

RESOLUTION NO. 3253

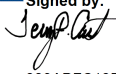
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH TOWNZEN AND ASSOCIATES TO PROVIDE ON-CALL CONSULTING SERVICES.

WHEREAS, the City entered into a contract with Townzen and Associates on September 13, 2022, for on-call building plan review and inspection services; and

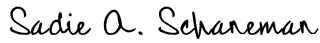
WHEREAS, the City Council desires to have Townzen and Associates continue to provide on-call building plan review and inspections services to ensure continuity of governmental services when staff is unavailable and to cover temporary surges in building permit activity.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Bonney Lake, Washington, does hereby authorize the Mayor to sign the attached agreement with Townzen and Associates to provide on-call consulting services.

PASSED by the City Council this 26th day of November 2024.

Signed by:

330AD7G13E9E492...
Terry Carter, Mayor

AUTHENTICATED:

DocuSigned by:

975A05C52D794C6...
Sadie A. Schaneman, CMC, City Clerk

City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Agenda Item Type: Resolution	Agenda Bill Number & Ordinance/Resolution/Motion Number: AB24-120 & Resolution R24-120	
Department/Division Submitting: Public Services	Presenter: Jason Sullivan	City Strategic Goal Category: DON'T FILL OUT YET

Agenda Subject: Townzen And Associate On-Call Contract Renewal.

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Peirce County, Washington, Authorizing The Mayor To Sign A Contract With Townzen And Associates To Provide On-Call Consulting Services.

Administrative Recommendation: Approve.

Background Summary: The City Entered Into An On-Call Contract With Townzen And Associates In September Of 2022 To Provide Building Plan Review And Inspection Service To Provide Coverage With The Building Staff Was Unavailable Due To Training, Vacations, And/Or Injury/Sickness. The City Has Also Used Townzen To Cover Plan Review During Peak Times To Ensure That Building Permits Are Reviewed In A Timely Manner. Finally, The Contract Provides The City With The Option To Have Structural Engineers Provide Support In The Review Of Structural Elements Of Larger More Complex Commercial Buildings. Based On Townzen's Efforts Over The Last Two Years, The Staff Is Requesting That The Contract Be Renewed For An Additional Two-Year Period.

Attachments: Resolution R24-120 And Townzen & Associate Contract.

BUDGET INFORMATION			
Budgeted Amount	Current Balance	Expenditure Amount Needed	Budgeted Balance Difference
Budget Explanation:			

COMMITTEE, BOARD & COMMISSION REVIEW					
Committee/Commission/Board: Community Development Committee					
Public Hearing Date:					
	Return/To Committee/ Commission/Board	Council Workshop Discussion	Consent Agenda	Committee/Council Full Issues	Chair Approval
Date: 11/19/2024	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	GAF
Date:	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	
Date:	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	
Date:	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	

Hearing Examiner Review:

COUNCIL ACTION	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 11/26/2024	Tabled To:

APPROVALS		
Department Director: Jason Sullivan	Mayor: Terry Carter	Date Reviewed By City Attorney (if applicable):

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF BONNEY LAKE AND TOWNZEN & ASSOCIATES, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT is entered into by and between the City of Bonney Lake, Washington, a municipal corporation (“**City**”) and Townzen & Associates, Inc. organized under the laws of the State of Washington, located and doing business at 221 Kenyon St NW, Suite 102, Olympia Washington 98502 (hereinafter the “**Consultant**”).

RECITALS:

WHEREAS, the City desires to have on-call building permit review and inspection services performed; and

WHEREAS, the City has selected the Consultant to perform such services pursuant to certain terms and conditions; and

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the Parties agree as follows:

AGREEMENT:

1. Scope of Services to be Performed by Consultant.

The Consultant shall perform the work as assigned by the City, which may include the services described in Exhibit “A” of this Agreement which is attached hereto and incorporated herein by this reference as if set forth in full. Additional work may be assigned by the City; however, this Agreement does not obligate the City to assign any specific work or any work to the Consultant. In performing the services, the Consultant shall comply with all federal, state, and local laws and regulations applicable to the services. The Consultant shall perform the services diligently and completely and in accordance with professional standards of conduct and performance.

2. Compensation and Method of Payment.

The City shall pay the Consultant for services rendered according to the rates set forth in Exhibit “B”. The City shall pay the Consultant for services within a reasonable amount of time once an invoice is received. However, if the City objects to all or any portion of an invoice, it shall notify Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the Parties will immediately make every effort to settle the disputed portion.

3. Duration of Agreement. This Agreement shall be in full force and effect for a period commencing on the date the last Party executes this Agreement and ending after two (2) years of the effective date of the Agreement unless sooner terminated under the provisions of this Agreement or extended by mutual agreement of the Parties. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

4. Ownership and Use of Documents.

A. *Ownership.* Any records, files, documents, drawings, specifications, data, or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not. Reuse of materials produced by the Consultant other than as contemplated by this Agreement shall be without liability to the Consultant.

