

CITY COUNCIL RESOLUTION NO. 2021-155

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH FRED FOX ENTERPRISES, INC.; PROVIDING FOR GRANT ADMINISTRATION SERVICES OF A COMMUNITY DEVELOPMENT BLOCK GRANT TOTALING \$750,000.00; PROVIDING FOR THE DEVELOPMENT OF AN AMPHITHEATER AT WILSON PARK; PROVIDING FOR THE PAYMENT OF A FEE NOT-TO-EXCEED \$49,000.00 FOR THE SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Lake City, Florida (hereinafter the "City") applied and was awarded a grant under the Florida Small Cities Community Development Block Grant Program from the Florida Department of Economic Opportunity; and

WHEREAS, the City desires to contract with an individual or firm for grant administration services for the Community Development Block Grant (hereinafter the "CDBG") as part of DEO Grant in the amount of \$750,000.00 (hereinafter the "Services"); and

WHEREAS, section 2-178(d) of the City Code requires the procurement of supplies and contractual services based on a competitive bid process and a formal contract to be entered when procuring services valued in excess of \$20,000.00; and

WHEREAS, due to the anticipated costs of the Services competing proposals were solicited and received and the city administration recommends that the Services be awarded to Fred Fox Enterprises, Inc. (hereinafter "Fred Fox"); and

WHEREAS, the City Council finds that it is in the City's best interest to award the Project to Fred Fox pursuant to and in accordance with the terms, provisions, conditions, and requirements of the *Contract between the City of Lake City, Florida and Fred Fox Enterprises, Inc.* (hereinafter the "Contract") attached hereto as "Exhibit A".

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are all true and accurate and are incorporated herein and made a part of this Resolution.

Section 2. The City Council hereby authorizes and directs the Mayor to execute the attached Contract with Fred Fox Enterprises, Inc.

Section 3. The City Manager and City Attorney are authorized to make such reasonable changes and modifications to the Contract as may be deemed necessary to be in the best interest of the City and its citizens. Provided however, that any such changes or modifications shall not cause the payment to Fred Fox Enterprises, Inc., to exceed the Contract pricing. The Mayor is authorized and directed to execute and deliver the Contract in the name of, and on behalf of, the City with such changes, amendments, modifications, omissions, and additions made by the City Manager and City Attorney. Execution by the Mayor and Fred Fox Enterprises, Inc. shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions, and additions.

Section 4. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED at a meeting of the City Council this ____ day of November 2021.

CITY OF LAKE CITY, FLORIDA

By: _____
Stephen M. Witt, Mayor

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

By: _____
Audrey E. Sikes, City Clerk

By: _____
Frederick L. Koberlein, Jr.,
City Attorney

**CONTRACT BETWEEN CITY OF LAKE CITY, FLORIDA AND
FRED FOX ENTERPRISES, INC.**

THIS CONTRACT made and entered into this ____ day of November 2021, by and between the CITY OF LAKE CITY, FLORIDA, a municipal corporation, with a mailing address of 205 North Marion Avenue, Lake City, Florida 32055 (herein referred to as "City") and FRED FOX ENTERPRISES, INC., having a mailing address of P.O. Box 840338 Saint Augustine, FL 32080 (herein referred to as "Contractor").

WHEREAS, the City applied and was awarded a grant under the Florida Small Cities Community Development Block Grant Program from the Florida Department of Economic Opportunity for the development of the Wilson Park amphitheater (hereinafter the "Project"); and

WHEREAS, competing proposals were solicited and received and the city administration recommended to the City Council that the Project be awarded to Contractor; and

WHEREAS, the City desires Contractor to provide grant administration services towards the Project; and

WHEREAS, the City desires to enter into a contract with the Contractor to memorialize the City and Contractors intentions and obligations.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. **Recitals**: The above recitals are all true and accurate and are incorporated herein and made a part of this Contract.

2. **Definitions:** The following definitions of terms associated with this Contract are provided to establish a common understanding between both parties to this Contract, as to the intended usage, implication, and interpretation of terms pertaining to this Contract:

(a) "CITY" means the City Council of the City of Lake City, Florida, and any official or employee thereof who shall be duly authorized to act on the City's behalf relative to this Contract.

(b) "CONTRACT" means the terms, conditions, and covenants expressed herein in addition to those terms, conditions, and of the attached Request for Proposal 028-2021 (hereinafter the "RFP") and its addendum, and any attachments hereto, all of which are available through the City Clerk's Office and made an essential part of this agreement between the parties.

(c) "CONTRACTOR" means Fred Fox Enterprises, Inc., which has executed this Contract, and which shall be legally obligated, responsible, and liable for providing and performing any and all of the services or work of sub-contractors, required under the covenants, terms, and provisions contained in this Contract and any and all amendments to this Contract.

(d) "SERVICES" means the grant administration services for the Community Development Block Grant (hereinafter the "CDBG") as part of DEO Grant in the amount of \$750,000.00. Specifically, the services and responsibilities listed within the RFP and attachment hereto.

