



REGULAR COUNCIL AGENDA

Council Chambers – 1300 First Street

May 18, 2022 at 7:00 PM

1. FLAG SALUTE - PLEDGE OF ALLEGIANCE

2. CALL TO ORDER - ROLL CALL

3. APPROVAL OF AGENDA

4. PUBLIC COMMENTS

5. CONSENT AGENDA

A. Claims Vouchers

B. April 20, 2022 Regular Meeting Minutes

6. COMMITTEE REPORTS

7. CITY OFFICIAL REPORTS

8. MAYOR'S REPORT

9. NEW BUSINESS

A. Resolution 2022-01 Purchasing Policy

B. Resolution 2022-02 Animal License Fees

C. AHBL Agreement

10. COUNCIL COMMENTS

11. PUBLIC COMMENTS

To meet Social Distancing Standards, the City Council will be holding its meeting via Zoom.

Please see the information below to connect.

Zoom Information

<https://us02web.zoom.us/j/89509787852?pwd=ZnZOYkVoTm1sYTJVK0ZHRUR4bTRXQT09>

Webinar ID: 898 1369 6538

Passcode: 690876

Phone Number: (253) 215-8782

**CITY OF COSMOPOLIS
Regular City Council Meeting
April 20, 2022**

Mayor Kyle Pauley presiding.

COUNCILMEMBERS PRESENT

Candice Makos, Stana Cummings, and Miles Wenzel. Councilmember Cummings made a motion to excuse Councilmembers Bridges and Ancich. Councilmember Wenzel seconded. Motion carried.

STAFF PRESENT

Attorney Steve Johnson, Police Chief Casey Stratton, Fire Chief Mark Tarabochia, City Administrator Darrin Raines, Public Works Superintendent Jeff Nations, Court Administrator Tracy Dugas, and Finance Director Julie Pope

APPROVAL OF AGENDA

Councilmember Wenzel made a motion to approve the agenda. Seconded by Councilmember Makos. Motion carried.

PUBLIC COMMENT

Linda Springer – She stated that she came in on April 4th and provided information to the Mayor and Council. She stated that she asked to be on the agenda but doesn't see it. City Administrator Raines stated that the information was provided to council with their agendas. Mayor Pauley stated that he would get back to her.

Carl Sperring – On item E the request to join the RFA Committee, he suggested that members of the community be allowed on the committee. Mayor Pauley stated that only elected officials can be on the committee.

CONSENT AGENDA

Councilmember Makos made a motion to approve the consent agenda. It was seconded by Councilmember Cummings. Motion carried.

COMMITTEE REPORTS

Finance Subcommittee – We met on March 30th to discuss the municode website program. This has to do with updating the City's website with agendas and other information. We also discussed updated to the City's website for ADA accessibility or mobile devices. We also discussed changing the deadline for getting the agenda to the Council. We are working towards a resolution for setting a hard date for getting the agenda to the Council. This might be easier once the website is updated with the Municode software. We had a question from the public on how the EMS charges are applied to businesses. It is applied to the property not necessarily the building. This was changed a few years ago from a percentage of utility costs. This will need to be further discussed to make it equitable for everyone.

Public Safety – They met with Chief Tarabochia but did not meet with Chief Stratton. They discussed recruitment and opening up to South Aberdeen. There aren't opportunities for residents in Aberdeen. They would have to go to a different community to do so. It is not restricted by policy or resolution to bring in volunteers from another area. They also discussed equipment needs and maintenance.

CITY OFFICIALS

City Administrator – Administrator Raines discussed the Mill Creek Objective Plan. He stated that the draft scope of work is almost completed. We are about \$20,000 apart from what is allowed with the grant. We are working to get costs back within the budget. He hopes to have it at the May Council meeting for approval. For the Highlands Park, he thanked Linda Springer for her hard work. He stated she has submitted another grant application. We have ordered some of the playground equipment that is being paid for by the T-Mobile grant. It should start arriving in 4-6 weeks. The Shorelines Master Program needs to be reviewed. We received grant funding to accomplish this. This item is Item G under new business.

Finance Director – She stated that we have reached the second quarter of the year. Inflation is running at 8.4 percent and fuel costs are up. She asked that everyone remain conservative with their spending.

Police Chief – We worked on getting the Tahoe surplus to the Fire Department. Repairs will be needed. We issued an internal policy regarding Kelly days and their use.