B. *Records preservation.* Consultant understands that this Agreement is with a government agency and thus all records created or used in the course of Consultant's work for the City are considered "public records" and may be subject to disclosure by the City under the Public Records Act, Chapter 42.56 RCW ("the Act"). Consultant agrees to safeguard and preserve records in accordance with the Act. The City may be required, upon request, to disclose the Agreement, and the documents and records submitted to the City by Consultant, unless an exemption under the Public Records Act applies. If the City receives a public records request and asks Consultant to search its files for responsive records, Consultant agrees to make a prompt and thorough search through its files for responsive records and to promptly turn over any responsive records to the City's public records officer at no cost to the City.

5. **Independent Consultant.** The Parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives, and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

6. **Indemnification.** Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorneys' fees, to the extent arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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 Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant'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.

7. Insurance. The Consultant 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 work hereunder by the Consultant, its agents, representatives, or employees.

A. *Minimum Scope of Insurance.* Consultant shall obtain insurance of the types described below:

- i. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- ii. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent Consultants and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
- iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- iv. Professional Liability insurance appropriate to the Consultant's profession.

B. *Minimum Amounts of Insurance.* Consultant shall maintain the following insurance limits:

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

- iii. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. *Other Insurance Provision.* The Consultant'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 insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

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

E. *Verification of Coverage.* The Consultant 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 Consultant before commencement of the work.

F. *Notice of Cancellation.* The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

G. *Failure to Maintain Insurance.* Failure on the part of the Consultant 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 Consultant to correct the breach, immediately terminate the contract 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 Consultant from the City.

H. *No Limitation.* Consultant'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.

8. Record Keeping and Reporting.

A. The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

B. The foregoing records shall be maintained for a period of seven (7) years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14 RCW and by the City.

9. City's Right of Inspection and Audit.

A. Even though the Consultant 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 the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

B. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by the City during the performance of this Agreement. All work products, data, studies, worksheets, models, reports, and other materials in support of the performance of the service, work products, or outcomes fulfilling the contractual obligations are the products of the City.

10. Consultant to Maintain Records to Support Independent Contractor Status. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the Parties which is subject to RCW Title 51, Industrial Insurance.

11. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection reasonably necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

12. Termination.

A. The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon seven (7) days' prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports, or other materials prepared by the Consultant pursuant to this Agreement shall promptly be submitted to the City.

B. In the event this Agreement is terminated or suspended, the Consultant shall be entitled to payment for all services performed and reimbursable expenses incurred to the

date of termination.

C. This Agreement may be canceled immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement.

D. The Consultant reserves the right to terminate this Agreement with not less than fourteen (14) days written notice, or in the event that outstanding invoices are not paid within sixty (60) days.

E. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

13. Force Majeure. Notwithstanding anything to the contrary in this Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, governmental laws, regulations or restrictions, civil commotions, Casualty, actual or threatened public health emergency (including, without limitation, epidemic, pandemic, famine, disease, plague, quarantine, and other significant public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization, breaches in cybersecurity, and other causes beyond the reasonable control of the Party obligated to perform, regardless of whether such other causes are (i) foreseeable or unforeseeable or (ii) related to the specifically enumerated events in this paragraph (collectively, a "**Force Majeure**"), shall excuse the performance of such Party for a period equal to any such prevention, delay or stoppage. To the extent this Agreement specifies a time period for performance of an obligation of either Party, that time period shall be extended by the period of any delay in such Party's performance caused by a Force Majeure. Provided however, that the current COVID-19 pandemic shall not be considered a Force Majeure unless constraints on a Party's performance that result from the pandemic become substantially more onerous after the effective date of this Agreement. In order to claim Force Majeure, the Party claiming must provide notice to the other Party within fourteen (14) days of the event which constitutes Force Majeure or such claim shall be waived for any period in which notice was due.

14. Discrimination Prohibited. The Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, sexual orientation, age, national origin, marital status, presence of any sensory, mental or physical disability, or other circumstance prohibited by federal, State or local law or ordinance, except for a bona fide occupational qualification.

15. Assignment and Subcontract. The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City. Any assignment made without the prior approval of the City is void.

16. Conflict of Interest. The Consultant represents to the City that it has no conflict of interest in performing any of the services set forth in Exhibit "A." In the event that the Consultant

is asked to perform services for a project with which it may have a conflict, Consultant will immediately disclose such conflict to the City.

17. Confidentiality. All information regarding the City obtained by the Consultant in performance of this Agreement shall be considered confidential. Consultant shall not disclose any such information to any third parties without (1) the prior written consent of the City or (2) legal process requiring disclosure, provided advance notice is provided to the City. Breach of confidentiality by the Consultant shall be grounds for immediate termination.

18. Non-Appropriation of Funds. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. 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 that the terms of the provision are effectuated.

