.4	Conduct research and policy analysis for Land Use, Capital Facilities, Utilities, and Parks Elements	
Step 3.5	Conduct tree canopy evaluation for Parks Element including: Urban Forestry Tree Inventory & Canopy Assessment	Tree Solutions scope is under separate agreement, BERK time facilitates effort.
Deliverable 3.3	Report on tree canopy evaluation findings	Tree Solutions scope is under separate agreement, BERK time facilitates effort.
Step 3.6	Draft updates to Land Use, Capital Facilities, Utilities, and Parks Elements	
Step 3.7	Finalize element updates for adoption	
Deliverable 3.4	Memo documenting City Council direction to update elements	
Deliverable 3.5	Tree Inventory shape files or equivalent for integration with City's GIS Application	Tree Solutions scope is under separate agreement, BERK time facilitates effort.
<b>Task 4</b>	<b>Downtown Resiliency Code Amendments</b>	
Step 4.1	Gap analysis of current code and implications for heat islands, landscaping, and building design in relation to 2023 climate vulnerability assessment and spatial model as a starting point. A comprehensive review and audit of the zoning code with proposed revisions and improvements aimed at enhancing the city's control and adaptability to climate challenges.	This scope will be carried forward with TCA under a separate agreement with BERK review and facilitation.
Deliverable 4.1-A	Report on findings of gap analysis	This scope will be carried forward with TCA under a separate agreement.

## Post June 2025 Tasks

Step 4.2	Analyze the interaction between building design and pedestrian movement in the downtown area to enhance accessibility, safety, and sustainability. Evaluate how public facilities can benefit the overall downtown climate response strategy and recommend improvements or enhancements that	This scope will be carried forward with TCA under a separate agreement with BERK review and facilitation.
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	will contribute to the city's resilience and climate response efforts.	
Deliverable 4.1-B	Report on findings of gap analysis (4.1-A) incorporating the Downtown climate vulnerability analysis (4.1-B)	This scope will be carried forward with TCA under a separate agreement.
Step 4.3	Develop high-level policy recommendations that will guide the city's decision-makers and provide a strategic framework for addressing climate-related challenges and improving resilience. To enhance the city's control over its development and land use, evaluate and propose improvements to the zoning code. Explore affordable and practical solutions to address the identified deficiencies. Develop recommended code changes Covington could made to address vulnerabilities based on best practices. Also, develop recommended ways to measure the success of these practices. Create visual aids and graphics that effectively communicate the proposed strategies and changes to the public.	This scope will be carried forward with TCA under a separate agreement with BERK review and facilitation.
Deliverable 4.2	Memo recommending code changes and measures	This scope will be carried forward with TCA under a separate agreement with BERK review and facilitation.
Step 4.4	Finalize code changes for adoption	This scope will be carried forward with TCA under a separate agreement with BERK review and facilitation.
Deliverable 4.3	Adopted code	
Step 4.5	Downtown Improvements Assessment: Site visits and meetings to assess downtown areas for potential canopy improvements as part of non-motorized and "beautification" objectives. This is in response to heat islands over downtown parking lots.	Tree Solutions scope is under separate agreement, BERK time facilitates effort.
Deliverable 4.4	Downtown Tree Canopy Report Draft and Final	Tree Solutions scope is under separate agreement, BERK time facilitates effort.

# Budget

## Budget Through June 2025

This scope is funded as of June 2024 through June 2025.

	CCG	BERK
		<b>Hours and Estimated Cost by Task</b>
<b>2023 Hourly Rate</b>		
<b>Task 1: Engagement</b>		
Workplan		\$3,040
Interviews		\$12,850
Storymap		\$13,180
Technical Team (5)		\$12,500
Survey and Summary of Engagement		\$11,000
Team Coordination		\$6,240
<b>Subtotal</b>		<b>342</b>
		<b>\$58,810</b>
<b>Task 2: Climate Element</b>		
GHG Emissions Inventory	\$25,000.00	\$2,080
GHG Reduction Targets and Sub-Element	\$38,000.00	\$6,700
Climate Resilience Sub-Element		\$9,980
Memo and Element		\$5,640
Team Coordination		\$4,320
Legislative Meetings (4)		\$8,040
<b>Subtotal</b>		<b>172</b>
		<b>\$36,760</b>
<b>Task 3: HB 1181 Updates to Other Elements</b>		
Tree Canopy		\$4,160
Non-Motorized Plan		\$6,460
Other Element Updates		\$8,000
Team Coordination		\$5,340
Legislative Meetings (3)		\$5,780
<b>Subtotal</b>		<b>134</b>
		<b>\$29,740</b>
<b>Task 4: Downtown Resiliency Code Amendments</b>		
Buildings		\$1,040
<b>Subtotal</b>		<b>4</b>
		<b>\$1,040</b>
<b>Total Estimated Hours</b>		<b>652</b>
<b>Cost (Hours*Rate)</b>	<b>\$63,000.00</b>	<b>\$126,350</b>
<b>Subtotal Consultant Cost</b>		<b>\$126,350</b>
<b>Survey Monkey: \$50 for small, \$100 for big lift</b>		<b>\$200</b>
<b>Project Expenses at ~1% of Project Budget</b>		<b>\$1,590</b>
<b>Partner Firm Cost</b>		<b>\$63,000</b>
<b>Estimated Project Total</b>		<b>\$191,140</b>
<i>Under separate agreements, DEA, Tree Solutions, TCA</i>		<i>\$218,960</i>

*Budget Post June 2025*

The budget after June 30, 2025 depends on an amended Commerce agreement.

<b>Task 4: Downtown Resiliency Code Amendments</b>	
Buildings	\$3,120
Stormwater/Plantings	\$3,120
Code Development	\$13,260
Team Coordination	\$3,120
Legislative Meetings (4)	\$6,240
<b>Subtotal Hours</b>	<b>128</b>
	<b>\$28,860</b>
<b>Project Expenses at ~3% of Project Budget</b>	<b>\$1,000</b>
<b>Total</b>	<b>\$29,860</b>

*Budget All Phases*

With all funding in place the full budget is presented below.

	<b>Through 6/2025</b>	<b>Post 6/2025</b>	<b>Total</b>
BERK	\$128,140	\$29,860	\$158,000
Cascadia (subconsultant)	\$63,000		\$63,000
<b>Grand Total</b>	<b>\$191,140</b>	<b>\$29,860</b>	<b>\$221,000</b>

**Budget Assumptions**

- Budget may be transferred from one task to another to address different levels of effort, provided that each task is completed.
- Project management costs such as check-in meetings with staff and monthly invoicing will be reported under the corresponding task.
- Any travel expenses will be billed to the corresponding task.
- The City will handle any costs associated with engagement materials, such as printing.
- Completion of deliverables for Tasks 2, 3, and 4 is dependent upon work the City has contracted under separate agreements with DEA, Tree Solutions, and TCA. See corresponding scope notes.

# Attachment A: Covington Climate Element – GHG Services

## Scope of Work for Cascadia Consulting Group

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### Task 1: Project Management & Kickoff

Cascadia Consulting Group (“Cascadia”) will convene a **kickoff meeting** with the City to confirm goals, deliverables, and timelines for the Climate Element. We will use the results of the kickoff meeting to develop a draft and final Climate Element work plan and schedule.

### Task 2: GHG Emissions Inventory

Cascadia will provide a summary of Covington’s estimated 2019 communitywide GHG emissions as developed through the Puget Sound Regional Emissions Analysis (PSREA) project, including quantification of major sources such as buildings and transportation.

#### Deliverable(s):

Covington 2019 GHG emissions summary report

### Task 3: GHG Wedge Analysis

Drawing from the GHG emissions inventory as a guide, we will identify top local GHG reduction strategies, including quantitative estimates of potential GHG emission reductions as modeled in the PSREA wedge analysis tool. As part of this process, we will update growth assumptions in the tool to match local planning projections and develop GHG reduction targets.

#### Deliverable(s):

Covington GHG emissions forecast & strategy scenario analysis (in Excel)  
Covington GHG emissions forecast & strategy assessment report<sup>1</sup>

### Task 4: Climate Element

Cascadia will utilize available information—including State guidance, City policies, and the GHG emission analyses—to develop a draft and final Climate Element for City of Covington’s Comprehensive Plan update.

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<sup>1</sup> Could be combined with 2019 GHG emissions inventory report, if desired.

**Deliverable(s):**

Draft and final Climate GHG Sub-Element that includes:

- Goals and policies, with brief descriptions (e.g., one paragraph).
- Report formatting for editorial review only (no advanced graphics treatment)
- 10-15 pages
- 2-3 rounds of client review and edits before finalizing

## Stakeholder Engagement

Cascadia will prepare for and attend up to two meetings with stakeholders, City Council, Commissions, etc.

## Schedule

The proposed schedule for this work is indicated below.

Task	Jul	Aug	Sep	Oct	Nov	Dec	Jan
1. PM & Kickoff	█						
2. GHG Emissions Inventory	█	█	█				
3. GHG Wedge Analysis	█	█	█				
4. Climate Sub-Element				█	█	█	█
5. Stakeholder Engagement				█	█	█	█

## Budget

The proposed budget for this scope of work is indicated below.

Task	Budget
1. PM & Kickoff	\$2,000
2. GHG Emissions Inventory	\$8,000
3. GHG Wedge Analysis	\$15,000
4. Climate Element	\$35,000
5. Stakeholder Engagement	\$3,000
<b>TOTAL</b>	<b>\$63,000</b>

# Attachment A: Covington Climate Element

## SCOPE OF WORK FOR BERK CONSULTING

### Task 1: Project Management & Kickoff

---

Cascadia Consulting Group (“Cascadia”) will convene a **kickoff meeting** with the City to confirm goals, deliverables, and timelines for the Climate Element. We will use the results of the kickoff meeting to develop a draft and final Climate Element work plan and schedule.

### Task 2: GHG Emissions Inventory

---

Cascadia will provide a summary of Covington’s estimated 2019 communitywide GHG emissions as developed through the Puget Sound Regional Emissions Analysis (PSREA) project, including quantification of major sources such as buildings and transportation.

**Deliverable(s):**

- Covington 2019 GHG emissions summary report

### Task 3: GHG Wedge Analysis

---

Drawing from the GHG emissions inventory as a guide, we will identify top local GHG reduction strategies, including quantitative estimates of potential GHG emission reductions as modeled in the PSREA wedge analysis tool. As part of this process, we will update growth assumptions in the tool to match local planning projections and develop GHG reduction targets.

**Deliverable(s):**

- Covington GHG emissions forecast & strategy scenario analysis (in Excel)

- Covington GHG emissions forecast & strategy assessment report<sup>1</sup>

## Task 4: Climate Element

Cascadia will utilize available information—including State guidance, City policies, and the GHG emission analyses—to develop a draft and final Climate Element for City of Covington’s Comprehensive Plan update.

