

**Finance & Administration Committee Meeting**  
**August 20, 2024**  
**4:00 p.m.**

- 1 A2H Contract – TDEC ARPA Wastewater Collection Extension
- 2 Fire Protection Fees Discussion
- 3 Covington Electric Tax Equivalent Discussion
- 4 Newman Property

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE TO ESTABLISH THE TEXT OF THE COVINGTON MUNICIPAL CODE, (FIRE PROTECTION FEE) TITLE 7, CHAPTER 5.

WHEREAS, the Board of Mayor and Alderman has deemed it necessary, for the purpose of promoting the health, safety, prosperity, morals, and general welfare of the City, to establish the following Fire Protection Fee.

WHEREAS, the Board of Mayor and Alderman have discussed and reviewed the above stated proposed addition and,

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMAN OF THE CITY OF COVINGTON:**

**Section 1.** That the following attached Title 7, Chapter 5 be added.

**Section 2.** BE IT FURTHER ORDAINED that this Ordinance shall become effective immediately upon its passage after the third and final reading, this ordinance shall take effect from and after its passage, the welfare of the City requiring it.

Passed First Reading \_\_\_\_\_  
\_\_\_\_\_ Mayor

Passed Second Reading \_\_\_\_\_

Passed Public Hearing \_\_\_\_\_  
\_\_\_\_\_ Recorder-Treasurer

Passed Third Reading \_\_\_\_\_

## Chapter 5

### FIRE PROTECTION FEE

#### SECTION

**7-501. Short title.**

**7-502. Purpose and findings.**

**7-503. Definitions.**

**7-504. Issuance of building permit and certification of occupancy.**

**7-505. Collection of fire fee.**

**7-506. Computation of the amount of fire fee.**

**7-507. Use of funds.**

**7-508. Amendments.**

**7-509. Exemptions.**

**7-510. Appeals and protests.**

**7-511. Severability.**

**7-501. Short title.** This chapter shall be known and cited as the City of Covington Fire Protection Fees Ordinance.

**7-502. Purpose and findings.** The Board of Mayor and Alderman (the "board") finds that:

- (1) The fire protection systems of the City of Covington (the "city") needs expansion, repair, and constant maintenance, to provide adequate protection for persons and property.
- (2) A fire protection fee is required to provide a capital improvement plan (CIP) needed to aid in maintaining and expanding fire protection and emergency services throughout the city's fire district; and
- (3) The fee established by this chapter will be imposed and collected for the purpose of providing additional funds necessary to ensure the city's ability to maintain and expand fire protection and emergency services in accordance with its current standards.

**7-503. Definitions.** Definitions are extracted from (1) IFC (2018), (2) IBC (2018) and (3) NFPA 101, (2018) as used in this chapter, unless the context otherwise requires:

- (1) "Building," means a structure utilized or intended for supporting or sheltering any occupancy.
- (2) "Building permit" means a permit issued by the city building official authorizing the construction or placement of a building or structure within the city municipal limits.
- (3) "Certificate of occupancy" means a license for occupancy of a building or structure after the building or structure has been inspected to determine the construction has been undertaken in compliance with the building permit application in conformity with the zoning ordinance and other pertinent ordinances and codes adopted by the city.
- (4) "Change of occupancy<sub>2</sub>" means a change in the use of a building or a portion of a building which results in one of the following:
  - A. A change of occupancy classification.
  - B. A change from one group to another group within an occupancy classification.
  - C. A change in use within a group for which there is a change in application of the requirements of the 2018 IFC.

(5) "Emergency Services" for the purpose of this chapter means emergency response that threatens the safety and well-being of people in their area.

(6) "Feepayer" is a person who applies to the city for a permit of any new residential, commercial or industrial structures or change of occupancy in existing buildings.

(7) "Fire protection" for the purpose of this chapter means the prevention and extinguishment of fires, the protection of life and property from fire, and the enforcement of federal, state, and municipal fire codes.

(8) "Governing body" means the Board of Mayor and Alderman.

(9) "Gross Floor Area:" means the floor area within the inside perimeter of the outside walls of the building under consideration for hallways, stairs, closets, thickness of interior walls, columns, elevator and building service shafts, or other feature, but excluding floor openings associated with atriums and communicating spaces.

(10) "IBC" means International Building Code (2018).