Fire Chief – He stated that everyone has welcomed him with open arms. He said he is frustrating that we do not have any responders. We are working on this. He has met with the prior members. He said that

the things that the prior members were upset about have been fixed. He would like them to come back and be apart of the team. He said that we things we need to do in order to fight a fire: get our SCBA's tested, hydrotesting on the bottles, and compressor maintenance. This hasn't been done for a couple of years. Next year, we will need to get our bunker year replaced. He will be looking at grants or piggyback on another agency's purchase in order to safe money. He has interviewed six people. He believes four of the six would be dedicated responders. Three of them would need training and this will take approximately six months to complete. We have talked about going outside of the city to find responders towards South Aberdeen or Cosmo Specialty Fibers. We are working hard to get responders. To accomplish NFPA standards, we will coming back each month with requests. Chief Tarabochia stated that a citizen is donating \$1,000 towards buying an AED. The one that Chief Tarabochia is requesting will be plug and play with the City of Aberdeen. He was able to find a reconditioned one for \$1195. He asking permission to buy one this month and another one in June. One will go in a patrol vehicle and the other would be placed in City Hall. He would like us to also purchase adult patches and a CPR kit. They are \$35 and \$43 respectively. Councilmember Wenzel made a motion to purchase one AED. Councilmember Makos seconded. Councilmember Wenzel stated a citizen had come to him with the request to purchase since we do not have any responders at this time and offered a donation to help pay for it. Moton carried.

Attorney – He stated that municipal court is tomorrow and will again be on Zoom. He does not know when court will resume in person. It will be up to Judge Arnold. The zoom information can be found on the City's website.

Court Administrator – We recently changed our PO Box. They no longer share it with the Police Department. The PO Box number is 788. It has been updated on the court's website, vendors, and notices.

MAYOR'S REPORT

Mayor Pauley stated that we received community development ideas from the 5th and 6th graders from Cosmopolis Elementary. He said wildlife parks or zoos, ice cream shops, skate parks, a pool, a Target store, trampoline parks, and other ideas were brought to the City. For the Regional Fire Authority Committee, he, Administrator Raines, and Chief Tarabochia was invited to join the last meeting. Cosmopolis was asked to join the committee. At this time, nothing is committing us to joining the RFA. The Committee would need three elected officials. It would include Mayor Pauley and two councilmembers. He said it would make sense to have the Public Safety Committee, but since two councilmembers are missing tonight, he will put out a request for interest. Bids for the municipal building was opened up this month but the bids were above the \$3 million as approved by residents. We will go back and look at the design for any adjustments that can be made. The request that was made by a citizen regarding fees made to businesses will probably need a rate study. We will be looking at options regarding this. There are still questions as to why we are still on zoom. This is all due to the OPMA. We are required to do a virtual at this time. We are not currently set up to do a hybrid meeting. He is looking at options and their costs. The biggest concern is audio quality.

NEW BUSINESS

- A. **Ordinance 1377 (Lodging Tax)** – Councilmember Makos made a motion to read by title only. Councilmember Cummings seconded. Attorney Johnson read the title of the ordinance. Mayor Pauley stated that this ordinance imposes a two-percent lodging tax. The City has previously not had one. It would be imposed on hotels, motels, bed & breakfast, etc. It can only be used on tourist related expenses. Councilmember Makos made a motion to approve the ordinance. Seconded Councilmember Cummings. Councilmember Wenzel stated that he had previously been on the Lodging Tax Advisory Committee for the County. Most of the money was spent on events and advertising to bring people to the area. Because our population is under 5,000, the Council will serve as the Committee. Motion carried.
- B. **2022 Fire Hose Testing and Ground Ladder Testing Agreement** – Chief Tarabochia stated that these items need to be tested annually. For safety reasons, it is important to get this taken care of for responder and citizen safety. Director Pope state that this is done every year. The pricing on this quote is comparable to the prior year. For the hose, it comes to \$2,575 and the hose testing comes to \$305 for a total of \$2,880. Councilmember Wenzel made a motion for \$3,000 for testing. It was seconded by Councilmember Makos. Councilmember Wenzel stated that this was approved in the budget. Motion carried.
- C. **Municode Meetings Software** - Director Pope stated that this will streamline the agenda process and include it to the website. It will also track votes on agenda items and link the recordings. It will make the meeting minutes faster to produce and provide a one stop shop for the citizens to find all of the items related to the agenda and Council meetings. Municode will be able to codify ordinances immediately instead of waiting for an email. Councilmember Makos made a motion to approve the purchase of the software. Councilmember Cummings

seconded. Mayor Pauley stated that this is something we have discussed since before the pandemic. This would create better transparency for residents and streamline the process. Councilmember Wenzel asked what fund this would come from. She stated that it would come from Equipment Reserve. She stated that this funded from the utility tax on the water and sewer bills. Director Pope stated this will also add a calendar to the website which will help the citizens to see when all public meetings will be held. Director Pope stated that anything prior will stay on the website as is because of the costs. This would be going forward only. Councilmember Wenzel asked what the ongoing costs would be. Director Pope stated that it would be \$3,400 as they host it on their servers. We do not have our own. Councilmember Makos stated that she went into City Hall and went over the software with the Finance Director. She believes it will remove a lot of time it takes the staff to produce the agenda and meeting minutes. Mayor Pauley stated that a number of other cities use this software. Motion carried.