### Deliverable(s):

- Draft and final Climate GHG Sub-Element that includes:
  - Goals and policies, with brief descriptions (e.g., one paragraph).
  - Report formatting for editorial review only (no advanced graphics treatment)
  - 10-15 pages
  - 2-3 rounds of client review and edits before finalizing

## Stakeholder Engagement

Cascadia will prepare for and attend up to two meetings with stakeholders, City Council, Commissions, etc.

## Schedule

The proposed schedule for this work is indicated below.

Task	Jul	Aug	Sep	Oct	Nov	Dec	Jan
1. PM & Kickoff							
2. GHG Emissions Inventory							
3. GHG Wedge Analysis							
4. Climate Sub-Element							
5. Stakeholder Engagement							

<sup>1</sup> Could be combined with 2019 GHG emissions inventory report, if desired.

# Budget

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The proposed budget for this scope of work is indicated below.

<b>Task</b>	<b>Budget</b>
1. <b>PM &amp; Kickoff</b>	\$2,000
2. <b>GHG Emissions Inventory</b>	\$8,000
3. <b>GHG Wedge Analysis</b>	\$15,000
4. <b>Climate Element</b>	\$35,000
5. <b>Stakeholder Engagement</b>	\$3,000
<b>TOTAL</b>	<b>\$63,000</b>



City of Covington Agreement No.  _____
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**PROFESSIONAL SERVICES AGREEMENT  
between the City of Covington and  
David Evans and Associates, Inc.**

This Professional Services Agreement (“Agreement”) is made between the City of Covington (“City”), a Washington municipal corporation, and David Evans and Associates, Inc. (“Contractor”), a Washington corporation, also individually referred to as a “Party” and together as the “Parties.” The Parties agree as follows:

**I. DESCRIPTION OF SERVICES.**

Contractor shall perform the following services for the City: Climate Grant, as more specifically described in Exhibit A (the “Services”), which is attached hereto and incorporated by this reference.

- A. Contractor represents that the Services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed. The Contractor warrants that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services shall begin immediately upon the effective date of this Agreement.
  
- B. The Services shall be subject, at all times, to inspection by and approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Agreement, notwithstanding the City’s knowledge of defective or non-complying performance, its substantiality, or the ease of its discovery.

**II. TERM OF AGREEMENT.**

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services specified in this Agreement, but in any event no later than December 31, 2027 (“Term”). This Agreement may be extended for additional periods of time upon the mutual written agreement of the Parties.

**III. COMPENSATION.**

The City shall pay Contractor a total amount not to exceed \$130,000 for the Services described in this Agreement. The Contractor shall provide its W-9 to the City concurrent with the execution of this Agreement. The Contractor shall invoice the City monthly based on time and materials incurred during the preceding month. The method of compensation for Contractor’s services shall be as delineated in the attached and incorporated A. All rates and/or other methods of compensation shall remain locked at the negotiated rates throughout the Term of this Agreement. Except as otherwise provided in Exhibit A, the Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance of Services and payment under this Agreement.

If the Services do not meet the requirements of this Agreement, the Contractor will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

#### **IV. INDEPENDENT CONTRACTOR.**

The Parties intend that the Contractor shall be an independent contractor and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. The City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay, or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of this Agreement. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the Services specified in this Agreement and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the Services. The Contractor shall pay all income and other taxes due except as specifically provided in Section III of this Agreement. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. If the Contractor is a sole proprietorship or if this Agreement is with an individual, the Contractor agrees to notify the City and complete any required form if the Contractor retired under a State of Washington retirement system and agrees to indemnify any losses the City may sustain through the Contractor's failure to do so.

Even though Contractor is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

#### **V. TERMINATION.**

Either Party may terminate this Agreement, with or without cause, upon providing the other Party thirty (30) days' written notice to the addresses set forth in the signature block of this Agreement. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Contractor's records or data is not related to this project, it shall be without liability or legal exposure to the Contractor.

#### **VI. DISCRIMINATION.**

In all Contractor services, programs, activities, hiring, and employment made possible by or resulting from this Agreement, Contractor and its employees, agents, and subcontractors shall not discriminate in violation of and at all times shall comply with Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and any other applicable federal, state, or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and may result in ineligibility for further City agreements.

## **VII. INDEMNIFICATION.**

Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City; however, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

## **VIII. INSURANCE.**

- A. Insurance Term. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Services hereunder by the Contractor, its agents, representatives, or employees.
- B. No limitation. The Contractor's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- C. Minimum Scope of Insurance. The Contractor shall obtain insurance of the types and coverage described below:
  - 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
  - 2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with

respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Contractor's profession.

D. Minimum Amounts of Insurance. The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

E. Other Insurance Provision. The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage. The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Agreement before commencement of the Services.

H. Notice of Cancellation. The Contractor shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

J. City Full Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether

such limits maintained by the Contractor are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

## **IX. COMPLIANCE WITH LAWS AND CONTRACTOR'S WORK AND RISK.**

The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those Services. All Services shall be performed at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the Services.

## **X. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Contractor will be safeguarded by the Contractor. Contractor shall make such data, documents, and files available to the City upon the City's request.

## **XI. MISCELLANEOUS PROVISIONS.**

- A. Non-Waiver of Breach and Enforcement. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity, or by statute. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.
- B. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the Parties agree in writing to an alternative dispute resolution process. Each party consents to the personal jurisdiction of the state and federal courts in King County, Washington and waives any objection that such courts are an inconvenient forum. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall pay all its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by

law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Agreement.

- C. Written Notice. All communications regarding this Agreement shall be sent to the Parties at the email and/or physical addresses listed on the signature page of the Agreement, unless notified to the contrary in writing. Email notice shall become effective at the date and time it is received by the City. Any physical written notice shall become effective three (3) business days after the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be later specified in writing pursuant to this Section.
- D. Assignment. Any assignment of this Agreement by either Party without the written consent of the non-assigning Party shall be void.
- E. Interpretation and Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.
- F. Entire Agreement. The written provisions and terms of this Agreement, together with any attached Exhibits, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement. Any provision of this Agreement that is declared invalid, inoperative, null and void, or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- G. Public Records Act. The Contractor acknowledges that the City is a public agency subject to the Public Records Act codified in Chapter 42.56 RCW, and documents, notes, emails, and other records prepared or gathered by the Contractor in its performance of this Agreement may be subject to public review and disclosure, even if those records are not produced to or possessed by the City of Covington. As such, the Contractor agrees to cooperate fully with the City in satisfying the City's duties and obligations under the Public Records Act.
- H. City Business License Required. Prior to commencing the tasks described in Section I, Contractor agrees to provide proof of a current City of Covington business license pursuant to Chapter 5.10 of the Covington Municipal Code.
- I. Counterparts and Signatures by Fax or Email. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement. Further, upon executing this Agreement, either party may deliver the signature page to the other by fax or email and that signature shall have the same force and effect as if the Agreement bearing the original signature was received in person.

**IN WITNESS, the Parties below execute this Agreement, which shall become effective on the last date entered below. All acts consistent with the authority of this Agreement and prior to its effective date are ratified and affirmed, and the terms of the Agreement shall be deemed to have applied.**

[Signature Page Follows]

<p><b>CONTRACTOR:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: _____</p> <p>Its: _____  <i>(title)</i></p> <p>DATE: _____</p>	<p><b>CITY OF COVINGTON:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: Regan Bolli</p> <p>Its: City Manager</p> <p>DATE: _____</p>
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<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CONTRACTOR:</b></p> <p>Josh Anderson  David Evans and Associates, INC  2100 S. River Parkway, Suite 100  Portland, OR 97201  (503) 223-6663  <a href="mailto:Josh.Anderson@deainc.com">Josh.Anderson@deainc.com</a></p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF COVINGTON:</b></p> <p>Salina Lyons, Community Development Director  City of Covington  16720 SE 271<sup>st</sup> Street, Suite 100  Covington, WA 98042  (253) 480-2400 (telephone)  <a href="mailto:slyons@covingtonwa.gov">slyons@covingtonwa.gov</a></p>
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Contractor shall provide the following scope of services.

## Tasks:

### **Task 1. Covington Pedestrian-Bicycle Plan**

#### **1.1. Review Plans and Assemble Current Data**

Review, synthesize and summarize city and regional transportation and parks plans and policies. Assemble pertinent and available GIS transportation, land use, trails and transit data from the city, WSDOT, King County, PSRC, and King County Metro. Summarize data in a single geodatabase for later delivery to the City of Covington.

#### **1.2. Inventory Pedestrian-Bicycle System and Calculate Level-of-Traffic Stress (LTS)**

Assemble and map available pedestrian and bicycle facility data, including locations, type, and condition (as available). Conduct Google and Google Streetview inventory for those local arterial, collector, and local streets to complete inventory. Calculate and map pedestrian-and bicycle LTS based on summary inventory.

#### **1.3. Identify Existing Pedestrian-Bicycle System Gaps**

Based on available data, identify and map gaps in the pedestrian network (sidewalks and trails) and bicycle network (based on current city and state design standards). Coordinate with City Staff, schedule, facilitate, and summarize virtual **Staff Work Session 1** to review outcomes of Tasks 1.1, 1.2, and 1.3 and establish draft pedestrian and bicycle policies and evaluation criteria.

### **MEMORANDUM #1:**

Prepare and submit Memorandum #1 that will include the following:

- Summary of various city and regional transportation plans and policies
- Relevant GIS information as a baseline for the Covington Pedestrian-Bicycle plan
- GIS geodatabase layers summarizing pedestrian and bicycle inventory and LTS
- Summary of gaps in the pedestrian and bicycle networks

#### **1.4. Conduct FHWA Best Practice Connectivity Analysis**

Employ a six-part connectivity assessment of Covington by implementing FHWA's Best Practice guide for multi-modal connectivity. Based on GIS data available from Tasks 2-3. Calculate and map unique pedestrian/bicycle system features, including:

- **Safety:** Pedestrian crash counts and severity to examine streetscape features or motorist / pedestrian travel behavior.
- **Network Completeness:** Measures proportion of network with existing pathways or sidewalks by street functional class.
- **Level of Traffic Stress:** Identify routes attractive to pedestrians sensitive to network quality.
- **Route Directness:** Illustrate parcel-level connectivity and neighborhood-level gaps in pedestrian networks, and benefits of connectivity improvements.
- **Intersection Density:** Urban design principles of multi-modal connections through short blocks and minimal dead-end streets.

- **Access to Destinations:** Measures whether the network connects people to desired destinations: schools, parks, civic centers, and active transportation access points.

Outcomes will be used to identify needed improvements (Task 5), with focus attention on sidewalk and bicycle facility network completion, access to key non-motorized destinations and intersecting routes, and parallel pedestrian and bicycle networks within and around Covington.

