

Name Electrical Engineering Services for Overhead and Underground FacilitiesAMENDMENT NO. 2

THIS AMENDMENT made and entered into this __21st__ day of __April__, 2023 by and between THE CITY OF GREEN COVE SPRINGS, FLORIDA, a political subdivision of Florida, by and through its City Council, hereinafter referred to as OWNER, and TOCOI Engineering, whose address is 714 N. Orange Avenue, Green Cove Springs, FL 32043, hereinafter referred to as CONTRACTOR;

WHEREAS, both parties agreed to the Professional Services Agreement for Engineering Services entered into effective April 21, 2021;

NOW, THEREFORE, in consideration of the mutual promises contained in the Professional Services Agreement, both parties agree to Amendment No. 2 as set forth below:

TERM

The OWNER and CONTRACTOR have mutually agreed to renew the Professional Services Agreement for the following services:

Agreement term for an additional one (1) year period, through April 20, 2024.

Rates as shown in Exhibit "A" attached. (Known as Exhibit "D" in original agreement)

Agreement will be eligible for three additional one (1) year period extensions.

Remainder of Page Intentionally Left Blank

IN WITNESS WHEREOF, the parties hereto have signed this Amendment No. 2 in duplicate. One (1) counterpart each has been delivered to OWNER, and CONTRACTOR.

OWNER: CITY OF GREEN COVE SPRINGS, FLORIDA

By: _____
Daniel M. Johnson, Mayor

By: _____
Steve Kennedy, City Manager

ATTEST:

APPROVED AS TO FORM:

By: _____
Erin West, City Clerk

By: _____
L.J. Arnold III, City Attorney

CONTRACTOR:

By: Laura L Mahoney
Name & Title: Laura L Mahoney
President

ATTEST:

By: Terri Villalva

Printed Name: Terri Villalva



STANDARD TERMS & CONDITIONS FOR TOCOI ENGINEERING, LLC

Whereas: Toco Engineering, LLC (TE) is a Limited Liability Corporation in the State of Florida with its principal office located at 714 N. Orange Avenue, Green Cove Springs, FL 32043.

Whereas: Client expressly understands that the services TE performs are personal in nature and are only intended to benefit Client, Client's subsidiaries, and wholly owned companies.

Therefore: TE and Client enter into this Agreement to provide engineering services to Client for pay.

By execution of this Agreement, TE agrees to provide the professional services described herein, and Client agrees to accept such services, all in accordance with the following terms and conditions.

The following terms shall have the meanings set forth below whenever they are used in this agreement:

a) "Scope of Work" ("SOW), incorporated by reference to these terms and conditions shall mean the technical description of the work to be performed. The price of the services to be provided is identified in an appropriate price schedule. For many projects, such as those in the early stages of project development, planning, zoning, or investigation, all activities are often not fully definable prior to the execution of the Agreement. Initial and additional detailed investigation may uncover additional facts and information requiring an alteration in the scope of the agreement. TE will inform Client of any material changes pursuant to the work which may alter the scope of this agreement.

b) "Documentation" shall mean deliverable documentation in accordance with the SOW for services described therein. Unless specifically stated otherwise in the SOW all Documentation shall be prepared in accordance with normal and customary criteria common for the services provided.

PAYMENT TERMS: Invoices will be submitted on a monthly or semi-monthly basis, or sooner. Payment is due upon receipt of our invoice. If payment is not received within fifteen (15) days from the invoice date, Client agrees to pay a finance charge on the principal amount of the past due account of one- and one-half percent per month. If one- and one-half percent per month exceeds the maximum allowed by law, the charge shall automatically be reduced to the maximum legally allowable. In the event Client requests termination of the services prior to completion, the Client shall pay all charges incurred through the date services are stopped plus any shutdown costs. If during the execution of the services, TE is required to stop operations as a result of changes in the scope of services such as requests by the Client or requirements of third parties, additional charges will be applicable. In addition to other rights in law and/or equity, TE may, after giving five (5) days written notice, suspend services under this or any other agreement until all past due accounts have been paid. Client further agrees to and shall pay to TE all costs and expenses for collection including but not limited to reasonable attorney fees and court costs.

INSURANCE: TE maintains Workman's Compensation and Employer's Liability Insurance in conformance with applicable state law. In addition, we maintain Comprehensive General Liability Insurance and Automobile Liability Insurance. A certificate of insurance can be supplied upon request. Cost of above coverage is included in our quoted fees. If additional coverage or increased limits of liability are required, TE will endeavor to obtain the required insurance and charge separately for costs associated with additional coverage or increased limits.

STANDARD OF CARE: The only warranty or guarantee made by TE in connection with the services performed hereunder, is that we will use the degree of care and skill ordinarily exercised under similar conditions by reputable members of our profession practicing in the same or similar locality. No other warranty, expressed or implied, is made or intended by our proposal for consulting services or by our furnishing oral and written reports. The implied warranty of merchantability and fitness for purpose are specifically excluded.

PERMITTING/ZONING: The client is herein notified that several City, State, and Federal environmental, zoning, and regulatory permits may be required for this project. TE will assist Client in preparing these permits at the Client's direction. However, the Client acknowledges that it has the responsibility for submitting, obtaining, and abiding by all required permits. Furthermore, the Client holds TE, harmless from any losses or liabilities resulting from such permitting or regulatory action.