(11) "IFC" means International Fire Code (2018).

(12) "NFPA" means National Fire Protection Association- 101 Life Safety Code (2018).

(13) "Person:" means an individual, heirs, executors, administrators, assigns, and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid. the plural as well as the singular number.

(14) "Public building" for the purpose of this chapter, means a building owned by the State of Tennessee or any agency thereof, a political subdivision of the State of Tennessee, including but not necessarily limited to the counties, cities, towns, school districts and special districts, or the federal government or any agency thereof.

(15) "Occupancy Classification," for the purpose of this chapter means the Fire Code Official's interpretation, in good faith, of the terms which defines certain occupancies and their groups, per the IBC (2018):

A. "Commercial= Business/Mercantile/Assembly" means the use of a building or structure, or a portion thereof, for office, professional or service-type transactions, including storage of records and accounts- Group B; or for the display and sale of merchandise, and involves stocks of goods, wares or merchandise incidental to such purposes and accessible to the public- Group M; or the use for gathering of persons for purposes such as civic, social or religious functions; recreation, food or drink consumption, or awaiting transportation- Group A.

B. "Industrial= Factory/Industrial/Storage" means the use of a building or structure, or portion thereof, for assembling, disassembling, fabrication, finishing, manufacturing, packaging, repair or processing operations and/or storage of any products- Group H, F, or S.

C. "Residential" means the use of a building or structure, or portions thereof, for sleeping purposes when not classified as Institutional Group I or when not regulated by the *International Residential Code* in accordance with Section 101.2 of the *International Building Code (2018 IBC 101.2 Scope)* -Group R.

**7-504. Issuance of building permit and certificate of occupancy.**

No building permit for new residential, commercial, or industrial building(s) or certificate of occupancy for a change of occupancy in commercial and industrial building(s), within the

city, shall be issued until the fire protection fee has been paid in full by the person engaging in such building or change.

**7-505. Collection of fire protection fee.** (1) Each applicant/feepayer seeking a building permit for new residential, commercial, or industrial structure(s), or for a change of occupancy, must declare the total gross square footage of the structure(s) on a form provided by the building or fire official.

(2) The building official shall calculate the fee due on the permit and collect such fee, prior to issuance of the building permit.

(3) In the event that a new building permit or a change of occupancy permit is not obtained for any structure(s), the applicant/feepayer for a certificate of occupancy shall state the amount of gross square footage contained in the project subject to application. The building official shall calculate the fee due on the project and collect the appropriate fee, prior to issuance of the certificate of occupancy.

(4) No building permit or certificate of occupancy shall be issued until the fee required has been paid.

**7-506. Computation of the amount of fire protection fees.** (1) The fee schedule shall be as currently adopted in the Administrative Ordinance for all new structures or change of occupancy in existing commercial or industrial buildings.

(2) All funds collected pursuant to this chapter shall be identified as fire protection fee and transferred for deposit into the appropriate fire protection fee fund.

(3) These fire protection fees shall be used solely for the purposes specified herein.

**7-507. Use of funds.** (1) Funds collected from fire protection fees shall be used for the purposes of maintaining and expanding fire protection and emergency services.

(2) Each fiscal year the Fire Chief shall present to the Board of Mayor and Aldermen, a proposed CIP for the fire department. Monies including any accrued interest, not obligated in any fiscal year, shall be retained in the same fire protection fee fund until the next fiscal year.

**7-508. Amendments.** The Board of Mayor and Alderman may, from time to time, amend this chapter and the fee, based upon adoption of a revised capital improvements program for fire services, which identifies new capital improvements and costs reasonably attributed to new residential, commercial or industrial structures or change of occupancy.

**7-509. Exemptions.** No fee shall be assessed or collected for the new construction or change of occupancy of: (1) Buildings used for agricultural purposes.

(2) Public buildings or public tenant spaces. (3) Fully sprinkled buildings or tenant space(s) of less than four thousand five hundred square feet (4,500 sq. ft.) in accordance with NFPA standards. (4) Uninhabited residential accessory structures.

**7-510. Appeals.** Any person aggrieved by the calculation or assessment of the fee authorized by this chapter may appeal such assessment pursuant to the laws of the State of Tennessee.