### 1.5. Identify Pedestrian-Bicycle Connection Improvements

Identify important non-motorized connections which help fill system gaps, better linking Covington neighborhoods with critical walk-bike destinations like safe routes to schools, parks, civic centers, healthy food stores and public transit. Coordinate with City Staff, schedule, facilitate and summarize virtual **Staff Work Session 2** to review outcomes of Tasks 7.4 and 7.5.

#### MEMORANDUM #2:

Prepare and submit Memorandum #2 that will include the following:

- Results of the connectivity analysis (Task 1.4) in map form
- Results of the identification and mapping of pedestrian and bicycle connection improvements

### 1.6. Estimate Costs and Rank Pedestrian-Bicycle Connection Improvements

Based on early coordination with Staff, develop and apply consistent planning-level unit cost metrics to estimate the cost of pedestrian and bicycle projects identified in Task 1.5. Apply draft evaluation criteria from Task 1.1, and rank and prioritize pedestrian and bicycle improvements. Projects will be categorized as 6-, 12- and 20-year priorities. Coordinate and facilitate virtual **Staff Work Session 3** to review and amend outcomes from Task 1.6.

### 1.7. Prepare Pedestrian-Bicycle Capital Improvement Plan

Summarize and evaluate federal, state, and local source programs that can be used to fund pedestrian and bicycle projects. Based on Task 7.1/Memorandum #1 update the Comprehensive Plan Transportation Element levels of service text/policies regarding pedestrian and bicycle facilities. Maps from the Pedestrian-Bicycle Capital Improvement Plan will be integrated into the Comprehensive Plan Transportation Element.

### 1.8. VMT Assessment and Findings

Develop a methodology to post-process vehicle travel demand model estimates and summarize net VMT per capita reduction based on priority pedestrian and bicycle projects from Tasks 5-7. Modeling estimates for the 6-, and 20-year Transportation Improvement Plan (build and no-build) scenarios will be summarized, including estimates of pedestrian-bicycle project impacts on overall travel demand (VMT).

#### MEMORANDUM #3:

Prepare and submit Memorandum #3 that will include the following:

- Planning level cost estimates
- Project evaluation criteria
- Ranking of identified projects in 6-, 12-, and 20-year bins
- Pedestrian-Bicycle 6-year capital improvement plan (to inform 6-year TIP)

- VMT assessment and findings

**1.9. Prepare Pedestrian-Bicycle System Plan Report**

Assemble the key work products completed in previous tasks into a Draft Pedestrian-Bicycle Systems Plan (Plan) report. The draft Plan will be distributed to city Staff. Coordinate and facilitate virtual **Staff Work Session 4** to review and amend capital improvement plan (Task 1.7, VMT Assessments (Task 1.8) and Draft Plan. Comments and feedback on the Draft Plan will be assimilated into the Final Pedestrian-Bicycle Systems Plan and submitted to the city.

**FINAL DELIVERABLE:** Draft and Final Pedestrian-Bicycle System plan.

**SCHEDULE**

Completed Pedestrian-Bicycle Systems Plan Report within 7 months of Notice-to-Proceed.

**BUDGET**

Task	Estimated Budget
Task 1.1 – Review Plans and Assemble Current Data	\$4,000
Task 1.2 – Inventory Pedestrian-Bicycle System and Calculate LTS	\$21,000
Task 1.3 – Identify Existing Pedestrian-Bicycle System Gaps	\$4,000
Task 1.4 – Conduct FHWA Best Practice Connectivity Analysis	\$26,000
Task 1.5 – Identify Pedestrian-Bicycle Connection Improvements	\$21,000
Task 1.6 – Estimate Costs and Rank Pedestrian-Bicycle Connection Improvements	\$17,000
Task 1.7 – Prepare Pedestrian-Bicycle Capital Improvement Plan	\$10,000
Task 1.8 – VMT assessment and Findings	\$21,000
Task 1.9 – Prepare Pedestrian-Bicycle System Plan Report	\$6,000
<b>Total Not to Exceed</b>	<b>\$130,000</b>



**PROFESSIONAL SERVICES AGREEMENT  
between the City of Covington and  
Tree Solutions, Inc.**

This Professional Services Agreement (“Agreement”) is made between the City of Covington (“City”), a Washington municipal corporation, and Tree Solutions, Inc. (“Contractor”), a corporation, also individually referred to as a “Party” and together as the “Parties.” The Parties agree as follows:

**I. DESCRIPTION OF SERVICES.**

Contractor shall perform the following services for the City: Climate Grant, as more specifically described in Exhibit A (the “Services”), which is attached hereto and incorporated by this reference.

- A. Contractor represents that the Services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed. The Contractor warrants that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services shall begin immediately upon the effective date of this Agreement.
- B. The Services shall be subject, at all times, to inspection by and approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Agreement, notwithstanding the City’s knowledge of defective or non-complying performance, its substantiality, or the ease of its discovery.

**II. TERM OF AGREEMENT.**

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services specified in this Agreement, but in any event no later than December 31, 2027 (“Term”). This Agreement may be extended for additional periods of time upon the mutual written agreement of the Parties.

**III. COMPENSATION.**

The City shall pay Contractor a total amount not to exceed \$110,000 for the Services described in this Agreement. The Contractor shall provide its W-9 to the City concurrent with the execution of this Agreement. The Contractor shall invoice the City monthly based on time and materials incurred during the preceding month. The method of compensation for Contractor’s services shall be as delineated in the attached and incorporated Exhibit A. All rates and/or other methods of compensation shall remain locked at the negotiated rates throughout the Term of this Agreement. Except as otherwise provided in Exhibit A, the Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance of Services and payment under this Agreement.

If the Services do not meet the requirements of this Agreement, the Contractor will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

#### **IV. INDEPENDENT CONTRACTOR.**

The Parties intend that the Contractor shall be an independent contractor and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. The City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay, or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of this Agreement. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the Services specified in this Agreement and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the Services. The Contractor shall pay all income and other taxes due except as specifically provided in Section III of this Agreement. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. If the Contractor is a sole proprietorship or if this Agreement is with an individual, the Contractor agrees to notify the City and complete any required form if the Contractor retired under a State of Washington retirement system and agrees to indemnify any losses the City may sustain through the Contractor's failure to do so.

Even though Contractor is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

#### **V. TERMINATION.**

Either Party may terminate this Agreement, with or without cause, upon providing the other Party thirty (30) days' written notice to the addresses set forth in the signature block of this Agreement. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Contractor's records or data is not related to this project, it shall be without liability or legal exposure to the Contractor.

#### **VI. DISCRIMINATION.**

In all Contractor services, programs, activities, hiring, and employment made possible by or resulting from this Agreement, Contractor and its employees, agents, and subcontractors shall not discriminate in violation of and at all times shall comply with Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and any other applicable federal, state, or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and may result in ineligibility for further City agreements.

## **VII. INDEMNIFICATION.**

Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City; however, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

## **VIII. INSURANCE.**

- A. Insurance Term. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Services hereunder by the Contractor, its agents, representatives, or employees.
- B. No limitation. The Contractor's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- C. Minimum Scope of Insurance. The Contractor shall obtain insurance of the types and coverage described below:
  - 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
  - 2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with

respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Contractor's profession.

D. Minimum Amounts of Insurance. The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

E. Other Insurance Provision. The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage. The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Agreement before commencement of the Services.

H. Notice of Cancellation. The Contractor shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

J. City Full Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether

such limits maintained by the Contractor are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

## **IX. COMPLIANCE WITH LAWS AND CONTRACTOR'S WORK AND RISK.**

The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those Services. All Services shall be performed at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the Services.

## **X. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Contractor will be safeguarded by the Contractor. Contractor shall make such data, documents, and files available to the City upon the City's request.

## **XI. MISCELLANEOUS PROVISIONS.**

- A. Non-Waiver of Breach and Enforcement. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity, or by statute. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.
- B. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the Parties agree in writing to an alternative dispute resolution process. Each party consents to the personal jurisdiction of the state and federal courts in King County, Washington and waives any objection that such courts are an inconvenient forum. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall pay all its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by

law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Agreement.

- C. Written Notice. All communications regarding this Agreement shall be sent to the Parties at the email and/or physical addresses listed on the signature page of the Agreement, unless notified to the contrary in writing. Email notice shall become effective at the date and time it is received by the City. Any physical written notice shall become effective three (3) business days after the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be later specified in writing pursuant to this Section.
- D. Assignment. Any assignment of this Agreement by either Party without the written consent of the non-assigning Party shall be void.
- E. Interpretation and Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.
- F. Entire Agreement. The written provisions and terms of this Agreement, together with any attached Exhibits, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement. Any provision of this Agreement that is declared invalid, inoperative, null and void, or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- G. Public Records Act. The Contractor acknowledges that the City is a public agency subject to the Public Records Act codified in Chapter 42.56 RCW, and documents, notes, emails, and other records prepared or gathered by the Contractor in its performance of this Agreement may be subject to public review and disclosure, even if those records are not produced to or possessed by the City of Covington. As such, the Contractor agrees to cooperate fully with the City in satisfying the City's duties and obligations under the Public Records Act.
- H. City Business License Required. Prior to commencing the tasks described in Section I, Contractor agrees to provide proof of a current City of Covington business license pursuant to Chapter 5.10 of the Covington Municipal Code.
- I. Counterparts and Signatures by Fax or Email. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement. Further, upon executing this Agreement, either party may deliver the signature page to the other by fax or email and that signature shall have the same force and effect as if the Agreement bearing the original signature was received in person.

**IN WITNESS, the Parties below execute this Agreement, which shall become effective on the last date entered below. All acts consistent with the authority of this Agreement and prior to its effective date are ratified and affirmed, and the terms of the Agreement shall be deemed to have applied.**

[Signature Page Follows]

<p><b>CONTRACTOR:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: _____</p> <p>Its: _____  <i>(title)</i></p> <p>DATE: _____</p>	<p><b>CITY OF COVINGTON:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: Regan Bolli</p> <p>Its: City Manager</p> <p>DATE: _____</p>
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<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CONTRACTOR:</b></p> <p>Haley Sonerholm  Tree Solutions, Inc.  2940 Westlake Ave N., Suite 200  Seattle, WA 98109  206-528-4670 (telephone)  <a href="mailto:haley@treesolutions.net">haley@treesolutions.net</a></p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF COVINGTON:</b></p> <p>Salina Lyons, Community Development Director  City of Covington  16720 SE 271<sup>st</sup> Street, Suite 100  Covington, WA 98042  (253) 480-2400 (telephone)  <a href="mailto:slyons@covingtonwa.gov">slyons@covingtonwa.gov</a></p>
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## **City of Covington – Urban Forestry Tree Inventory & Assessment**

*This scope of work is listed as task 3.5 and 4.2 (as well as deliverables 3.3 and 3.5) in the Climate Planning Grant 2023-2025 agreement between WA State Dept of Commerce and the City of Covington. It includes a “Tree Canopy Evaluation for Parks Elements including Urban Forestry Tree Inventory & Canopy Assessment”, a report on “tree canopy evaluation findings”, and an analysis of the downtown area to enhance accessibility, safety, and sustainability. Evaluate how public facilities can benefit the overall downtown climate response strategy and recommend improvements or enhancements that will contribute to the city’s resilience and climate response effort”.*

*The Consultant will provide overall project management and documentation of work progress, changes, and additions to the project. Includes meeting with staff and/or consulting team, setting objectives, refining scope of work and developing approach. Includes years 2024 and 2025. Project management is included in the tasks below.*

### **Task 1. Tree Inventory, Data Collection & GIS Mapping (2024)**

#### **Inventory**

Tree inventory and Level 1 assessment of public ROW (approximately 67 linear miles of streets) and 6 managed parks. Inventory will include up to 3,000 trees. Priority areas will be managed parks (listed below), and arterial streets in the ‘Street Types’ map (Figure 1). City to define subsequent priority areas.