- D. Website Update Proposal** – Mayor Pauley stated this is another item that was discussed pre-pandemic. Councilmember Makos made a motion to approve the proposal. It was seconded by Councilmember Wenzel. The proposal is by the current website administrator Jared Loman Creative. It is for \$4,500. Councilmember Wenzel asked if this would be coming out the same fund as the municode format. She stated that it would. This would be a custom website. We have to become ADA and mobile compliant. She stated the only additional costs are the \$150 a month that we currently pay. It would not be increasing. Motion carried.
- E. Request to Join Regional Fire Authority Committee** – Mayor Pauley stated that this does not commit us to join any ballot measures coming forward. Councilmember Wenzel made a motion to join the committee. It was seconded by Councilmember Makos. Councilmember Wenzel stated that this wasn't part of our plan with the fire department resigning. The Committee came to the City asking us to join. Mayor Pauley stated that the City did not seek this out. Motion carried.
- F. Appointment of Council Representatives to Fire Authority Committee** – Mayor Pauley is tabling this item with two councilmembers being absent tonight.
- G. Department of Ecology Grant Agreement** – Administrator Raines stated the grant is for \$11,200 for the Shorelines Master Plan review. We would be partnering with the cities of Aberdeen and Hoquiam. This would Cosmopolis' cost. Each City has to get their own grant. Councilmember Wenzel made a motion to approve. It was seconded by Councilmember Cummings. Councilmember Wenzel asked if this grant would cover the total cost. Administrator Raines stated that it would since our plan was recently done in 2017. Motion carried.

COUNCIL COMMENTS

Councilmember Makos – She stated that we are making forward movement. It is nice to see us coming together to make things happen.

Councilmember Wenzel – He stated that the Council was given information regarding Highlands Park. He would like to have a discussion on this. He and Councilmember Cummings will have a parks committee meeting regarding this. He stated that he has several discussions with Chief Tarabochia and appreciates his hard work.

PUBLIC COMMENTS

Linda Springer – She said she has put in a lot of work. She is disappointed that she was not put on the agenda. We are at almost \$100,00 that she has raised for Highland Park. She is hoping to do landscaping in the park this weekend. She is asking for \$7,000 to complete this park. We are up against timelines because these are grants. She thanked Jeff Nations for all of his help. Mayor Pauley thanked her for all of hard work.

Carl Sperring – He would like to know where he can find information on the RFA framework that states elected officials only. He asked when the Council committees would be updated on the website. Mayor Pauley thanked him for pointing out the issue with the website. Mayor Pauley also that it is RCW 52.26.030 that states that it must be elected officials on the committee. Mr. Sperring liked the comments from the elementary students. He liked Chief Tarabochia's report. It appears that he is trying to move forward in a challenging situation. He feels that Linda Springer is being dissed by not having her on the agenda tonight. He thanked Councilmember Wenzel for the AED's.

Billi Newton – She asked if we are going to be able to dump more than grass clippings. She is frustrated that we lost that. They would be willing to pay a fee. Mayor Pauley said that it has been discussed with the City Administrator. We will look at funding to see what is available. Residents can go to the Lemay transfer station or go to Stafford Creek Landfill to dump their yard waste. Administrator Raines said that

until we can find a funding source, we can't open it back up. The contractor we used before is no longer able to do it and we are out of room. We would like to be able to bring it back.

Ray Robinson - He stated that he received a phone call from a councilmember that he has been waiting for since January. He stated that this councilmember has moved to Florida. The councilmember stated in the phone call that he was in Florida. Mayor Pauley stated that this councilmember is not at the meeting tonight to answer any questions. Mr. Robinson stated that we have a councilmember that represents the constituents and not living in this State. Per RCW he isn't eligible if he isn't living here. He said the councilmember doesn't represent us if he isn't living here.

Mayor Pauley adjourned the meeting.

Finance Director

Attest:

Mayor

DRAFT

CITY OF COSMOPOLIS
RESOLUTION NO. 2022-01

A RESOLUTION establishing a policy which authorizes the Mayor to execute certain City contracts and Department Heads to make certain purchases without obtaining prior approval of the City Council.

WHEREAS, in order to promote efficiency and the reduction of unnecessary formalities which delay the performance of City business, the City Council has determined that it is necessary to authorize the Mayor to execute certain City contracts and to pay certain City debts, and to authorize Department Heads to make certain purchases without obtaining prior approval of the City Council; NOW THEREFORE,

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COSMOPOLIS, WASHINGTON, IN REGULAR MEETING DULY ASSEMBLED, AS FOLLOWS:

SECTION 1. Public Works Projects: The Mayor shall be authorized to execute any public works projects contracts, and to direct the payment of the contracted amount in due course, without obtaining prior City Council approval, when all of the following factors are present:

- a. The public works project has been previously approved by the City Council as part of the current budget or any current year supplemental budget, or a capital project budget; and
- b. The total amount to be paid for the public works contract is \$15,000.00 or less, excluding sales tax; and
- c. The public works project was awarded through the small works process and the public works contract conforms with all applicable State and City laws and regulations regarding performance bonds and retainage requirements.