**7-511. Severability.** If any of the provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.

**Example/Option Sheet- Not Included in This Ordinance**

**Option 1**

**7-507. Computation of the amount of fire protection fee.**

The fee schedule shall be calculated at twelve cents (\$0.12) per square foot of enclosed floor area for all new residential units.

(examples) 2,000 sq. ft. x \$0.12= \$240.00  
3,000 sq. ft. x \$0.12= \$360.00

The fee schedule shall be calculated at fifteen cents (\$0.15) per square foot of enclosed floor area for all new/change of occupancy business/mercantile structures.

(examples) 3,000 sq. ft. x \$0.15= \$450.00  
7,000 sq. ft. x \$0.15= \$1,050.00

The fee schedule shall be calculated at twenty cents (\$0.20) per square foot of enclosed floor area for all new/change of occupancy in factory/ industrial structures.

(examples) 10,000 sq. ft. x \$0.20 = \$2,000.00  
20,000 sq. ft. x \$0.20 = \$4,000.00

**Option 2**

**7-507. Computation of the amount of fire protection fee.**

The fee schedule shall be calculated at twelve cents (\$0.12) per square foot of enclosed floor area for all new residential units.

(examples) 2,000 sq. ft. x \$0.12= \$240.00  
3,000 sq. ft. x \$0.12= \$360.00

The fee schedule shall be calculated at eighteen cents (\$0.18) per square foot of enclosed floor area for all new/change of occupancy business/mercantile structures.

(examples) 3,000 sq. ft. x \$0.18= \$540.00  
7,000 sq. ft. x \$0.18= \$1,260.00

The fee schedule shall be calculated at twenty-four cents (\$0.24) per square foot of enclosed floor area for all new/change of occupancy in factory/industrial structures.

(examples) 10,000 sq. ft. x \$0.24 = \$2,400.00  
20,000 sq. ft. x \$0.24 = \$4,800.00

**Examples-** Charms is in the process of building a storage addition to their building. The expansion is scheduled to be around 100k sq. ft. total- Using Option 2 of this document, CFD would receive approx. \$24,000.00 from this one project.

New Residential Structures at \$0.12 per avg. 2,000 sq. ft. house-  
(Proposed- 179 Annex, Newman Property, etc.)

1,000 residences x \$240.00= \$240,000.00

Also, this may be used as a tool in bargaining for sprinkler systems in lieu of fees.



August 6, 2024

The Honorable Jan Hensley  
Mayor  
City of Covington, TN  
200 West Washington Street  
Covington, TN 38019

Re: City of Covington, TN  
TDEC ARPA State Strategic Grant Program  
Covington Wastewater Collection Extension  
Covington, TN

**A2H # 24248**

Dear Mayor Hensley,

A2H is pleased to submit our Contract for design and consulting related services for this project. As an integrated Engineering, Architectural and Planning firm, A2H offers all services required to successfully complete this project. If you agree with the terms as outlined within the enclosed Contract, please acknowledge your acceptance by signing and dating the Contract and initialing the Terms and Conditions in the spaces indicated and return one executed Contract to our office.

If selected, please note that David Smith will serve as Project Manager for this project and will be your contact person in our office. If you have any questions or require additional information, please do not hesitate to contact either me or David at any time.

Thank you for giving us the opportunity to submit this Contract.

Sincerely,  
A2H, INC.

Pat Harcourt, PE  
CEO | Principal

David M. Smith, Ph.D., PE  
Principal | Project Manager



August 6, 2024

The Honorable Jan Hensley  
Mayor  
City of Covington, TN  
200 West Washington Street  
Covington, TN 38019

Re: City of Covington, TN  
TDEC ARPA State Strategic Grant Program  
Covington Wastewater Collection Extension  
Covington, TN

**A2H # 24248**

Dear Mayor Hensley,

A2H is pleased to respond to your request for Professional Services on the above referenced project. By way of this Contract, we are enclosing our understanding of the scope of work required for the project and shall perform the Professional Services upon the terms and conditions set forth in this letter.

**I. The following represents our understanding of the project description:**

A2H will be responsible for professional design and consulting services necessary for the TDEC ARPA State Strategic Grant Program Covington Wastewater Collection Extension proposed in Covington, TN.

This project is being supported, in whole or in part, by federal funds awarded to the City of Covington, TN by the U.S. Department of Treasury and through the State of Tennessee Department of Environment and Conservation American Rescue Plan Act State Strategic Grant Program.