ISA Certified Arborists and field personnel will collect data from the ground on each tree, including GPS location, diameter at standard height (DSH) size class, species, and condition. Include priority management recommendations for trees in parks and along arterial ROWs.

Data collected will also include potential new tree planting locations. For [ROW](#), we will refer to Ordinance no. 08-2021 for street tree guidelines. Data will be integrated into a Geographic Information System (GIS) for mapping and analysis within ESRI or the City’s existing GIS platform.

#### **Data Analysis and Reporting**

An in-depth analysis of the tree inventory data will be conducted and incorporated into a Tree Maintenance and Management Plan. This document will include clear guidelines and action items to maintain and improve the general quality and quantity of tree canopy on public property. It will specifically address managed parks property and targeted ROW areas.

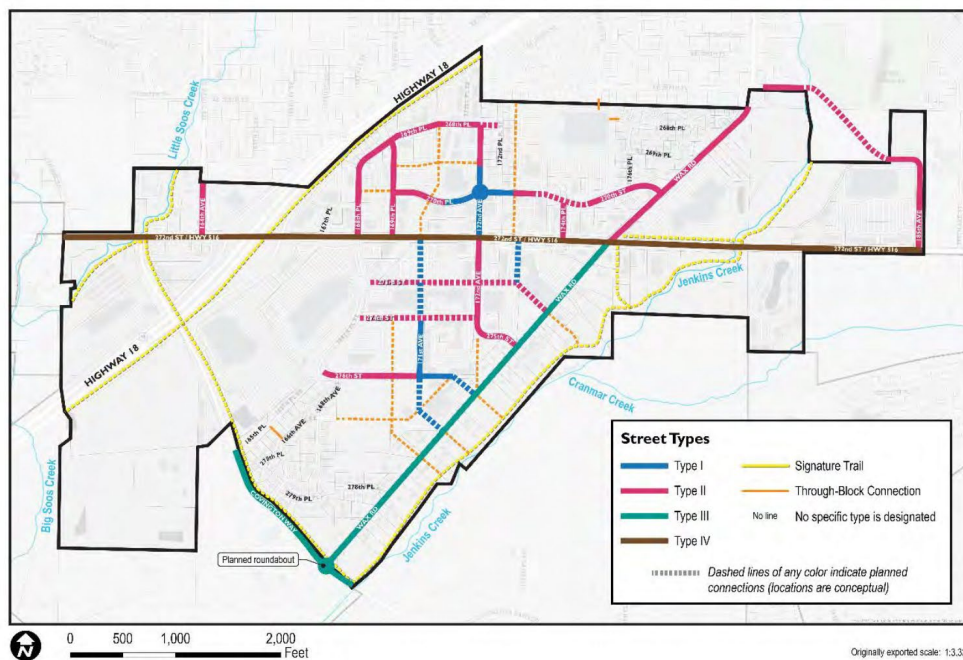
- Assess overall health and condition of trees on city-owned land, including pest and/or disease trends present, and species diversity.

- Identify trends and areas with long-range concerns for trees (tree/infrastructure conflict, inadequate irrigation, poor maintenance practices, disease centers, etc.)
- Summarize maintenance recommendations for parks parcels.
- Summarize opportunities for canopy improvement in ROW (where drawn in Figure 1).
- Summarize tree planting recommendations.
- Identify next steps and outreach opportunities for a City Tree Management Program (to be later developed):

**Areas included:**

Parks (managed):

- Covington Aquatic Center
- Covington Community Park (portion of park actively managed, and perimeter trees)
- Crystal View Park
- Friendship Park
- Gerry Crick Skate Park
- City Hall
- Public Right-Of-Ways (ROW) – improved



**Figure 1. Street types (existing and proposed)**

The following areas are excluded:

- Kent School District properties (public schools)
- King County parks and libraries,
- Paved roads that are not City ROW, and

- Natural parks (unmanaged) and parcels: Cedar Valley Park, Covington Community Park (forested section), Evergreen Park, Founders Park, Jenkins Creek Park & Trail, North Wingfield Open Space, Rainer Vista Open Space
- Unimproved / unopened ROW

**Assumptions:**

- GIS maps will be provided by City of Covington of all parks and ROW property to be inventoried (including public vs private streets). If GIS asset data is already available for trees, those will be provided, and will be incorporated into this data set.
  - Parcel data with address
  - Street data – location of public streets and street type (1, 2, 3, or 4 per Figure 1).
  - Tree data (if available)
  - High resolution imagery if available
- Trees do not have pre-existing identification numbers.
- Trees will NOT be tagged during this inventory but will be assigned a unique numerical identifier for GIS tracking.
- Where private property fence is in the ROW, data will only be collected for trees outside fence.
- Unless otherwise marked, data collector will assume fences (ex: Timberlane Dr) are representative of property line.
- Only trees that appear to be 4 inches DSH or greater will be collected, or trees smaller but were deliberately planted as a street tree. If tree has multiple stems, and was deliberately planted, we will collect data if a single stem equivalent may be 4” or greater.
- Laurel (*Prunus lusitanica* and *Prunus lauroceracus*), Rhododendrons (*Rhododendron* spp.) Strawberry trees (*Arbutus unedo*) and other shrub species will not be collected regardless of size.
- Trees maintained as hedges will not be collected.
- Data collected will be owned by both the City of Covington and Tree Solutions Inc.
- One round of revisions on draft report, following consolidated feedback from stakeholders
- City to provide priority areas for ROW to direct data collection regarding maintenance recommendations. Not all trees will be assessed for maintenance recommendation.
- Analysis will reference 2018 Urban Tree Canopy Assessment (KCD, Plan-it Geo), but will not replace it.

**Meeting(s):**

1. Assumes 3 meetings (1 hour, virtual) for Tree Inventory
  - a. Kick off
  - b. Progress (20%) update
  - c. Completion

**Deliverable(s):**

1. Monthly Progress Report (email or PDF for duration of task)
2. Monthly Invoices (PDF)
3. ESRI Layer Package, Shapefile, or equivalent for integration with City’s GIS Application
4. Tree Maintenance Plan (DRAFT) – (Word)

5. Tree Maintenance Plan (FINAL) – (PDF)

## Task 2. Downtown Improvements Assessment (2025)

Site visits and meetings to assess downtown areas for potential canopy improvements as part of non-motorized (walking and biking) and climate resiliency objectives. Includes 3 sample plots of publicly-accessible private property. This is in response to heat islands over downtown parking lots.

- Sample-based data collection on 3 x one-acre sample sites – one in Town Center, one in Mixed Commercial, one in Mixed Housing/Office or General Commercial. **City to identify these sample plots.**
- Collect general observations of landscape beds and tree planting opportunities (including limitations) within publicly accessible (privately owned) commercial parking lots.
- Conduct general landscape beds analysis on public property that includes soil quality assessment, percentage of total planted cover vs weed colonization, plant health analysis, and appropriateness of existing tree palettes.
- Develop recommendations for increasing and improving tree canopy and planting on future development sites.
- Develop recommendations for increasing tree canopy on public property in Downtown. Components of tree health and improving tree growth may include soil volume, soil quality, soil cells (if used), functionality of irrigation, and management practices.

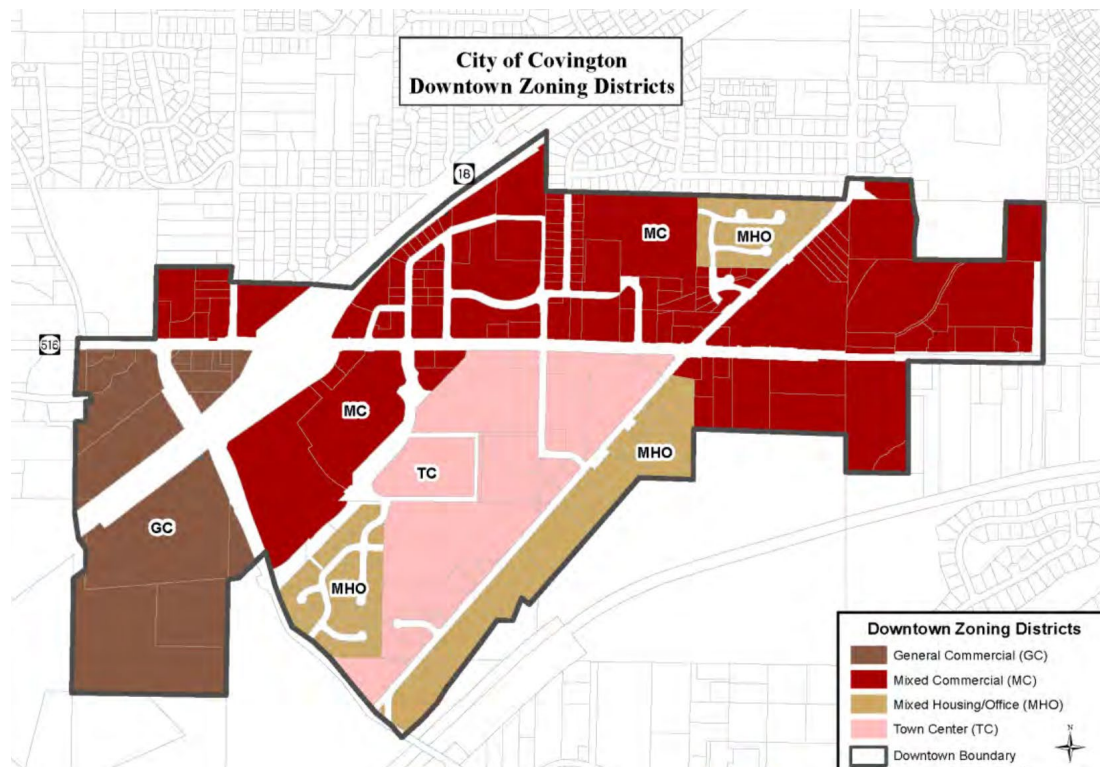


Figure 2. Downtown zoning districts

**Assumptions:**

- Three (3) sample sites (one acre each) will be selected for in-depth analysis based on input from city staff.
- Excludes soil sampling.
- City will procure rights-of-entry if required from private property owner.