SECTION 2. Personal Services Contracts and Other Contracts: The Mayor shall be authorized to execute any personal services contracts and contracts other than public works contracts, and to authorize the payment of the contracted amount in due course, without obtaining prior City Council approval, when all of the following factors are present:

- a. The subject of the contract and contracted amount has been previously approved by the City Council as part of the current budget or any current year supplemental budget, or a capital project budget; and
- b. The total amount of the contract is \$10,000.00 or less, excluding sales tax; and
- c. The personal services contract or other contract does not involve a former employee or official of the City of Cosmopolis.

SECTION 3. Purchases: The Mayor and Department Heads shall be authorized to make any purchases on behalf of the City without obtaining prior City Council approval, when all of the following factors are present:

- a. The item or items to be purchased have been previously approved for purchase by the City as part of the current budget or any current year supplemental budget, or a capital project budget; and
- b. For the water, streets and sewer departments, equipment purchases where the total cost of the purchased item is \$15,000.00 or less, excluding sales tax, and the City has complied with state bidding requirements; and
- c. For all other departments, and for purchases by the water, streets, sewer and stormwater departments that do not involve equipment, where the total cost of the purchased item is \$5,000 or less, excluding sales tax; and
- d. For all departments, the purchase of office and operating supplies shall be made through a centralized purchasing system developed and conducted by the finance department.

PASSED AND APPROVED this 18th day of May, 2022.

Mayor

Attest:

Finance Director

CITY OF COSMOPOLIS
RESOLUTION NO. 2022-02

A RESOLUTION setting fees for licenses for dogs and cats, pursuant to Cosmopolis Municipal Code Section 8.08.010.

WHEREAS, the City Council has recognized a need to address and amend the fees charged for licenses for dogs and cats; NOW THEREFORE,

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COSMOPOLIS, WASHINGTON, IN REGULAR MEETING DULY ASSEMBLED, AS FOLLOWS:

SECTION 1: Pursuant to Cosmopolis Municipal Code Section 8.08.010, the fees for licenses for dogs and cats in the City of Cosmopolis shall be as follows:

- (A) Altered dog or cat: \$5.00 per year.
- (B) Unaltered dog or cat: \$20.00 per year.
- (C) Lifetime license for an altered dog or cat: \$25.00.
- (D) License for service dog: Free.
- (E) Cost to replace lost or damaged tag for dog or cat: \$3.00.

PASSED AND APPROVED this 18th day of May, 2022.

Mayor

Attest:

Finance Director



April 28, 2022

Mr. Darrin C. Raines
City Administrator
City of Cosmopolis
1300 1st Street
Cosmopolis, WA 98537

Project: Cosmopolis 2023 SMP Update, AHBL No. 2220313.30
Subject: Proposal for SMP Periodic Review Consultant Support

Dear Mr. Raines:

Thank you for the opportunity to submit this proposal for the City of Cosmopolis's periodic update to the Shoreline Master Program (SMP). This scope of work is for performing updates to the City's SMP, which was adopted by City Council on June 29, 2016, followed by acceptance by the Department of Ecology (Ecology). Per RCW 90.58.080(4) and WAC 173-26-090, a periodic review and update is due by June 30, 2023. Ecology is providing a grant to the City for the project.

We understand that you will be the primary point of contact at the City for this work. AHBL's (Consultant's) scope of work for Tasks 3, 4, and 5 (to coincide with your grant agreement with Ecology) is attached as Exhibit A. Tasks 1 and 2 are project oversight and securing consultant services, which are the responsibility of the City. In addition, the City will administer the Ecology grant through the EAGL system, including updating reports and sending grant performance documents to the agency.

Wayne Carlson will serve as Principal-in-Charge and quality review lead for Consultant to provide oversight of our planners, and will coordinate with City staff to ensure we are meeting the City's needs. Senior Planning Project Manager, Nicole Stickney, will provide project management and staffing, as needed, with support from additional staff members from our Eastern and/or Western Washington offices, as needed. Wayne Carlson will provide quality assurance/quality control, as authorized.

Wayne Carlson and Nicole Stickney will contact the City periodically throughout the term of the contract to discuss staffing needs and adjust staffing levels accordingly. As Principal-in-Charge, Wayne will be involved to ensure that Consultant brings the appropriate additional resources to the projects, as needed. We are accustomed to tracking our time by each project and will format our invoices to reference project elements, to correspond with your grant.