(e) "SUB-CONTRACTOR" means any individual or firm offering professional services which is engaged by the Contractor or one of its sub-contractors in

providing and performing the professional services, work, and materials for which the Contractor is contractually obligated, responsible, and liable to provide and perform under this Contract and any and all amendments thereto. The City shall not be a party to, responsible, or liable for, or assume any obligation whatsoever for any agreement entered into between the Contractor and any sub-contractor or any sub-sub-contractor.

(f) "PARTIES" means the signatories to this Contract.

3. **Engagement of Contractor:** City hereby engages Contractor to provide City with the services identified herein.

4. **Term of Contract:** The term of this Agreement commences on the Effective Date and remains in full force and effect until the Agreement is terminated or extended as provided herein. The Contractor shall not perform any work until the Contractor has provided the City's Procurement Department with proof of insurance coverages.

5. **Compensation and Method of Payment:** City agrees to pay the Contractor compensation for its services rendered to the City not to exceed the amount shown in the attached fee schedule ("Exhibit A"), which is a total of forty-nine thousand dollars and zero cents (\$49,000.00) and in accordance with the *Local Government Prompt Payment Act*.

6. **Insurance:** Contractor agrees to and shall procure and maintain insurance during the term of this Contract and shall provide proof of the following insurance coverages to the City Procurement Department prior to the commencement of work:

(a) Comprehensive commercial general liability insurance covering as insured the Contractor and City with limits of liability of not less than \$1,000,000.00 for coverage of bodily injury or death to any person or persons, property damage, premises-operations, independent contractors, products/completed operations; and

(b) Comprehensive automobile liability insurance covering all owned, hired, and non-owned vehicles with coverage limits of not less than \$300,000.00 per person and \$500,00.00 per occurrence and \$200,00.00 property damages; and

(c) Worker's compensation insurance for the benefit of the employees of Contractor, as required by the laws of the State of Florida; and

(d) Professional liability insurance for "errors and omissions" covering as insured the Contractor with not less than \$1,000,000.00 limit of liability.

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. This Contract does not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability or obligations under the Contract. All insurance policies shall be through Insurers authorized to write policies in Florida. All certificates shall provide that the policy or policies of insurance shall not be changed or canceled until at least ten (10) days prior written notice shall have been given to City. As to insurance other than workers compensation and professional liability insurance, the coverage shall name City as an additional insured for City's vicarious

liability resulting from the conduct of Contractor and other employed or utilized sub-Contractors in the performance of the services.

7. **Indemnity:** Contractor is an independent contractor and agrees to indemnify, and hold harmless the City and its agents, and employees from and against all suits, actions, claims, damages, costs, charges, and expenses, including court costs and attorneys' fees, of any character caused by or brought because of any injury or damage, received or sustained by any person, persons, or property caused by or resulting from any asserted negligent act, errors, or omissions of Contractor or its agents, employees, or sub-contractors.

The indemnity required hereunder shall not be limited by reason of the specifications of any particular insurance coverage in this Contract.

Notwithstanding any other provisions of this Contract, neither party will be responsible to the other party for consequential damages, including, but not limited to, loss of profit, loss of investment, or business interruption.

8. **Liability:** The Contractor shall be and agrees to be and remain liable for any and all damages, losses, fees and expenses incurred by the City caused by the errors, omissions, negligence, or delays of the Contractor, or by any sub-contractor engaged by the Contractor in providing, performing and furnishing services, work or materials pursuant to this Contract.

9. **Licenses and Compliance with Regulations:** The Contractor agrees to and shall obtain and maintain throughout the period that this Contract is in effect, all licenses and authorizations as are required to do business in the State of Florida, including, but not limited to, licenses required by any federal and state boards and

other governmental agencies responsible for regulating and licensing the services provided and performed by Contractor pursuant to this Contract.

Contractor agrees to and will abide by and comply in accordance with the laws, statutes, ordinances, codes, rules, regulations, and requirements of any and all governmental agencies which may regulate or have jurisdiction over the services to be provided and performed by Contractor for the City, and by any sub-contractor engaged by the Contractor.

10. **Timely Accomplishment of Services**: The timely and expeditious accomplishment and completion by the Contractor of all services provided pursuant to this Contract is of the essence. The Contractor agrees to employ, engage, retain, or assign an adequate number of personnel throughout the period of this Contract so that all services provided pursuant to this Contract will be provided, performed, and completed in a diligent, continuous, expeditious, and timely manner throughout.

11. **Controlling Law**: This Contract is to be governed by the laws of the State of Florida. If any term or provision of the Contract is found to be illegal or unenforceable such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. It is further agreed and understood that in the event of any dispute between the City and Contractor arising out of any interpretation or compliance with any of the terms, conditions, and requirements of this Contract proper venue for filing any lawsuit with respect to any such disputes shall lie in Columbia County, Florida. It is intended and understood that this venue provision shall survive any bankruptcy filing.

12. **Attorneys' Fees and Costs:** In the event of default by either party under the terms of the Contract, the defaulting party shall be liable for, and agrees to pay all costs and expenses incurred in the enforcement of this Contract, including reasonable attorneys' fees as well as fees, costs, and expenses in the collection of said expenses.