**Meeting(s):**

1. Assumes 3 meetings (1 hour, virtual)
  - a. Kick off
  - b. Progress (20%) update
  - c. Completion

**Deliverable(s):**

1. Monthly Progress Report (PDF)
2. Monthly Invoices (PDF)
3. Downtown Tree Canopy Improvements Report (DRAFT) (word)
4. Downtown Tree Canopy Improvements Report (FINAL) (pdf)

**Estimated costs**

	<i>Hours</i>	<i>Estimated Cost</i>
Task 1. Tree inventory: Data Collection, GIS mapping, Analysis and Reporting		\$75,000
Task 2. Downtown improvements		\$35,000
<b>TOTAL</b>		<b>\$110,000</b>

This proposal is for services provided by Tree Solutions Inc. It is an estimate only, based on the information available and provided and scope of work as described above. We charge for time spent and materials used on site. **Overall contract amount will not be exceeded** without written agreement with the City based on a scope amendment.

Respectfully,

Holly Iosso, Principal



**PROFESSIONAL SERVICES AGREEMENT  
between the City of Covington and  
TCA Architecture Planning, Inc.**

This Professional Services Agreement (“Agreement”) is made between the City of Covington (“City”), a Washington municipal corporation, and TCA Architecture Planning, Inc. (“Contractor”), a corporation, also individually referred to as a “Party” and together as the “Parties.” The Parties agree as follows:

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- A. Contractor represents that the Services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed. The Contractor warrants that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services shall begin immediately upon the effective date of this Agreement.
- B. The Services shall be subject, at all times, to inspection by and approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Agreement, notwithstanding the City’s knowledge of defective or non-complying performance, its substantiality, or the ease of its discovery.

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The City shall pay Contractor a total amount not to exceed \$39,000 for the Services described in this Agreement. The Contractor shall provide its W-9 to the City concurrent with the execution of this Agreement. The Contractor shall invoice the City monthly based on time and materials incurred during the preceding month. The method of compensation for Contractor’s services shall be as delineated in the attached and incorporated Exhibit A. All rates and/or other methods of compensation shall remain locked at the negotiated rates throughout the Term of this Agreement. Except as otherwise provided in Exhibit A, the Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance of Services and payment under this Agreement.

If the Services do not meet the requirements of this Agreement, the Contractor will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

#### **IV. INDEPENDENT CONTRACTOR.**

The Parties intend that the Contractor shall be an independent contractor and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. The City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay, or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of this Agreement. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the Services specified in this Agreement and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the Services. The Contractor shall pay all income and other taxes due except as specifically provided in Section III of this Agreement. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. If the Contractor is a sole proprietorship or if this Agreement is with an individual, the Contractor agrees to notify the City and complete any required form if the Contractor retired under a State of Washington retirement system and agrees to indemnify any losses the City may sustain through the Contractor's failure to do so.

Even though Contractor is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

#### **V. TERMINATION.**

Either Party may terminate this Agreement, with or without cause, upon providing the other Party thirty (30) days' written notice to the addresses set forth in the signature block of this Agreement. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Contractor's records or data is not related to this project, it shall be without liability or legal exposure to the Contractor.

#### **VI. DISCRIMINATION.**

In all Contractor services, programs, activities, hiring, and employment made possible by or resulting from this Agreement, Contractor and its employees, agents, and subcontractors shall not discriminate in violation of and at all times shall comply with Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and any other applicable federal, state, or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and may result in ineligibility for further City agreements.

## **VII. INDEMNIFICATION.**

Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City; however, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

## **VIII. INSURANCE.**

- A. Insurance Term. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Services hereunder by the Contractor, its agents, representatives, or employees.
- B. No limitation. The Contractor's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- C. Minimum Scope of Insurance. The Contractor shall obtain insurance of the types and coverage described below:
  - 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
  - 2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with

respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Contractor's profession.

D. Minimum Amounts of Insurance. The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

E. Other Insurance Provision. The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage. The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Agreement before commencement of the Services.

H. Notice of Cancellation. The Contractor shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

J. City Full Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether

such limits maintained by the Contractor are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

## **IX. COMPLIANCE WITH LAWS AND CONTRACTOR'S WORK AND RISK.**

The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those Services. All Services shall be performed at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the Services.

## **X. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Contractor will be safeguarded by the Contractor. Contractor shall make such data, documents, and files available to the City upon the City's request.

## **XI. MISCELLANEOUS PROVISIONS.**

- A. Non-Waiver of Breach and Enforcement. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity, or by statute. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.
- B. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the Parties agree in writing to an alternative dispute resolution process. Each party consents to the personal jurisdiction of the state and federal courts in King County, Washington and waives any objection that such courts are an inconvenient forum. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall pay all its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by

law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Agreement.

- C. Written Notice. All communications regarding this Agreement shall be sent to the Parties at the email and/or physical addresses listed on the signature page of the Agreement, unless notified to the contrary in writing. Email notice shall become effective at the date and time it is received by the City. Any physical written notice shall become effective three (3) business days after the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be later specified in writing pursuant to this Section.
- D. Assignment. Any assignment of this Agreement by either Party without the written consent of the non-assigning Party shall be void.
- E. Interpretation and Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.
- F. Entire Agreement. The written provisions and terms of this Agreement, together with any attached Exhibits, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement. Any provision of this Agreement that is declared invalid, inoperative, null and void, or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- G. Public Records Act. The Contractor acknowledges that the City is a public agency subject to the Public Records Act codified in Chapter 42.56 RCW, and documents, notes, emails, and other records prepared or gathered by the Contractor in its performance of this Agreement may be subject to public review and disclosure, even if those records are not produced to or possessed by the City of Covington. As such, the Contractor agrees to cooperate fully with the City in satisfying the City's duties and obligations under the Public Records Act.
- H. City Business License Required. Prior to commencing the tasks described in Section I, Contractor agrees to provide proof of a current City of Covington business license pursuant to Chapter 5.10 of the Covington Municipal Code.
- I. Counterparts and Signatures by Fax or Email. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement. Further, upon executing this Agreement, either party may deliver the signature page to the other by fax or email and that signature shall have the same force and effect as if the Agreement bearing the original signature was received in person.

**IN WITNESS, the Parties below execute this Agreement, which shall become effective on the last date entered below. All acts consistent with the authority of this Agreement and prior to its effective date are ratified and affirmed, and the terms of the Agreement shall be deemed to have applied.**

[Signature Page Follows]



## Project Scope

In this phase, we aim to comprehensively assess the City of Covington's downtown area and develop a robust long-term strategy to address climate-related challenges and enhance its resilience. This phase marks the initial steps in the City of Covington's journey toward becoming more resilient and prepared for the impacts of climate change. The goal is to create a thriving, sustainable, and climate-resilient downtown area that serves the best interests of the community and the city as a whole.

Our primary services in this phase include:

- **Identifying Gaps and Solutions:** We will identify gaps in the city's existing strategies and infrastructure, and propose solutions to bridge these gaps. This holistic approach ensures that all aspects of the city's resilience are considered and addressed.
- **Zoning Code Improvement:** To enhance the city's control over its development and land use, we will evaluate and propose improvements to the zoning code. Relationship between the building and the street relate and
- **High-Level Policy Recommendations:** We will develop high-level policy recommendations that will guide the city's decision-makers and provide a strategic framework for addressing climate-related challenges and improving resilience.
- **Practical Solutions:** Our team will explore affordable and practical solutions to address the identified deficiencies. These solutions are designed to be cost-effective and feasible, ensuring that the city can implement them without significant financial burden.
- **Community Engagement:** Engaging the community is a vital component of this planning effort. We will participate in community meetings to gather input, insights, and feedback from residents, businesses, and other stakeholders.
- **Collaboration among Project Consultants:** To foster effective collaboration and knowledge sharing among project team members, we will facilitate collaboration meetings and work summits. These meetings will encourage cooperation and ensure that expertise from various disciplines contributes to the project's success.
- **Relationship between the Building and Movement - Pedestrians:** Analyze the interaction between building design and pedestrian movement in the downtown area to enhance accessibility, safety, and sustainability.
- **Public Facilities:** Evaluate how public facilities can benefit the overall downtown climate response strategy and recommend improvements or enhancements that will contribute to the city's resilience and climate response efforts.
- **Practical Solutions:** Our team will explore affordable and practical solutions to address the identified deficiencies. These solutions are designed to be cost-effective and feasible, ensuring that the city can implement them without significant financial burden.

## Deliverables

- **Zoning Code Audit:** A comprehensive review and audit of the zoning code with proposed revisions and improvements aimed at enhancing the city's control and adaptability to climate challenges.
- **Graphics and Illustrations for Public Outreach:** Visual aids and graphics that effectively communicate the proposed strategies and changes to the public. These visuals will be essential for public engagement and understanding the long-range plan.
- **Design Solutions:** Comprehensive design solutions that address identified deficiencies and contribute to the overall resilience and sustainability of Covington's downtown area.

## Cost Range

We are proposing a cost range from \$30,000 - \$60,000

# Agenda Item 1

Covington City Council Meeting

Date: June 25, 2024

SUBJECT: DISCUSS FACILITY RENTAL FEES FOR BUSINESSES.

RECOMMENDED BY: Ethan Newton, Parks and Recreation Director

ATTACHMENT(S):

None.

PREPARED BY: Ethan Newton, Parks and Recreation Director

EXPLANATION:

The city council requested this agenda item to explore and discuss options for discounts for city businesses, which the city currently does not offer. The only exception is that homeowner associations are extended a discounted rental rate of the community room of \$24/hr (compared to a resident rate of \$75/hr and nonresident rate of \$94/hr).

For consideration, a high-level survey of nearby jurisdictions was completed to understand if discounts for local businesses are common in the area.

<b>Agency</b>	<b>Discount for City Businesses (Y/N)</b>	<b>Discount for Nonprofits (Y/N)</b>	<b>Notes</b>
Auburn P&R	Y & N (see notes)	Y & N (see notes)	Discounts limited to large rental rooms for city-nonprofits and non-city nonprofits (different rates). No discounts for all other facility rentals. No discounts for for-profit businesses.
Bellevue P&R	N	Y	
Kent P&R	N	N	
Maple Valley P&R	N	Y & N (see notes)	Nonprofit and government receive 20-30% discount limited to Lake Wilderness Lodge conference rooms. No discounts for all other facility rentals.
Renton P&R	N	N	
Tacoma (Metro Parks)	N	Y	Nonprofits receive 25% discount.