All planning services, including State Environmental Policy Act (SEPA) review, contract management, quality control, and review by senior staff, and any related assistance or other planning services will be based on the attached rate sheet (Exhibit B). We will seek your authorization for the use of any staff member not included within this scope of work.

The initial authorization on this contract will be \$11,200, with an expiration date of June 30, 2023.

Civil Engineers
Structural Engineers
Landscape Architects
Community Planners
Land Surveyors
Neighbors

TRI-CITIES
5804 Road 90
Suite H
Pasco, WA 99301
509.380.5883 TEL

Mr. Darrin C. Raines
April 28, 2022
2220313.30
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Section 9, Item C.



If you find this proposal acceptable, please sign and return a copy of the enclosed contract (Exhibit C) to our office. We will return a copy of this contract to you after we have signed it. Our receipt of the signed contract will be our notification to proceed.

If you have any questions, please call me at (509) 380-5883.

Sincerely,

A handwritten signature in black ink that reads "Nicole Stickney".

Nicole Stickney, AICP
Senior Planning Project Manager

NS/lsk

Enclosures

c: Wayne Carlson - AHBL
Accounting

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EXHIBIT A

SCOPE OF WORK

Task 3 Public Participation

- 3.1 Develop a public participation plan.
- 3.2 Updates of public involvement activities in progress reports – quarterly.

Task 4 Review SMP and Draft Revisions

- 4.1 Periodic review checklist.
- 4.2 Initial draft SMP amendments or Findings of Adequacy and supporting documentation.

Task 5 Draft Final SMP or Findings of Adequacy and Adoption Process

(Steps: Complete SEPA Review and documentation; Provide GMA 60-day notice; Hold public hearing; Prepare responsiveness summary; Adopt SMP and submit to Ecology by June 30, 2023)

- 5.1 Updates of public review process activities in progress report.
- 5.2 Submit an SMP final draft amendment or Findings of Adequacy, with relevant supporting documentation and complete Period Review Checklist.



SCHEDULE OF CHARGES & COMPENSATION

Principal	225.00/Hour	Director of Landscape Architecture	170.00/Hour
Associate Principal	200.00/Hour	Senior Landscape Architect	145.00/Hour
Senior Project Manager	185.00/Hour	Landscape Architect 2	130.00/Hour
Project Manager	170.00/Hour	Landscape Architect 1	120.00/Hour
Senior Planning Project Manager	160.00/Hour	Senior Landscape Designer	120.00/Hour
Planning Project Manager	150.00/Hour	Landscape Designer 3	110.00/Hour
Survey Project Manager	160.00/Hour	Landscape Designer 2	100.00/Hour
Assistant Project Manager	125.00/Hour	Landscape Designer 1	90.00/Hour
Senior Engineer	160.00/Hour	Senior Landscape Technician	130.00/Hour
Project Engineer 4	140.00/Hour	Landscape Technician 3	105.00/Hour
Project Engineer 3	130.00/Hour	Landscape Technician 2	90.00/Hour
Project Engineer 2	120.00/Hour	Landscape Technician 1	80.00/Hour
Project Engineer 1	105.00/Hour	Senior Survey Technician	130.00/Hour
Senior Engineer Technician	130.00/Hour	Survey Technician 3	120.00/Hour
Engineer Technician 3	120.00/Hour	Survey Technician 2	105.00/Hour
Engineer Technician 2	105.00/Hour	Survey Technician 1	90.00/Hour
Engineer Technician 1	90.00/Hour	Chief of Parties	140.00/Hour
Project Administrator	100.00/Hour	Survey Crew	200.00/Hour
Project Expeditor	80.00/Hour	1-Person Survey Crew	130.00/Hour
Planner 5	145.00/Hour	Graphic Designer	110.00/Hour
Planner 4	130.00/Hour	Technical Editor	105.00/Hour
Planner 3	115.00/Hour	Word Processor/Sr. Administrative Asst.	85.00/Hour
Planner 2	100.00/Hour	Administrative Assistant	75.00/Hour
Planner 1	75.00/Hour	Outside Consultants	Separate Fee Proposal
Planning Technician	50.00/Hour	Geotechnical Engineers	Separate Fee Proposal
		Environmental Consultants	Separate Fee Proposal

Large Format Bond	0.50/sf
Large Format High Density Color Bond	2.00/sf
Large Format Mylar	2.00/sf
Small Format Color Bond 11 X 17	0.50/Sheet
Small Format Color Bond 8.5 X 11	0.40/Sheet

The Schedule of Charges and Compensation is subject to change.

Charges are made for technical typing, as in the preparation of reports, and for technical clerical services directly related to projects. Direct charges are not made for general secretarial services, office management, accounting, or maintenance.