19. Employment of State Retirees. The City is a “DRS-covered employer” which is an organization that employs one or more members of any retirement system administered by the Washington State Department of Retirement Systems (DRS). Pursuant to RCW 41.50.139(1) and WAC 415-02-325(1), the City is required to elicit on a written form if any of the Consultant’s employees providing services to the City retired using the 2008 Early Retirement Factors (ERFs), or if the Consultant is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. Failure to make this determination exposes the City to significant liability for pension overpayments. As a result, before commencing work under this Agreement, Consultant shall determine whether any of its employees providing services to the City or any of the Consultant’s owners retired using the 2008 ERFs, and shall immediately notify the City and shall promptly complete the form provided by the City after this notification is made. This notification to DRS could impact the payment of retirement benefits to employees and owners of Consultant. Consultant shall indemnify, defend, and hold harmless the City from any and all claims, damages, or other liability, including attorneys’ fees and costs, relating to a claim by DRS of a pension overpayment caused by or resulting from Consultant’s failure to comply with the terms of this provision. This provision shall survive termination of this Agreement.

20. Entire Agreement. This Agreement contains the entire agreement between the Parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the Parties. If there is a conflict between the terms and conditions of this Agreement and the attached exhibit, then the terms and conditions of this Agreement shall prevail over the exhibit. Either Party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

21. Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered, in which case the notice or communication shall be deemed given on the date of receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, in which case the notice or

communication shall be deemed given three (3) business days after the date of deposit in the United States mail; or (c) sent by overnight delivery using a nationally recognized overnight courier service, in which case the notice or communication shall be deemed given one business day after the date of deposit with such courier. In addition, all notices shall also be emailed, however, email does not substitute for an official notice. Notices shall be sent to the following addresses:

Notices to the City of Bonney Lake shall be sent to the following address:

City Clerk
City of Bonney Lake
9002 Main Street E.
Bonney Lake WA 98391

Notices to the Consultant shall be sent to the following address:

Townzen & Associates, Inc
Attn: Les Townzen
221 Kenyon St NW, Ste 102
Olympia WA 98502
les@townzen-consulting.com

22. Applicable Law; Venue; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration or other proceeding is instituted to enforce any term of this Agreement, the Parties specifically understand and agree that venue shall be exclusively in Pierce County, Washington. The prevailing party in any such action shall be entitled to its reasonable attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee shall be included in the judgment.

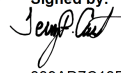
23. Compliance with Laws. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

24. Counterparts. 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.

25. Severability. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

IN WITNESS WHEREOF, the City and the Consultant have executed this Agreement as of the dates listed below.

CITY OF BONNEY LAKE

Signed by:

330AD7G13E0E402...

Name: Terry Carter

Title: Mayor

Date: 11/27/2024 | 7:44 AM PST

TOWNZEN & ASSOCIATES, INC

DocuSigned by:

62E3FF4EBAD5406...

Name: Les Townzen, CFPS

Title: President/CEO

Date: 10/17/2024

ATTEST

DocuSigned by:

975A05C652D704C6...

Sadie A. Schaneman, CMC
City Clerk

APPROVED AS TO FORM

DocuSigned by:

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Jennifer S. Robertson, City Attorney

EXHIBIT A

Scope of Services to be Provided by Consultant.

The Consultant shall provide on-call building permit review and inspection services to ensure that development proposals comply with the requirements of Chapters 15.04, 15.08, 15.16 and 15.24 Bonney Lake Municipal Code (BLMC). Such work shall be performed using facilities, equipment and staff provided by the Consultant, and shall be performed in accordance with all applicable federal, state, and local laws, ordinances, and regulations. The Consultant shall exercise reasonable care and judgment in the performance of work pursuant to the Agreement. The Consultant shall make minor changes, amendments, or revisions in the detail of the work as may be required by the City; such work will not constitute Extra Work under this Agreement.

EXHIBIT B
Rates of Service

Services Based on a Portion of the Collected Plan Review Fees

Building Plan Review Services:	<u>Plan Review Fee Valuation</u>	<u>W/Structural Review</u>	<u>WO/Structural Review</u>
	\$0-\$500,000	Per Hourly Rate*	Per Hourly Rate*
	\$500,001+	60%	35%
Residential Plan Review	50% (Residential plan review does not include a full structural review.)		

*The hourly rate is charged for both disciplines. (90/Hr. for plan reviewer plus \$150/Hr. for the structural plan reviewer.)

The fees associated with the plan review will include one initial review and one re-submittal review. Any Additional reviews will be charged at the hourly rate listed in this proposal.

Deferred submittals or additional plan reviews required by changes, additions or revisions to plans will be an additional fee based on actual hours utilized at the appropriate hourly rate with a minimum of 1 hour.

Services Based on Hourly Rates

Plan Examiner	\$90.00/Hour
Structural Engineer	\$150.00/Hour
Inspector	\$85.00/Hour of Inspection
Travel Time	60% of Hourly Rate + Mileage

The Fees associated with the plan review will include one initial review and re-submittal review. Any additional reviews will be charged at the hourly rate listed in the schedule.

Deferred submittals or additional plan reviews required by changes, additions, or revisions to the plans will be additional fee based on actual hours utilized at the appropriate hourly rate with a minimum of 1 hour.

Expedited Review Fees:

Our standard rate for an expedited review is a surcharge that equals 2x our fee.