A few key takeaways from the survey:

- Discounts for city businesses (including for profit businesses) may not be common because of potential gifting of public funds issues.
- Discounts for nonprofits are offered by some agencies for room rentals, but not all. The degree of discounts range between 20-30%.

Considerations:

- Because of the potential for a gift of public funds issue, it is not recommended to provide discounts benefiting for-profit businesses.
- Is there interest in implementing discounts for non-profit businesses? If so, it is recommended to limit these discounts to meeting room rentals.

FISCAL IMPACT:

Rental fee revenues could be impacted if direction is provided to change facility reservation fees. The extent of the impact would depend on the extent of the discounts.

CITY COUNCIL ACTION: \_\_\_\_\_Ordinance \_\_\_\_\_Resolution \_\_\_\_\_Motion   X  Other

**For information and discussion purposes.**

REVIEWED BY: Finance Director, City Attorney, City Manager

## Agenda Item 2

Covington City Council Meeting

Date: June 25, 2024

SUBJECT: PROPOSED RESOLUTION AUTHORIZING THE USE OF A SMALL WORKS ROSTER AND ESTABLISHING A SMALL WORKS ROSTER PROCESS TO AWARD PUBLIC WORKS CONTRACTS.

RECOMMENDED BY: Regan Bolli, City Manager

PREPARED BY: Mark Orthmann, City Attorney

ATTACHMENTS:

1. Proposed Resolution
2. Capital Projects Advisory Review Board—Overview and Frequently Asked Questions

EXPLANATION:

Effective July 1, 2024, the Washington State Legislature overhauled the small and limited public works procurement process and small works roster rules. A small works roster is a list of qualified, licensed contractors utilized by contracting agencies for small public works construction projects costing \$350,000 or less.

The small works rosters process is a helpful procurement tool for contracting agencies as it is less restrictive and time-consuming than a full, formal competitive bid process for a public works project. “A small works roster may make distinctions between contractors based upon different geographic areas served by the contractor. With a small works bid, an informal process occurs when an agency issues an invitation to the appropriate number of contractors to bid (based on the estimated dollar value) and awards the contract to the lowest responsive and responsible bidder.

Small works roster changes effective July 1, 2024 include:

- The establishment of a statewide roster through the MRSC Rosters program.
- Agencies using small works processes must establish procedures for implementing the new law.
- An updated public works procurement process, including an option for direct contracting.

Some of the major changes to the procurement process include the following:

- For projects estimated to be less than \$150,000 (excluding sales tax), if there are six or more contractors that qualify as “small businesses” on the MRSC roster that are interested in working in the area, the city may directly contract with one of those small businesses. If there are five or less small businesses to do the work, then the new law gives the city authority to directly contract with any contractor on the MRSC roster. For these contracts, the city can choose to waive retainage, but must still require bonding (or withholding the 10 percent in lieu of a bond).

- For public works projects under \$5,000, the same direct contracting provisions apply but there are no requirements for retainage or performance bonds.

Taking action on the proposed resolution will keep the city in compliance with the new state laws and allow staff to utilize the streamlined regulations.

OPTIONS:

1. Approve the proposed resolution.
2. Do not approve the proposed resolution and provide direction to staff .

FISCAL IMPACT: None. The resolution aligns city public works procurement processes with state law.

CITY COUNCIL ACTION: \_\_\_\_\_ Ordinance   X   Resolution \_\_\_\_\_ Motion \_\_\_\_\_ Other

**Councilmember \_\_\_\_\_ moves, Councilmember \_\_\_\_\_ seconds, to approve the resolution authorizing the use of the MRSC small works roster and establishing a small works roster process for awarding small public works projects.**

REVIEWED BY: City Manager, City Finance Director, City Attorney

## RESOLUTION NO. 202X-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, AUTHORIZING THE USE OF A SMALL WORKS ROSTER AND ESTABLISHING A SMALL WORKS ROSTER PROCESS TO AWARD PUBLIC WORKS CONTRACTS.

WHEREAS, the Washington State Legislature passed Second Substitute Senate Bill 5268, Chapter 395, Laws of 2023 (“SSSB 5286”), codified at RCW 39.04.152, to update public works procurement processes for projects with an estimated cost of \$350,000 or less, excluding state sales tax, effective July 1, 2024; and

WHEREAS, the Washington State Legislature repealed the existing small works roster contract procedures and limited public works process found in RCW 39.04.155, effective July 1, 2024; and

WHEREAS, pursuant to SSSB 5286, authorized local governments may utilize a statewide small works roster established by the Municipal Research and Services Center (“MRSC”); and

WHEREAS, MRSC must develop criteria for the statewide roster with collaboration from affected state and local agencies, the roster must have features to filter the roster by different specialties, categories of anticipated work, or geographic areas served by contractors and the roster must also indicate if the contractor is designated as a small business; and

WHEREAS, the City of Covington City Council (“Council”) previously adopted Resolution No. 08-11 to establish a small works roster process to award public works contracts and a consulting services roster for architectural engineering and other professional services; and

WHEREAS, the Resolution No. 08-11 authorization to utilize consulting services remains in effect; and

WHEREAS, Council wishes to continue using the MRSC small works roster to procure public works projects consistent with the requirements of SSSB 5286; and

WHEREAS, SSSB 5286 requires authorized local governments using small works rosters to establish procedures for implementing SSSB 5286; and

WHEREAS, Council wishes to authorize the use of the MRSC small works roster and establish the required procedures;

NOW THEREFORE, the City Council of the City of Covington, King County, Washington, resolves as follows:

Section 1. Authorization to use MRSC Small Works Roster. Pursuant to this resolution, the city manager, or designee, is authorized to utilize the Municipal Research and Services Center (“MRSC”) Uniform Small Public Works Roster (“Small Works Roster”) developed and maintained by MRSC in accordance with SSSB 5286 and RCW 39.04.152 as it currently exists or is amended in the future.

Section 2. Small Works Roster Procedures. The following small works roster procedures are established pursuant to SSSB 5286 and RCW 39.04.152(1):

1. The city may use the MRSC Small Works Roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of \$350,000 or less excluding state sales tax. The Small Works Roster process includes the direct contract provisions authorized under RCW 39.04.152.
2. For Small Works Roster projects with an estimated cost less than \$350,000, not including sales tax, the city may contract by securing written or electronic quotations to assure that a competitive price is established and to award contracts to the responsible bidder with the lowest responsive bid. The city shall invite bids notifying all contractors on the applicable roster that have indicated interest in performing work in the applicable geographical area, except as otherwise allowed by law.
3. For Small Works Roster projects with an estimated cost less than \$150,000, not including sales tax, the city may direct contract with small businesses, as defined in SSSB 5286, before direct contracting with other contractors on the appropriate small works roster without a competitive process as follows:
  - a. If there are six or more contractors meeting the definition of small business on the applicable roster, the city must direct contract with one of those small businesses on the applicable roster that have indicated interest in performing work in the applicable geographical area. The city must rotate through the contractors on the appropriate small works roster and must, when qualified contractors are available from the roster who may perform the work or deliver the services within the budget described in the notice or request for proposals, utilize different contractors on different projects.
  - b. If there are five or less contractors meeting the definition of small business on the applicable roster, the city may direct contract with any contractor on the applicable roster.
  - c. The city must notify small, minority, women, or veteran-owned businesses on the applicable roster when direct contracting is utilized.
  - d. The city manager is authorized to establish a small, minority, women, and veteran-owned business utilization plan. When engaging in direct contracting, the city may not favor certain contractors on the appropriate small works roster by repeatedly awarding contracts without documented attempts to direct contract with other contractors on the appropriate small works roster.
  - e. If the city elects not to use the methods outlined in this subsection, it may not use direct contracting and must invite bids by electronically notifying all contractors

on the applicable roster that have indicated interest in performing work in the applicable geographical area as described in this section.

4. For small public works contracts under \$5,000, there is no requirement for retainage or performance bonds. Small public works contracts valued at more than \$5,000 shall be subject to performance bond requirements set forth in Chapter 39.08 RCW and retainage requirements set forth in Chapter 60.28 RCW, provided, however, that the city may reduce or waive retainage requirements set forth in RCW 60.28.011(1)(a), thereby assuming the liability for the contractor's nonpayment of: (a) laborers, mechanics, subcontractors, materialpersons, and suppliers; and (b) taxes, increases, and penalties pursuant to Titles 50, 51, and 82 RCW that may be due from the contractor for the project. Any such waiver will not affect the rights of the city to recover against the contractor for any payments made on the contractor's behalf. For small public works contracts awarded through a bid solicitation, notice of any retainage reduction or waiver shall be provided in bid solicitations.
5. The city shall document its good faith efforts implementing the following:
  - a. After an award is made, the bid quotations obtained shall be recorded, publicly available, and available by request.
  - b. Annually, the city will publish a list of small works contracts awarded and contractors contacted for direct negotiation pursuant to RCW 39.04.200.

Section 3. Authorization to Adopt Additional Procedures. The city manager, or designee, is authorized to adopt additional procedures as may be necessary to implement SSSB 5286.

Section 4. Severability. If any section, paragraph, sentence, clause, or phrase of this resolution, or its application to any person or situation, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this resolution or its application to other persons or situation. The City Council of the City of Covington hereby declares that it would have adopted this resolution and each section, subsection, sentence, clauses, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 5. Corrections. Upon the approval of the city attorney, the city clerk and the codifiers of this resolution are authorized to make any necessary corrections to this resolution including, but not limited to, the correction of scrivener's/clerical errors, references, resolution numbering, section/subsection numbers, and any reference thereto.

Section 6. Ratification. Any act consistent with the authority and prior to the effective date of this resolution is hereby ratified and affirmed.

Section 7. Effective Date. This resolution shall be effective immediately upon passage by the City Council of the City of Covington.

Passed by the City Council of the City of Covington this \_\_\_ day of \_\_\_\_\_,  
2024.

Signed in authentication of its passage this \_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Jeff Wagner, Mayor

AUTHENTICATED:

\_\_\_\_\_  
Krista Bates, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Mark Orthmann, City Attorney

## **Equity and Efficiencies in Public Works Including Modifying Small Works Roster Requirements**

### **Overview & Frequently Asked Questions**

#### **Background**

The Capital Projects Advisory Review Board and its committees in partnership with various state agencies and public and private stakeholder groups have worked to develop this bill for the 2023 Legislative session. CPARB unanimously support the proposed bill.

Key issues came out of two important reports requested by the legislature to CPARB:

- Addressing equity and efficiencies in public works procurement was initiated in the [Business Equity/Diverse Business Inclusion Report](#) to the Legislature in June 2022 (from [SB 5032](#), Sec. 20).
- Modifying and updating small works roster requirements was suggested in the [Local Government Public Works Study Report](#) to the Legislature in 2021 (from [ESHB 5418](#), Sec. 16).