AHBL, INC. PROFESSIONAL SERVICES AGREEMENT



This Professional Services Agreement "this Agreement" is made this **28th** day of **April, 2022**, between **City of Cosmopolis**, the "Client," and **AHBL, Inc.** of Tacoma, Washington, the "Consultant," for **Cosmopolis 2023 SMP Update**, the "Project," **AHBL File No. 2220313.30**.

The Client and Consultant agree as follows:

1. **SERVICES.** The Consultant will perform for the Client the services outlined in the Consultant's proposal letter dated **April 28, 2022**, which is incorporated into this Agreement. Said services will commence upon receipt of a signed copy of this Agreement.

This Agreement is between the parties hereto only and is not intended to benefit any third party nor to create any rights in any person or entity other than the parties hereto.

2. **COMPENSATION FOR SERVICES.** The Client shall pay to the Consultant, as compensation for the services, the amounts as identified in the proposal letter referred to in Paragraph 1. For projects that include time and expenses charges, a schedule of charges can be provided upon request.

3. **REIMBURSABLE EXPENSES.**

3.1 Reimbursable Expenses, surcharged by fifteen percent (15%), are in addition to compensation for Services and include expenses incurred by the Consultant and Consultant's employees and subconsultants in the interest of the Project, as identified in the following clauses.

- 3.1.1 Expense of transportation in connection with the Project, expenses in connection with authorized out-of-town travel, long-distance communications, and fees paid for securing approvals of authorities having jurisdiction over the Project.
- 3.1.2 If authorized in advance by the Client, expenses of overtime work requiring higher than regular rates.
- 3.1.3 Expense of renderings, models, and mock-ups requested by the Client.
- 3.1.4 Reprographics, copy expenses, and other expenses connected with the project.

4. **BILLING AND PAYMENT.**

4.1 **Initial Payment.** The Client shall make an initial payment of **zero** and **no** hundredths dollars (**\$0.00**) upon execution of this Agreement. This payment shall be applied against the final invoice. Invoices shall be submitted by the Consultant monthly and are due upon presentation and shall be considered PAST DUE if not paid within thirty (30) calendar days after the invoice date, regardless of whether the Client has secured project financing or the Client has received payment from its client, as the case may be.

4.2 **Interest.** If payment is not received by the Consultant within sixty (60) calendar days of the date of the invoice, the Client shall pay an additional charge of one and one-half percent (1.5%) (or the maximum allowable by law, whichever is lower) of the PAST DUE amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. The right to charge and collect interest is in addition to, and not substitution for, the right to suspend or terminate in the event of the Client's failure to make timely payments.

4.3 **Suspension or Termination of Service.** If the Client fails to pay amounts within sixty (60) calendar days of the date of the invoice, this shall constitute a material breach of this Agreement, and the Consultant may, at any time, and without waiving any other rights against the Client and without thereby incurring any liability whatsoever to the Client, suspend services under this Agreement or terminate this Agreement. The Client agrees to release the Consultant from any consequences of such suspension or termination of services due to the Client's non-payment of the Consultant's fees.

4.4 **Set-offs, Backcharges, Discounts.** Payment of invoices is in no case subject to unilateral discounting or set-offs by the Client. Payment is due regardless of suspension or termination of this Agreement by either party. If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within thirty (30) calendar days of receipt of the invoice. The Client shall identify the specific cause of the disagreement and shall pay when due that portion of the invoice not in dispute. Interest as stated above shall be paid by the Client on all disputed invoiced amounts resolved in the Consultant's favor and unpaid for more than sixty (60) calendar days after date of invoice.

5. **TERMINATION.** This Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. Upon termination, Consultant shall be compensated for all services performed to the date of receipt of notice of termination, plus reimbursable expenses then due, plus reasonable additional expenses that may be incurred in the closing of the project records and project activities.

6. **OWNERSHIP OF DOCUMENTS.** Plans, reports, and specifications are instruments of service and shall remain the property of Consultant, whether the project for which they are made is executed or not. The Consultant shall retain all ownership rights, including the copyright. Submission to public agencies and Project contractor(s) shall not be deemed publication in derogation of the Consultant's retained rights. The Client shall be permitted to retain copies, including reproducible copies, of plans, reports, and specifications for information and reference in connection with Client's use and occupancy. The plans, reports, and specifications shall not be used by the Client on other projects, for additions to this Project, or for completion of this Project by others except by agreement in writing with appropriate compensation to, and protection from liability for, Consultant, provided Consultant is not in material breach of this Agreement.

6.1 **Electronic Media.** The Client may retain copies of drawings, reports, and/or specifications in electronic form. Any use or reuse of, or changes to, the electronic media will be at the Client's sole risk. The Client will defend, indemnify, and hold harmless the Consultant from any and all claims resulting from use or reuse of, or changes to, the electronic media by the Owner or the Owner's transferee.