Additional aspects of the project include the following:

- A. A2H understands that this project is part of the State Strategic ARPA Grant program managed by TDEC and that activities will need to be performed in conformance with the program requirements.
- B. The scope of this project is to extend the City of Covington's wastewater collection system southeastward beyond the city limits along Highway 59 to provide centralized wastewater collection and treatment capacity for a critical area of interest within the unincorporated area of Tipton County.
- C. The project includes the installation of wastewater pump stations both at the intersection of Highway 59 and Highway 14 and at the intersection of Highway 14 and Little Beaver Creek. These pump stations will be connected by an 8 inch force main with further 8 inch force main extended northwestward to the existing City of Covington collection system. The total length of force main is approximately 33,500 feet.



**II. It is our understanding that the Basic Scope of Services includes:**

A2H will provide the following as part of our Basic Scope of Services, working closely with City of Covington, TN to provide these services in support of the project:

- Project Management
- Civil Engineering
- Construction Administration
- Land Surveying
- Electrical Engineering

The phases described below represent our understanding of the project requirements as indicated by the Client:

**Covington Engineering Design**

- A. A2H will develop a conceptual wastewater collection plan that identifies:
  - i. The locations of the proposed pump stations
  - ii. The location and route of the proposed force main
  - iii. The location of the tie-in to the existing system
- B. A2H will review the conceptual plan with the City of Covington, TN for concurrence.
- C. Once the City of Covington, TN has agreed with the conceptual plan, A2H will complete the design components of the Construction Documents.
- D. Once the Construction Documents are completed, the appropriate submittal will be made to the Tennessee Department of Environment and Conservation (TDEC) Engineering Services for approval. Once approved, the project will be ready for bidding.
- E. A2H will assist the City of Covington, TN in bidding the project by preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Construction Documents and Specifications for distribution to all prospective bidders in the form of addenda during the bidding process.
- F. A2H will review the bids received with the City of Covington, TN and provide a recommendation regarding project award.

**Covington Construction Administration**

- A. A2H will have authority to act on behalf of City of Covington, TN only to the extent provided in this agreement. A2H will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, nor will A2H be responsible for the Contractor's failure to perform the work in accordance with the requirements of the Contract Documents. A2H will not have control over or charge of, and shall not be responsible for, acts, or omissions of the Contractor.
- B. A2H will advise and consult with the City of Covington, TN during the construction phase services.
- C. A2H will participate in a Pre-Construction Conference.
- D. A2H will review and approve or take other appropriate action upon the Contractor's submittals such as shop drawings, product data, samples, and test reports.
- E. A2H will assist the Contractor with questions generated during the construction process.
- F. A2H will perform site visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the various aspects of the Contractor's work. We anticipate seven (7) visits over the course of the construction of the project.

- G. A2H will conduct a site visit at substantial completion to provide a final comprehensive punch list of the project prior to final payment.
- H. A2H will review closeout documents prepared by Contractor at the end of the construction phase.

**III. Exclusions from our Basic Scope of Services are as follows:**

Services not set forth above as Basic Scope of Services in this Contract are excluded from the scope of our work and we assume no responsibility to perform such services, including but not limited to:

- A. Services required because of significant changes in the project, including changes in size, quality, complexity, schedule or methods of bidding.
- B. Improvements not specifically referenced in the Basic Scope of Services.
- C. Construction Cost Estimating services.
- D. Our limited Construction Administration services do not include construction management tasks, i.e., full time on-site representation and inspection. We will provide periodic site visits with observation reports as needed to observe the work and to verify pay applications.
- E. Quality Assurance Testing services, including but not limited to testing and special inspections.
- F. The preparation of As-Built Drawings or Record Drawings after completion of construction.
- G. Training of Owner's staff.
- H. Value Engineering/Analysis after the completion of the Construction Documents shall be compensated as an Additional Service per Section VII.