#### **Key Points**

- Provides a common definition for small businesses pursuing public works.
- Creates a small business certification program by OMWBE.
- Continues to protect the rights of workers.
- Streamlines small projects procurement:
  - Creates a statewide small public works roster.
  - Provides a direct contracting option. *See images below for comparison of the changes.*
  - Updates RCW references with various small works thresholds.
  - Requires owners to have a small business utilization plan to use direct contracting.
  - Aligns small works limits of ports & irrigation districts for parity with other agencies.
- Calls for periodic reviews by CPARB for small works thresholds starting in 2025.
- Removes barriers and encourages participation by small and diverse businesses:
  - Small works roster has provisions for direct contracting with certified small businesses, under certain conditions.
  - Certified MBE/MWBE/WBE/SEDBE businesses will be provided small businesses certification without having to reapply.
  - Eliminates fees for small contractors and promotes the use of a statewide roster to reduce administrative time to small and diverse businesses seeking work.
  - Provides foundation for small and diverse businesses to build payment and performance bond experience with sureties and build credit history.
  - Discourages favoritism by prohibiting repeat awards to same contractor when direct contracting.
  - Adds features to inclusion plans for alternative public works projects.
  - Eliminates confusion between Federal DBE program and State certification programs.
- Effective date July 1, 2024, to allow adequate time for various agencies to develop rules, procedures and revisions to data systems. (July 1, 2023, for small works limit parity for ports & irrigation districts.)
- Success is dependent on funding for revisions to L&I, OMWBE, and MRSC systems.

**Previous Statute Overview:**

PUBLIC WORKS CATEGORIES	THRESHOLD	COMPETITION REQUIREMENT	RETAINAGE REQUIREMENT	BOND REQUIREMENT	INTENT/AFFIDAVIT REQUIREMENT
Limited Public Works	< \$50,000	Small Works Roster Process, Invite Quotes from All or select minimum of 3	Public Owners allowed the option to assess risk and determine waiver of retainage	Allows waiver of bonds	Allows for combined intent/affidavit forms per 39.12.040 (2)  Otherwise, Individual Intent/Affidavits Required
Small Works	\$50,000 - \$250,000	Small Works Roster Process, Invite Quotes from All or select from minimum of 5	Public Owners allowed the option to assess risk and determine waiver of retainage	Allow 10% retainage in lieu of Bond for public works contracts under \$150,000	Individual Intent/Affidavits Required
	\$250,000 – \$350,000 *\$300,000 for Port and Irrigation Districts	Small Works Roster Process, Invite Quotes from all Contractors on Rosters	Public Owners allowed the option to assess risk and determine waiver of retainage	Performance & Payment Bond Required	Individual Intent/Affidavits Required

**Proposed Legislation Overview:**

PUBLIC WORKS CATEGORY	THRESHOLD	COMPETITION REQUIREMENT	RETAINAGE REQUIREMENT	BOND REQUIREMENT	INTENT/AFFIDAVIT REQUIREMENT
Small Works	Under \$150,000	1) Contract through direct negotiation with equitable distribution OR 2) solicit quotes from all on the appropriate roster	Under \$5,000 – No retainage Required  All remaining contracts - Public Owners allowed the option to assess risk and determine reduction or waiver of retainage	Under \$5,000 – No bond Required  Allow 10% retainage in lieu of Bond	Under \$5,000 – Combo Forms allowed  Individual Intent/Affidavits Required
	\$150,000 – \$350,000	Invite Quotes from all Contractors on Rosters	All remaining contracts - Public Owners allowed the option to assess risk and determine reduction or waiver of retainage	Performance & Payment Bond Required	Individual Intent/Affidavits Required

**What is the public works threshold...does it increase the dollar limit for the SWR?**

This act sets the threshold for public works at \$350,000 and standardizes that dollar value for all agencies authorized to utilize the Small Works Roster Act. Small Works Roster projects are those public works with an estimated cost under \$350,000 exclusive of WA state sales tax.

The previous limited public works threshold of \$50K is replaced by a new threshold of \$150k and allows for direct contracting under certain conditions.

For projects \$150k or less, the public body may send notice to bid to all firms on the roster category, OR the public body may contract directly with a firm on the roster category.

There is a preference for small business built into the act to encourage the utilization of these contractors. See Section 15 subsection 2.

Defining Thresholds

- Two primary public works thresholds
  - Bid Threshold
  - SWR
- Take a variety of forms across agency types

Government Type	Bid Threshold	Small Works Roster Threshold	Applicable RCW	Limits for Work by Agency Employees
Area Agency on Aging	Subject to state bid requirements of RCW 43.19		74.38.050	Follows state requirements of RCW 43.19
City, first class	\$75,500 (1 craft) \$150,000 (>1 craft)	\$350,000	35.22.620	Per project: \$75,500 (1 trade), \$150,000 (>1 trade). NTE 10% of public works budget.
City, second class and towns city code	\$75,500 (1 craft) \$116,155 (>1 craft)	\$350,000	35.23.352 35A.40.210	Per project: \$75,500 (1 trade), \$116,155 (>1 trade). NTE 10% of public works budget.
Conservation district	None; established by policy		89.08	No statutory limits - set by policy
County, population >400k with purchasing department	\$0	\$350,000	36.32.235	Per project: \$45,000 or \$125k for Riverine or stormwater project (1 trade), \$90,000 or \$250k for Riverine or stormwater project (>1 trade). NTE 10% of public works budget.
County, population <400,000 with purchasing department	\$0	\$350,000	36.32.240 36.32.235	Per project: \$45,000 or \$125k for Riverine or stormwater project (1 trade), \$90,000 or \$250k for Riverine or stormwater project (>1 trade). NTE 10% of public works budget.
County without purchasing department	\$40,000	\$350,000	36.32.250	Allowed for non-road projects; road project limits set according to population and motor vehicle fuel tax factor
Educational service district (ESD)	None; established by policy (unless contracting on behalf of a school district, in which case school district bid laws apply)		28A.310	Most restrictive of establishing jurisdiction; if NA then by policy
Fire district	\$20,000	\$350,000	52.14.110	Not authorized
Flood/diking/drainage district	\$5,000	\$350,000	85.38.190	\$5,000
Health district	None; established by policy		70.46	No statutory limits - set by policy
Hospital district	\$75,000	\$350,000	70.44.140	\$75,000
Housing authority	None; established by policy		35.82 AGO 2009 No. 2	No statutory limits - set by policy
Intrastate agreement agency	Most restrictive of establishing jurisdiction		39.34	Most restrictive of establishing jurisdiction
Irrigation district	\$0	\$300,000	8703.435-436	No limit; must bid materials used by employees; must follow public works bid process when materials unless provided by contractor
Library district	None; established by policy		2712	Most restrictive of establishing jurisdiction; if NA then by policy
Mosquito control district	None; established by policy		17.28	No statutory limits - set by policy
Park and recreation district	None; established by policy		36.69	Most restrictive of establishing jurisdiction; if NA then by policy
Metropolitan parks district	\$20,000	\$350,000	35.61135	\$20,000
Port district	\$40,000	\$300,000	53.08.120	Allowed for all projects, except when over \$40k; must make a determination whether cost is lower performed by contract.
Public development authority (PDA)	Statutes of creating city or county		35.21730	Statutes of creating city or county
Public facilities district (PFD)	None; established by policy		36.100.030 35.57620	No statutory limits - set by policy
Public utility district (PUD)	\$50,000	\$350,000	54.04.070	\$300,000
Reclamation district (over 1 million acres)	All public works must be formally bid		89.30154	Not authorized
Regional support network (RSN)	Statutes of creating county		71.24.300	Statutes of creating county
School district	\$100,000	\$350,000	28A.335.190	\$75,000
Self-insurance risk pool	Most restrictive of establishing jurisdiction		48.62	Most restrictive of establishing jurisdiction
State college or university	\$45,000 (1 craft) \$90,000 (>1 craft)	\$350,000	28B.10.350 28B.50.330	\$45,000 (1 craft) \$90,000 (>1 craft)
Transportation authority (under RCW 36.57 or 36.57A)	None; established by policy		36.57A	No statutory limits - set by policy
Transportation authority (under RCW 35.21.225 or 36.73)	Statutes of creating city or county		35.21.225 36.73	Most restrictive of establishing jurisdiction
Water-sewer district	\$50,000	\$350,000	5708.050	\$50,000

Note: "Craft" refers to professional trades. The bid threshold is thus based on the number of professional trades required to complete a project.

**Which businesses are eligible to be on the SWR?**

SWR is open to all responsible contractors who have requested to be on the list, and where required by law, are properly licensed or registered to perform such work in this state in accordance with 39.04.350.

Contractors must indicate if they meet the definition of women-, minority-, veteran-owned business and/or small business as defined in this act.

Contractors must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the appropriate agency as a condition of being placed on the roster(s) and award of a contract.

- **What is considered a small business?**

- “Small Business” means a business meeting certification criterion for size, ownership, control, and personal net worth adopted by the Office of Minority & Women’s Business Enterprises in accordance with RCW 39.19.030(7)(b).
- A small business is based on U.S. Small Business Administration (SBA) size standards.
- Average of annual gross revenue less than \$28.48M, or less depending on NAICS code (specialty subcontractors are \$16.5M for example). And owner’s net worth must be \$1.32M or less, excluding value of primary residence and business.
- The definition of small business matches the federal definition without the requirement for citizenship or permanent resident.
- There is no race or gender preference in the definition or certification of a small business.

- **What are the requirements for direct contracting?**

- For small public works projects with an estimated cost less than \$150,000, not including sales tax, to increase the utilization of small businesses, state agencies and local governments are encouraged to and may direct contract with small businesses as defined in the act.
  - (a) *if there are 6 or more contractors meeting the definition of small business on the applicable roster the state agency or authorized local government must direct contract with one of those small businesses on the applicable roster that have indicated interest in performing work in the applicable geographical area.*
  - (b) *if there are 5 or less contractors meeting the definition of small business on the applicable roster the state agency or authorized local government may direct contract with any contractor on the applicable roster.*

When direct contracting, utilization plans are required, and agencies must not repeat award to same contractor without documented attempt to direct contract with others on the roster.

- Invitations for bids or direct contract negotiation must include, at a minimum, an estimate for the scope of work including the nature of the work to be performed as well as the materials and equipment to be furnished. Detailed plans and specifications need not be included.

- **Why are the direct contract numbers at 6 or more and 5 or less?**

- Finding a consensus and a middle ground for this number was a major discussion.
- While using a smaller number would give the perception that there is more of an opportunity for smaller businesses, using a larger number provides a pool of contractors available to do the work, particularly for smaller agencies and authorized local governments struggling to find contractors to perform work today.
- The limited public works and small works roster processes from the past used a “3-5 contractors” in the solicitation process. Various iterations of this new SWR act were written/re-written with 5 being the accepted compromise.