- 7. OPINIONS OF PROBABLE COST. Because Consultant does not have control over the cost of labor, materials, or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, opinions of probable cost, when provided, are made on the basis of the Consultant's experience and qualification, and represent the Consultant's best judgment as a design professional generally familiar with the construction industry. However, Consultant cannot and does not guarantee that proposals, bids, or the construction cost will not vary from opinions of probable cost prepared for the Client. If the Client wishes greater assurance as to the construction cost, the client shall employ an independent cost estimator.
- 8. RISK ALLOCATION. In the execution of its services, the Consultant will exercise its best professional judgment. No other warranties, expressed or implied, are given.

Client recognizes the inherent risk of claims associated with the service to be provided by Consultant. In partial consideration of Consultant's commitment to perform the services under this Agreement, Client and Consultant agree:

- 8.1 To limit the aggregate amount of damages the Client may recover against the Consultant (along with its officers, directors, and employees) arising under or related to this Agreement to \$50,000 or the amount of compensation paid to the Consultant pursuant to this Agreement, whichever is greater. The types of claims to which this limitation applies include, without limitation, claims based on negligence, professional errors or omissions, professional malpractice, indemnity, contribution, breach of contract, breach of expressed warranty, breach of implied warranty and strict liability.
- 8.2 The Consultant shall indemnify the Client (along with its officers, directors, and employees) against damages, losses, and liability, including reasonable attorneys' fees and expenses recoverable under applicable law, to the extent they are caused by the negligent acts or omissions of the Consultant or its consultants in the performance of professional services under this Agreement.
- 8.3 The Client shall indemnify the Consultant (along with its officers, directors, and employees) against damages, losses, and liability, including reasonable attorneys' fees and expenses recoverable under applicable law, to the extent they are caused by the negligent acts or omissions of the Client or its consultants under this Agreement.
- 8.4 Consequential Damages. The Client and the Consultant waive consequential damages for claims, disputes and other matters in question arising out of or related to this Agreement or the breach or alleged breach of this Agreement.

9. DISPUTES.

- 9.1 Mediation. Any dispute between the Client and the Consultant arising out of or relating to this Agreement shall be submitted to non-binding mediation. The Client agrees to participate in the mediation process in good faith upon receiving written notice, within the time limitation set forth below, from the Consultant of the Consultant's election to subject a dispute to mediation ("Notice of Election to Mediate"). Prior to commencing litigation against the Consultant, the Client shall, within the time limitation set forth below, provide the Consultant with written notice of the Client's claim(s) setting forth the nature of the dispute and the Client's claim(s), the amount in controversy, a brief summary of the factual circumstances surrounding such dispute and claim(s), and a statement of the Client's intention to commence litigation ("Notice of Intent to Litigate"). If within fourteen (14) days following the Consultant's receipt of Notice of Intent to Litigate the Consultant has not given the Client Notice of Election to Mediate, the Client may commence litigation. The Consultant may specifically enforce this mediation provision, whether through a motion to compel mediation or otherwise. Unless the Client and the Consultant subsequently agree otherwise in writing, the mediation will be conducted under the auspices of the American Arbitration Association acting under its Construction Industry Mediation Rules. Each party shall pay one-half of the mediator's charges and one-half of the mediation service's charges. The parties shall participate in the mediation process in good faith.
- 9.2 Litigation. If the Consultant elects not to mediate a dispute or if mediation is conducted but does not fully resolve all disputes and/or claims, either the Client or the Consultant may commence litigation. In that case, both parties agree that venue of any litigation shall be in Pierce County, Washington. If litigation is not commenced within ninety (90) days of the termination of the mediation proceedings between the parties or after Consultant's written election not to submit the dispute to mediation, the claims that were the subject of the mediation proceedings shall be forever barred.
- 9.3 Time Limitation. Any litigation arising out of or related to this Agreement, or the breach or alleged breach of this Agreement, must be commenced within one year of the date on which the Consultant last performs services pursuant to this Agreement. Claims by one party against the other, whether the basis of any such claim is known or unknown, shall be forever barred if not commenced within that one-year time period. This limitation period shall be tolled upon the Consultant's service of a Notice of Election to Mediate or the Client's service of a Notice of Intent to Litigate, and shall recommence running upon the termination of mediation proceedings or, in the event the Consultant does not elect to mediate, fourteen (14) days following service of the Notice of Intent to Litigate.