**IV. It is our understanding that the following Supplemental Conditions are included as part of the project:**

- A. Breach of Contract
  - i. A2H shall be deemed to have breached this Contract if any of the following occurs:
    - a. Failure to provide, in full or in part, the Services under this Contract.
    - b. Failure to maintain the records and/or submit any report required in this Contract.
    - c. Assignment of this Contract without prior written authorization by Client.
    - d. Failure to perform, in full or in part, any of the conditions in this Contract.
    - e. Failure to adhere to any county, state, or federal rules and regulations governing this Contract.
  - ii. If A2H or any of its subcontractors fail to perform or comply with any of the provisions of this Contract, including the Purchase Order/s issued in accordance hereof, Client may consider such failure or non-compliance a breach of this Contract and reserves the right to terminate the Contract at any time, in full or in part, in the sole judgment and discretion of the Client. Client expressly retains all its rights and remedies provided by law in case of such breach. No action by Client shall constitute a waiver of any such rights or remedies.
- B. Termination of Contract
  - i. Termination for Convenience:
    - a. It is agreed by and between each of the parties hereto, respectively, that each of the parties hereto shall have, and there is hereby reserved to such parties and each of them the absolute right to cancel and annul this Contract at any time upon ninety (90) days written notice to the other party.

- ii. Termination for Cause:
  - a. Client may, at any time, terminate this Contract upon written notice to A2H in case of A2H's breach of this Contract as written in above Section "Breach of Contract" and A2H has failed to cure the breach within a reasonable period allowed by Client.
  - b. Client and A2H shall endeavor to resolve claims, disputes, and other matters in question between them by mediation. If this Contract is terminated by Client due to A2H's accused breach of contract, Client's recovery for losses, including costs to engage a new consultant and excess costs for increased pricing, shall be resolved by mediation. Parties agree that prior to instituting any litigation for damages, the Parties shall conduct a non-binding mediation to attempt to resolve their dispute. In the event the Parties cannot agree upon a mediator, each Party shall select a mediator and such mediators shall select a third mediator who shall serve as the mediator for the dispute and the parties shall equally pay the mediator's fee. In the event such mediation does not occur within thirty (30) days of a written request of either Party or in the event the parties attend mediation, and the mediation is unsuccessful, the Parties shall be free to pursue litigation.
  - c. Client may terminate this Contract without penalty if A2H's performance of Services under this Contract is interrupted by Force Majeure and such performance does not resume within thirty (30) days from such interruption.
  - d. In the event any voluntary or involuntary proceedings by or against A2H in bankruptcy or insolvency, or for the appointment of a receiver, trustee or an assignee for the benefit of creditors of the property of A2H, Client may terminate this Contract without penalty and upon written notice to A2H or affirm this Contract and hold A2H responsible for damages.
  - e. In no event shall Client's exercise of its right to terminate this Contract relieve A2H of any liability to Client for any damages or claims.
- C. Access to Records
  - i. A2H and their contractors and subcontractors must give the Department of Treasury and other authorized representatives access to records associated with their awards during the federally required record retention period and as long as the records are retained.
  - ii. The following access to records applies to this Contract:
    - a. A2H agrees to provide Client, Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of A2H which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
    - b. A2H agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
    - c. The Client agrees to provide the Treasury or authorized representatives access to construction or other work sites pertaining to work being completed under the Contract.
- D. Compliance With Federal Law, Regulations And Executive Orders
  - i. This is an acknowledgement that Treasury ARP SLFRF financial assistance will be used to fund all or a portion of the Contract. A2H will comply with all applicable Federal law, regulations, executive orders, Treasury policies, procedures, and directives.

**V. Our proposed schedule of deliverables for the above referenced Basic Scope of Services is as follows:**

A2H will provide the Client with a schedule for phase deliverables and construction within two weeks of the Notice To Proceed. The Notice to Proceed is understood to be issued by the City of Covington, TN after receipt and execution of the ARPA Non-Competitive Grant contract with the State of Tennessee, or at their discretion.

**VI. Our proposed compensation for the above referenced Basic Scope of Services is as follows:**

Covington Engineering Design	\$	246,900.00
Covington Construction Plans Review	\$	\$1,500.00
Covington Construction Administration	\$	121,900.00
<b>Compensation for Basic Scope of Services</b>	<b>\$</b>	<b>370,300.00</b>

**VII. Additional Services:**

Additional services shall consist of all services not included in the Basic Services as set forth above. No work will be performed beyond the services noted above without an express written agreement between A2H and City of Covington, TN. Additional Services will be billed either on an hourly basis in accordance with the hourly rate schedule contained herein, or a negotiated fixed fee based on the scope of additional services requested. The A2H Hourly Rate Schedule is as follows:

STAFF MEMBER	LEVEL I	LEVEL II	LEVEL III
Principal	\$ 200.00	\$ 215.00	\$ 230.00
Project Manager	\$ 140.00	\$ 160.00	\$ 180.00
Project Coordinator	\$ 85.00	\$ 95.00	\$ 105.00
Engineer	\$ 135.00	\$ 150.00	\$ 175.00
Land Surveyor	\$ 100.00	\$ 110.00	\$ 125.00
Construction Administrator	\$ 90.00	\$ 100.00	\$ 120.00
Construction Inspector	\$ 85.00	\$ 100.00	\$ 115.00
Designer	\$ 95.00	\$ 105.00	\$ 115.00
BIM/CAD Technician	\$ 80.00	\$ 90.00	\$ 110.00
Survey Crew Member	\$ 65.00	\$ 75.00	\$ 85.00
Administrator	\$ 65.00	\$ 75.00	\$ 90.00

This Contract and the Terms and Conditions attached hereto and incorporated herein satisfactorily set forth your understanding and the agreement between us. This Contract will be open for acceptance for 30 calendar days. We certainly look forward to working with you on this project and thank you for giving us the opportunity to submit this Contract.

If you have any questions, please call.

Sincerely,  
**A2H, INC.**



Pat Harcourt, PE  
CEO | Principal

Attachment: Terms and Conditions

This Contract entered into as of the day and year written below.

**AGENT FOR:**      **CITY OF COVINGTON, TN**

**ACCEPTED BY:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TERMS AND CONDITIONS**

1. The parties agree that **CITY OF COVINGTON, TN** is solely responsible for payment in accordance with the following terms. **A2H, Inc.** (hereinafter sometimes "the Consultant") shall submit monthly invoices for work in progress. Payment shall be due upon receipt. Invoices more than 30 days old will be subject to a finance charge of 1.5% per month. The Consultant shall have the right to cease work if payment is not received within 45 days of each invoice. In addition, **CITY OF COVINGTON, TN** agrees to pay any and all legal expenses and other costs incurred in the collection of any overdue amount.
2. In the event of any litigation arising from or related to this Contract or the services provided under this Contract, the "prevailing party" shall be entitled to recover from the "non-prevailing party" all reasonable legal expenses and attorney's fees incurred in such litigation. For the purposes of this provision, a party asserting a claim shall be considered the "prevailing party" only if it recovers 50% or more of the amount claimed. If it does not, the claimant shall be the "non-prevailing party."
3. **CITY OF COVINGTON, TN** shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant unless **CITY OF COVINGTON, TN** has first provided the Consultant with a written certification executed by an independent Consultant currently practicing in the same discipline as the Consultant and licensed in the State of the project. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certification shall be provided to the Consultant not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause takes precedence over any existing state law in force at the time of the claim or demand for arbitration."
4. The Consultant shall commence services within seven (7) days of receiving executed acceptance of this Contract from **CITY OF COVINGTON, TN** along with all project information needed to commence services. The Consultant shall perform the work with due diligence commensurate with sound professional practice.
5. The Consultant shall be responsible for the design of the items listed in the scope of services only. Responsibility for any other items not specifically mentioned in the scope of services or shown on the drawings produced by the Consultant shall be borne by **CITY OF COVINGTON, TN**.
6. In preparation of Contract Documents, the Consultant is entitled to rely upon the accuracy and completeness of information (electronic or otherwise) furnished by **CITY OF COVINGTON, TN**, or its independent consultants. Such information includes but is not limited to topographic and/or boundary surveys, grading and drainage plans, building information, geotechnical reports, dimensions of existing construction, property data, and zoning and land use information.
7. Notwithstanding any other provision of this Contract or the parties' contract, in providing services under this Contract, the Consultant shall endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
8. Construction Documents are by necessity drawn to a small scale and in many cases schematic in nature. Construction Documents cannot be perfectly prepared. Drawings and specifications continually need to be interpreted and clarified, and sometimes must be corrected or updated. Accordingly, if **CITY OF COVINGTON, TN** does not engage the Consultant for full customary Construction Administration of this Project, **CITY OF COVINGTON, TN** agrees to indemnify, release and hold harmless the Consultant and its employees and consultants from and against any claims of liability arising from defects in the design and/or construction work.
9. In the event **CITY OF COVINGTON, TN** should require Consultant to perform construction administration services, **CITY OF COVINGTON, TN** acknowledges that the purpose of construction observation by the Consultant is to ascertain in general whether the work when complete will be in substantial compliance with the Contract Documents. In no event shall the Consultant perform exhaustive or continuous inspection. The Consultant is not responsible for, and shall not have control of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work, nor will it be responsible for the Contractor's failure to carry out the construction work in accordance with the Contract Documents. The Consultant shall not be responsible for, nor have control or charge over the acts or omissions of the Contractor, Subcontractor, nor any of their agents or employees, or any other person performing any of the construction work. The Consultant shall not have the authority nor the responsibility to supervise or direct the construction work.
10. The Consultant's review of shop drawings is solely to determine whether the submittal generally conforms to the design concept expressed in the Contract Documents and is not to verify dimensions and quantities.
11. **CITY OF COVINGTON, TN** acknowledges the reports, plans, specifications, field data and notes and all other documents prepared by the Consultant, including all documents on electronic media, are instruments of professional service that shall remain the property of the Consultant. **CITY OF COVINGTON, TN** shall not reuse, make, or permit to be made, any modifications to the plans and specifications without the prior written authorization of the Consultant. **CITY OF COVINGTON, TN** agrees to indemnify, release, and hold harmless the Consultant from any claims arising from any unauthorized reuse or modification of the plans and specifications.
12. The Consultant makes no warranties, either expressed or implied, of merchantability, fitness for use for any particular purpose, or of any other nature or type. In no event shall the Consultant be liable to **CITY OF COVINGTON, TN** for any loss of profit, loss of use, or any other consequential damages.