• **What is the effective date of this bill?**

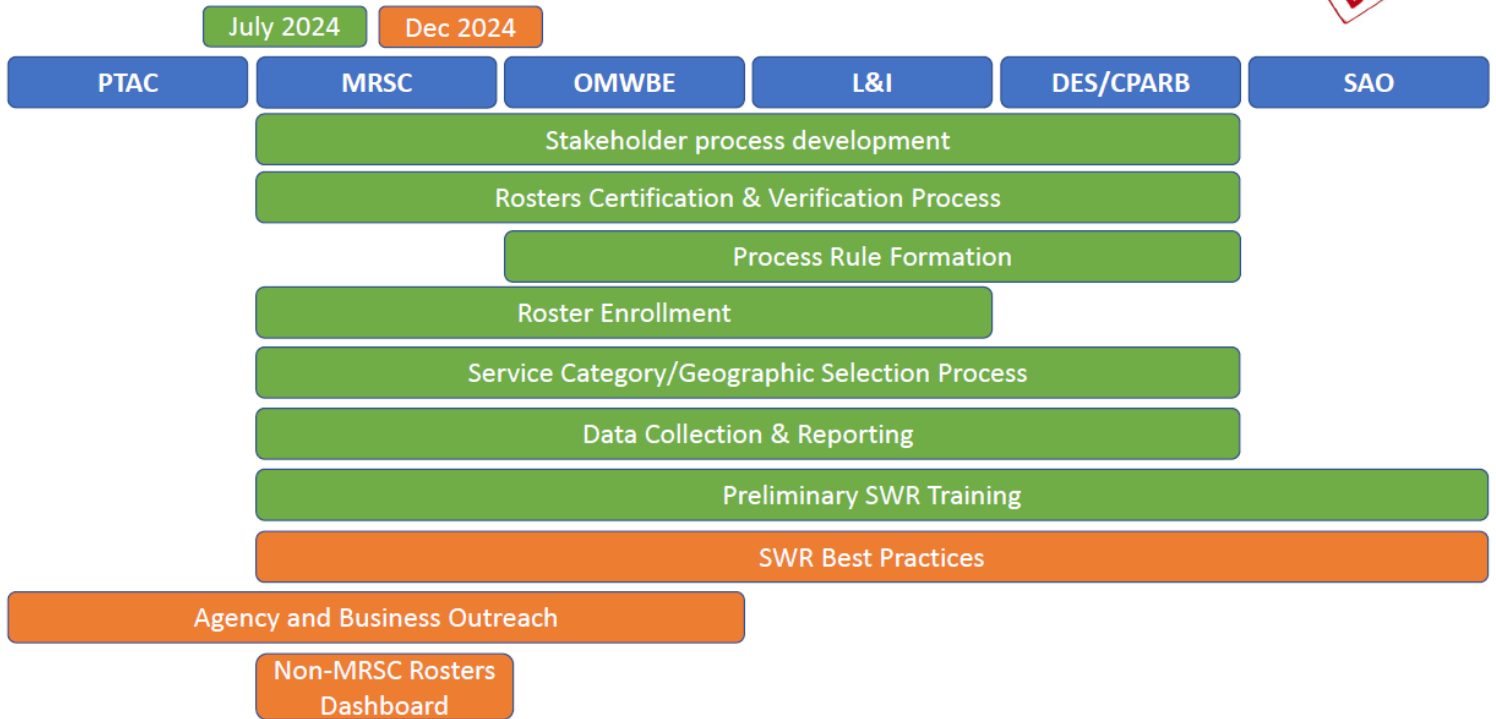
The expected implementation date is no later than July 1, 2024, except for small works limits parity for ports and irrigation districts will be effective July 1, 2023.

• **Why will it take until July 2024 to fully execute this bill?**

- Pending approval by the Legislature in spring of 2023, various agencies’ tasks, hiring, technical requirements and processes will need time to be funded, developed, tested, and training developed before full implementation can occur.
- We currently don’t have a small business certification process today – the work to be completed to implement a successful roll out is depicted here below: \*

# Small Works Roster Implementation Tasks

**DRAFT**



\*Details/description of these tasks can be found on page 7.

		Business Type								
<\$150K Direct Contract		Not Small	Small							
Action	Scenarios									
Direct Contract any	No Small	Green	Green	Green	Green	Green	Green	Green	Green	Green
Direct Contract Small Business	6 or more Small	Orange	Orange	Orange	Orange	Orange	Orange	Orange	Green	Green
Direct Contract any	5 or less Small	Orange	Orange	Green	Green	Green	Green	Green	Green	Green

*Guidance to be provided.*

- **What does the small business certification process look like?**

Certification is a rigorous process to eliminate fraud. Non-certified firms are encouraged to be certified.

If found not meeting the definition, a business may not receive preference for small works projects under \$150K where direct contracting is utilized.

- **What about specialized work?**

A public body or roster sponsor needs to determine what categories it needs in its roster.

Should it believe there is a need for a roster category of various specialized work, then it needs to establish that roster category.

The process of populating the all the roster categories is as noted above and the process of sending invitations to bid to all firms in the roster remains the same.

- **Why is the threshold for which retainage and bonding is not required at \$5,000?**

The new legislation removes the requirement for retainage and bonding for projects under \$5,000.

**Why not higher?** Contractor's must provide surety bond for their contractor license/registration, which is either \$6,000 or \$12,000, depending on their specialty. This should cover any unpaid wages thereby protecting the rights of the workers.

**What about projects over \$5,000?** For contracts greater than \$5,000, the awarding agency may reduce or waive retainage requirements up to \$350K, thereby assuming the liability for the contractor's nonpayment of: (a) Laborers, subcontractors, and suppliers; and (b) taxes (see Section 16 (5)).

- **What needs to be included in the Small Business Utilization Plan?**

A stakeholder group will be meeting including business and agency outreach to define and develop best practices.

- **What does documentation look like for good faith efforts look like?**

Annually, a state agency or authorized local government must publish a list of small works contracts awarded and contractors contacted for direct negotiation pursuant to 39.04.200. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection.

## Description of the Implementation Tasks

- **Stakeholder Process Development**

- The user experience for both agencies and businesses contain pain points that should be identified and remediated. This task would involve stakeholder review to identify more fully the scope of the supplemental tasks below.

- **Rosters Certification & Verification Process**

- OMWBE will need to form a Small Business certification team and associated procedures.
- With the incorporation of small business identification into the Rosters process, there will be system and process updates that need to be completed.
- Review existing verification controls to better align businesses with the categories of work they intend to perform.

- **Process Rule Formation**

- After the legislation is adopted, there will need to be a follow up effort to clarify specifics of implementation not covered in the bill's language. This may take the form of supplemental WAC or RCW's.
- DES, OMWBE and L&I will need to coordinate, craft and change rules in order to implement.

- **Rosters Enrollment**

- IT system changes for the Rosters enrollment process will need to be implemented for various administrators.

- **Service Category/Geographic Selection Process**

- Review the existing service category structure to identify needed revisions and the process for future category additions.
- Identify and implement the logic for geographic selection process.

- **Data Collection & Reporting**

- Work with stakeholders to identify reporting needs and create the data collection structure to support it.

- **Preliminary Small Works Roster Training**

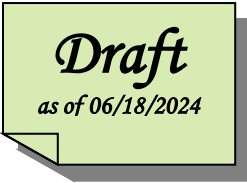
- Develop training material to support both agency and business participants in understanding and following the new requirements.

- ***Small Works Roster Best Practices***
  - Create resources to help guide agencies and businesses for efficiency and risk mitigation.
  - This differs from the preliminary training (legal requirements vs. best practices).
- ***Agency and Business Outreach***
  - This will be a continuous effort to provide access and encourage participation to the Statewide Roster for businesses and agencies.
- ***Non-MRSC Rosters Dashboard***
  - Provide information on all available Rosters.
  - Capture relevant related information for display on the Rosters portal.

# **DISCUSSION OF FUTURE AGENDA TOPICS:**

7:00 p.m., Tuesday, July 9, 2024, Regular Meeting

**(Draft Agenda Attached)**



**CITY COUNCIL REGULAR MEETING AGENDA**

[www.covingtonwa.gov](http://www.covingtonwa.gov)

**Tuesday, July 9, 2024  
7:00 p.m.**

**Covington City Hall  
Council Chambers, 16720 SE 271<sup>st</sup> Street, Covington and  
Telephonically/Virtually via Zoom Platform**

In compliance with state law, city council special and regular meetings will be held in a hybrid format with in-person, telephonic, and virtual options for public viewing and participation.

**This regular meeting will be held in-person and virtually/telephonically as follows:**

**Join In Person:** Covington City Hall, Council Chambers, 16720 SE 271st Street, Covington, WA 98042

**Join Online:** <https://us02web.zoom.us/j/89002439681?pwd=VXBiWmVnSXdYVDJMbEJiVGg2WIRhZz09>

Passcode: CovCouncil

**Join by Phone:** 253-215-8782

Webinar ID: 890 0243 9681

Passcode: 5108335955

**CALL CITY COUNCIL REGULAR MEETING TO ORDER**

**ROLL CALL/PLEDGE OF ALLEGIANCE**

**APPROVAL OF AGENDA**

**PUBLIC COMMUNICATION**

- Covington Chamber of Commerce Quarterly Update (Dana Neuts, Covington Chamber)
- 2024 Citizen of the Year Proclamation
- 2024 Honorary Citizen of the Year Proclamation

**RECEPTION FOR CITIZEN AND HONORARY CITIZEN OF THE YEAR**

**PUBLIC COMMENT** Speakers will state their name, address, and organization. Comments are directed to City Council, not the audience or staff. Comments are to be related to city business. Comments are not intended for conversation or debate and are limited to four minutes per speaker. For attendees participating by Zoom, click the “raise hand” button. For attendees participating by phone, dial \*9 to raise your hand. Once the City grants permission to speak, press “unmute” in Zoom or dial \*6 to “unmute” by phone.

NOTICE: Campaigning for any ballot measure or candidate at city hall or during council meetings, including public comments, is PROHIBITED by state law, RCW 42.17A.555.

**APPROVE CONSENT AGENDA**

- C-1. Minutes: June 11, 2024 Special (Interviews) and Regular Meeting Minutes (Bates)
- C-2. Vouchers (Parker)

**NEW BUSINESS**

1. Review 2024 Summit Action Items List (Bolli)
2. Review Strategic Plan (Council)

**FUTURE AGENDA ITEMS**

**COUNCIL/STAFF COMMENTS**

**PUBLIC COMMENT** See guidelines on public comments in first Public Comment section above.

**EXECUTIVE SESSION – if needed**

**ADJOURN**

**Americans with Disabilities Act – reasonable accommodations provided upon request a minimum of 24 hours in advance (253-480-2400).**