10. SPECIAL PROVISIONS.

- 10.1 Hidden Conditions. Inasmuch as the review of an existing building and/or site requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of the building and/or site, the Client agrees not to make any claims against the Consultant if it develops that the conditions that were encountered were not anticipated by Consultant.
- 10.2 Subconsultants. It is recognized and understood that some of the professional services required by this Agreement may be of a specialized nature that cannot be provided by Consultant in-house. Such specialized services include, but are not limited to, materials testing, mechanical, electrical, architectural, acoustical, and geotechnical Engineering, laboratory planning and design, professional cost estimating, LCC/energy analysis, acoustical Engineering, telecommunications Engineering, and other services identified elsewhere in this Agreement. Consultant shall, upon request received from the Client, procure such services from subconsultants subject to Client approval, and shall enter into agreements with the subconsultants. A copy of the agreements with the subconsultants shall be provided to the Client upon receipt of a written request. As the Client's agent, Consultant shall coordinate the activities of the subconsultants in the providing of their services under this Agreement.
- 10.3 Waiver of Claims. If the client declines to retain the Consultant to perform construction phase services, then the Client waives any claim that might otherwise be made against the Consultant (or its officers, directors, or employees) arising out of or related to use of drawings, reports and/or specifications prepared by the Consultant, except to the extent that the Client establishes that the claim against the Consultant would have existed even if the Consultant had performed construction phase services.

11. MISCELLANEOUS PROVISIONS.

- 11.1 Information Provided by Client. The Consultant shall indicate to the Client the information needed for rendering of services hereunder. The Client shall provide to the Consultant such information, and the Consultant is entitled to rely upon the accuracy and completeness thereof.
- 11.2 Environmental Hazards Waiver and Indemnity. The Consultant and the Consultant's subconsultant(s) shall have no responsibility for the discovery, presence, handling, removal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. It is further understood and agreed that Consultant will not contract to perform any services in connection with the detection, removal, abatement, disposal or eradication of any hazardous or potentially hazardous substances or materials located in, on, under, over, about or in any other way connected with the project or project site and that the incorporation into the contract of any specifications pertaining to such matter will be done only in accordance with the direction of the Client and their subconsultants without any responsibility or liability whatsoever of Consultant or their insurers in regard thereto.
- 11.3 Taxes. In the event that federal, state, and/or local legislative action imposes new or additional tax measures that will affect Consultant's cost of doing business, Client and Consultant agree that all professional fees negotiated in compensation for this project shall be adjusted to reflect such increases in taxation. Adjustments shall include, but not be limited to, compensation for potential new and/or the retroactive application of state sales tax on professional services, and increases in state and local business and occupation taxes.
- 11.4 Assignment. Neither the Client nor the Consultant shall assign or transfer this Agreement, or any interest in this Agreement or any cause of action arising under or related to it, without the written consent of the other, which consent may be withheld at the discretion of either party.
- 11.5 Construction Observation. The Consultant shall, if within the scope of services of this Agreement, visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Client and Consultant in writing to become generally familiar with the progress and quality of the construction. However, the Consultant shall not be required to make exhaustive or continuous onsite observations or any inspections to check the quality or quantity of the construction. The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Contractor's Work (Work). The Consultant shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Consultant shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- 11.6 Submittal Review. The Consultant shall review and take other appropriate action upon contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the plans and specifications. The Consultant's actions shall be taken with reasonable promptness. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the contractor. The Consultant's review shall not constitute review or approval of safety precautions or of construction means, methods, techniques, sequences, or procedures. The Consultant's review of a specific item shall not indicate review or approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems, or equipment is required by the plans and specifications, the Consultant shall be entitled to rely upon such certification to establish that the materials, systems, or equipment will meet the performance criteria required by the plans and specifications.
- 11.7 Property Insurance. The Client will assure that the Consultant is named as an additional insured on the builder's risk insurance policy and any other property policy carried by the Project owner and/or the Project prime construction contractor during the construction. The Client will furnish the Consultant with a certified copy of the policy or policies showing the Consultant's status as additional insured upon receipt of a request from the Consultant.
- 11.8 Governing Law. This Agreement shall be governed by the internal laws of the State of Washington.
- 11.9 Merger. This Agreement states the entire agreement between the Client and the Consultant with respect to its subject matter and supersedes all prior and contemporaneous negotiations, commitments, understandings, and agreements with respect to its subject matter. This Agreement shall not be modified or amended except by way of an instrument signed by both the Client and the Consultant.
- 11.10 Signing Authority. Each individual signing this Agreement on behalf of a named party warrants that he or she has the authority to sign on behalf of his or her principal and to bind his or her principal to this Agreement and its terms.

Client


CITY OF COSMOPOLIS

By: _____
Signature

Printed Name / Title

Date: _____

AHBL, INC.
Civil & Structural Engineers - Landscape Architects -
Community Planners - Land Surveyors
2215 North 30th Street, Suite 300
Tacoma, WA 98403
(253) 383-2422

By: 
Principal in Charge - Wayne E. Carlson, FAICP, LEED AP

Date: April 28, 2022

(AHBL File No. 2220313.30)