---

Initials

---

Date

13. If there are protracted delays for reasons beyond the control of the Consultant, the Consultant's compensation shall be equitably adjusted.
14. Neither party to this Contract shall transfer, sublet or assign any rights under or interest in this Contract (including but not limited to monies that may be due) without the prior written consent of the other party. The Consultant shall be permitted to subcontract portions of the professional services required under this Contract to properly qualified subconsultants.
15. This Contract may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of termination, by either party, the Consultant shall be paid for all services rendered and all reimbursable expenses up to and through the date of termination.
16. The fees charged by the Consultant have been structured in part in reliance upon the agreement and covenant of the **CITY OF COVINGTON, TN** that the liability of the Consultant for any defects in the services provided hereunder shall be limited to the total fee the Consultant charged for services rendered on the project.
17. In the event of defects in the services performed by the Consultant for which the Consultant is liable to **CITY OF COVINGTON, TN**, the measure of damages may include the cost of remediation work but shall not include the cost of work that adds value to the project for which **CITY OF COVINGTON, TN** would have been obligated to pay if the services had not been defective.
18. Any and all suits for any breach of this Contract shall be instituted and maintained in any Court of competent jurisdiction in Shelby County, Tennessee and both parties expressly consent to the jurisdiction of such Court.
19. If any portion of this Contract shall in any way become violative or prohibited by or under applicable laws, that provision or part hereof shall be ineffective and void to the extent of such violation or prohibition without invalidating any of the remaining provisions of this Contract.
20. In the event **CITY OF COVINGTON, TN** consents to, allows, authorizes or approves of changes to any plans, specifications or other construction documents, and these changes are not approved in writing by the Consultant, **CITY OF COVINGTON, TN** acknowledges that such changes, and the results thereof, are not the responsibility of the Consultant. Therefore, **CITY OF COVINGTON, TN** agrees to release the Consultant from any liability arising from such changes. In addition, **CITY OF COVINGTON, TN** agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any damage, liability or cost, including reasonable attorneys' fees and costs of defense, arising from such changes.
21. Original signed, sealed reproducible documents are the actual Contract Documents and any electronic copies provided to the Client are the Client's convenience. In the event there is a discrepancy between the original signed, sealed documents and the electronic copy, the original signed, sealed reproducible documents shall take precedence.
22. This Contract represents the entire understanding between **CITY OF COVINGTON, TN** and **A2H, Inc.** in the respect to the project and may be modified only by a writing signed by both parties.
23. If in the event that an executed copy of this Contract is not returned to our office, but payment is received for services rendered during the course of the project, the parties agree that these terms and conditions shall be binding upon the parties.

---

Initials

---

Date