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SEVERABILITY AND SURVIVAL: If any of the provisions contained in this AGREEMENT are held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

GOVERNING LAW: This agreement shall be governed in all respects by the laws of the State of Florida.

CONTRACT ADMINISTRATION: Client agrees that TE, will not be expected to make exhaustive or continuous on-site inspections but that periodic observations appropriate to the construction stage shall be performed. It is further agreed that TE, will not assume responsibility for the contractor's means, methods, techniques, sequences, or procedures of construction and it is understood that field services provided by TE will not relieve the contractor of his responsibilities for performing the work in accordance with the plans and specifications. The words "supervision", "inspection," or "control" are used to mean periodic observation of the work by TE to verify substantial compliance with the plans, specifications, and design concepts. A continuous inspection by our employees does not mean that TE is observing placement of all materials. Full time inspection means that an employee of TE has been assigned for eight (8) hour days during regular business hours. Construction Inspection and monitoring services which exceed 40 hours per week for one individual shall be invoiced at 150% of the standard billing rate. Client agrees to indemnify and hold TE harmless from any loss, damage, or liability arising out of errors, omissions, or inaccuracies in such documentation and/or data or where such documentation and/or data does not conform to normal and customary standards.

SALES TAX: The purchaser of the services described herein shall pay any applicable state sales tax in the manner and in the amount required by law.

COST OPINIONS: Any cost opinions or Project economic evaluations provided by TE will be on a basis of experience and judgment, but since it has no control over market conditions or bidding procedures, TE cannot warrant that bids, cost estimates, ultimate construction costs or Project economics will not vary from these opinions. The proposed fees constitute TE's best estimate of the charges required to complete the project as defined and are valid for a period of thirty (30) days from the date of the TE execution of this agreement. General consulting and other services beyond the scope of services identified herein including but not limited to preparation for and attendance at meetings will be billed at TE normal and customary rates for the services provided. If upon submission of the agreement to Client, Client fails to return a signed copy to TE and knowingly allows TE to proceed with work, such services shall be deemed performed pursuant to the agreement and these terms and conditions shall be binding the same as if the agreement were fully executed. Where the method of contract payment is based on a time and material basis, the minimum time segment for charging of work done at any of TE sites or offices will be one half hour.

OWNERSHIP OF DOCUMENTS: All documents including, but not limited to drawings, specifications, reports, boring logs, field notes, laboratory test data, calculations, and estimates prepared by TE as instruments of services pursuant to the Agreement, shall be the sole property of TE. Client agrees that all documents of any nature furnished to Client or Client's agents or designees, if not paid for, will be returned upon demand and will not be used by Client for any purpose whatsoever. Client further agrees that under no circumstances shall any documents produced by TE pursuant to this agreement be used at any location or for any project not expressly provided for in this Agreement without the written permission of TE and TE will provide Client with copies of documents created in performance of the work for a period not exceeding TWO (2) years following submission of the final plans and specifications contemplated by this Agreement.

SAFETY: Should TE provide periodic observations or monitoring services at the job site during construction, Client agrees that, in accordance with generally accepted construction practices, the Contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work and in compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Any monitoring of the Contractor's procedures conducted by TE is not intended to include review of the adequacy of the Contractor's safety measures in, on, adjacent to, or near the construction site.

ASSIGNABILITY: Client and TE respectively bind themselves, their successors, and assigns to the other party to this Agreement and to the successors and assigns of such other part with respect to all covenants of this Agreement. Neither Client nor TE shall assign this Agreement without prior written consent of the other part.

INTEGRATION: This Agreement represents the entire and integrated Agreement between Client and TE, and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

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LIMITATIONS ON CAUSE OF ACTION: Causes of action between the parties to the Agreement pertaining to acts or failures to act shall be deemed to have occurred and the applicable statutes of limitations shall commence to run not later the (1) the date of substantial completion for acts or failures to act occurring prior to substantial completion of our engineering services pursuant to the Agreement; or (2) the date of issuance of our final invoice for acts or failure to act occurring after substantial completion of our engineering services pursuant to this Agreement.

LIMITS OF LIABILITY: To the fullest extent of the law, and notwithstanding any other provision of this agreement, the total liability in the aggregate, of TE and it's officers, directors, employees, agents and sub-consultants, and any of them to TE and anyone claiming by, through or under TE for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the project or agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of warranty, express or implied, of TE and it's officers, directors, employees, agents, and sub-consultants and any of them, shall not exceed the total compensation received by TE under this agreement.

THIRD PARTY BENEFICIARY: Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against Client or TE.

RATE SCHEDULE

Effective January 2023

Principal.....	\$ 185.00
Project Manager	\$ 160.00
Senior Project Engineer.....	\$ 155.00
Grant Writer / Administrator.....	\$ 145.00
Project Engineer/Sr. Designer	\$ 140.00
Designer/Sr. Field Representative.....	\$ 120.00
Permit Coordinator/Engineer Intern.....	\$ 110.00
CADD Technician/Field Representative	\$ 100.00
Administration	\$ 85.00

- Where the method of payment is based on a time and materials basis, the minimum time segment for charging of work done at any of the TE offices or project sites is one half hour.
- **EXPENSES:** Costs such as printing, reprographics, delivery service, mileage, and travel shall be invoiced as Direct Costs plus 20%.

RECEIVED BY: _____