13. **Other Litigation:** The Contractor shall notify the City of any legal actions filed against it for a violation of any laws, rules, codes ordinances, or licensing requirements within thirty (30) days of the action being filed. The Contractor shall notify the City of any legal actions filed against it by a government subdivision or for any claims of sub-Contractors or materialmen. Failure to notify the City of a legal action within thirty (30) days of the action shall be grounds for termination.

14. **Public Records:** The Contractor shall comply with all public records laws.

(a) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

City Clerk, City of Lake City
205 North Marion Avenue
Lake City, Florida 32055
386-719-5826 or 386-719-5756

(b) The Contractor shall comply with public records laws, specifically the Contractor shall:

1. Keep and maintain public records required by the City to perform the services.

2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119 of Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City.

If the Contractor considers any portion of any documents, data, or records submitted to the City to be confidential, proprietary, trade secret, or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution, or other law, Contractor must simultaneously provide the City with a separate redacted copy of the information it claims as confidential and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the Contract name and number, and it shall be clearly titled "Confidential." The redacted copy should only redact those portions of material that the Contractor claim are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall

destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

5. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

15. **E-VERIFY**: As a condition precedent to entering into this Contract, and in compliance with Section 448.095, Fla. Stat., Contractor and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

(a) Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this Contract.

(b) The City, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.

(c) The City, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.

(d) A termination of this Contract under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this Contract by the City for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the City as a result of termination of any contract for a violation of this section.

(e) Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower-tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in this section.

16. **Entire Agreement:** Incorporated herein, and made a part hereof, are the Request for Proposal (RFP 028-2021) and all Addendum, and all attachments thereto, and the “Exhibit A” attached hereto. With those incorporations, this Contract constitutes the entire agreement between City and Contractor and supersedes all prior written or oral understandings. Should any term or condition of the documents referenced within this paragraph be found to conflict with a term or condition of this

contract the term or condition of this contract shall prevail and be binding. This Contract may only be amended, supplemented, modified, or canceled by a duly executed written instrument adopted by resolution.

17. **Effective and Binding:** This Contract shall not be effective or binding upon City unless and until the City Council of City shall have authorized the Mayor of the City to execute the same by the adoption of an official resolution.

18. **Effective Date:** It is agreed by City and Contractor that the effective date is that date first written above.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract as of the day and year first above written.

CITY OF LAKE CITY, FLORIDA

By: _____
Stephen M. Witt,
Mayor

Approved as to form and legality:

ATTEST:

By: _____
Audrey Sikes, City Clerk

By: _____
Frederick L. Koberlein, Jr.,
City Attorney

FRED FOX ENTERPRISES, INC.

By: _____
Fred Fox,
President

CITY OF LAKE CITY

**COMMERCIAL REVITALIZATION PROJECT
FEE SCHEDULE**

The fee schedule for the management of the City of Lake City's CDBG Project in the Commercial Revitalization category would be as follows:

SERVICEAMOUNT**1. Prepare the Environmental Review**

- Prepare the Environmental Review, including all required mail-outs.
- Prepare the required advertising. \$ 10,000.00

2. Attendance at the Project Monitoring Visits as well as the Completion of all Required Reports

- Prepare Project Amendments (Estimate - 2).
- Prepare all required reports for submission by the City
- Prepare all required advertisements.
- Participate in all State Monitoring visits (Estimate - 2).
- Prepare the Preliminary Contract and Final close-out documents for the project. \$8,000.00

3. Project Administration/Financial Supervisor

- Create and maintain an independent set of financial records for the project.
- Prepare all Request for Funds for the project for submission by the City.
- Coordinate 504 (handicapped accessibility) requirements with the City.
- Work with the City to carry out required Fair Housing Activities.
- Coordinate with the State on any new program requirements. \$ 14,000.00

4. Coordination with the Engineer and Contractor

- Coordinate with the engineer on all Federal and State requirements associated with the project.
- Participate in the Pre-bid conference for the project.
- Obtain the contractor approval from the State.
- Coordinate the Pre-construction conference with the engineer.
- Review contractor package for grant information completion. Insure Notice To Proceed is issued to the contractor. Conduct required Employee Interviews. **CITY OF LAKE CITY**

**COMMERCIAL REVITALIZATION PROJECT
FEE SCHEDULE (cont.)**

SERVICE AMOUNT

- Review and approve contractor payroll requests along with the engineer.
- Review and recommend approval of all change orders as they relate to State contract compliance. \$ 16,000.00

5. **Community Coordination**

- Meet with the Citizen’s Advisory Task Force to keep them updated on the progress of the project.
- Meet with the City Council and City Staff as requested to keep them updated on the progress of the project. \$500.00

6. **Coordination with State Staff**

- Maintain continuous telephone and written coordination with State staff to insure a smooth flow of the project through the state system.
- Walk any required amendments and approvals through the State to insure a quick approval. \$500.00

GRAND TOTAL ----- \$ 49,000.00