

CITY COUNCIL RESOLUTION NO. 2023-149

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AUTHORIZING THE EXECUTION OF A CONTINUING CONTRACT WITH TOCOI ENGINEERING, L.L.C.; PROVIDING FOR ENGINEERING SERVICES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Lake City, Florida (hereinafter the “City”) desires to engage a firm to provide it with Civil Engineering Services for small projects within the City on an as-needed basis (hereinafter the "Services"); and

WHEREAS, the City, in accordance with the Consultants Competitive Negotiation Act, solicited statements of qualifications from registered engineering firms, pursuant to a Request for Proposals (“RFQ” or “RFQ 017-2023”); and

WHEREAS, the City administration evaluated the statements of qualifications received and recommended TOCOI ENGINEERING, L.L.C., (hereinafter “TOCOI”) to the City Council; and

WHEREAS, the City Council and TOCOI desire to enter into a continuing contract, a copy of which is attached hereto (hereinafter the “Continuing Contract”), to establish procedures and provide for general terms and conditions whereby and under which the aforementioned services shall be rendered and performed; and

WHEREAS, the Continuing Contract is defined in Section 287.055(2)(g), Florida Statutes, and is subject to being terminated as provided for in the Continuing Contract; and

WHEREAS, the City Council finds it is in the best interest of the City to

execute the Continuing Contract with TOCOI.

**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 hereby made a part of this resolution.

Section 2. The City is hereby authorized to execute the Continuing Contract with GSE for consulting services for the City.

Section 3. The City Manager and City Attorney are authorized to make such reasonable changes and modifications to the Continuing Contract as may be deemed necessary to be in the best interest of the City and its citizens. The Mayor is authorized and directed to execute and deliver the Continuing Contract in the name 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 TOCOI shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions, and additions.

Section 4. Severability. Should any section, subsection, sentence, clause, phrase, or other provision of this resolution be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this resolution.

Section 5. Conflict. All resolutions or portions of resolutions in conflict with this resolution are hereby repealed to the extent of such conflict.

Section 6. Effective Date. This resolution shall take effect upon its adoption.

PASSED AND ADOPTED at a meeting of the City Council this _____ day of December 2023.

CITY OF LAKE CITY, FLORIDA

By: _____
Stephen M. Witt, Mayor

ATTEST:

APPROVED AS TO FORM AND
LEGALITY:

By: _____
Audrey E. Sikes, City Clerk

By: _____
Thomas J. Kennon, III,
City Attorney

**CONTRACT BETWEEN THE CITY OF LAKE CITY, FLORIDA AND
TOCOI ENGINEERING, L.L.C.**

THIS CONTRACT made and entered into this ____ day of _____ 202__ by and between the CITY OF LAKE CITY, FLORIDA, a municipal corporation, having a mailing address of 205 North Marion Avenue, Lake City, Florida 32055 (herein referred to as "City") and TOCOI ENGINEERING, L.L.C., a Florida Profit Limited Liability Company, having a principal address of 714 N. ORANGE AVENUE, GREEN COVE SPRINGS, FL 32043 (herein referred to as "Contractor").

WHEREAS, the City desires to retain a contractor to provide it with Civil Engineering Services for small projects within the City on an as-needed basis (hereinafter the "Services"); and

WHEREAS, the City, in accordance with the Consultants Competitive Negotiation Act, solicited statements of qualifications from registered engineering firms, pursuant to a Request for Proposals ("RFQ" or "RFQ 017-2023"); and

WHEREAS, the City administration evaluated the statements of qualifications received and recommended the Contractor to the City Council as the most qualified; and

WHEREAS, the Contractor desires to render the services as described hereinbelow, and has the qualifications, experience, staff, and resources to perform those services; and

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

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 and/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 all the terms, conditions, and covenants of the Request for Proposals 017-2023 and all Addendums (hereinafter collectively referred to as "RFQ-017-2023" or "RFQ"), all of which are incorporated herein and made an essential part of this agreement between the parties.

(c) "CONTRACTOR" means TOCOI ENGINEERING, L.L.C., which has executed this Contract, and which shall be legally obligated, responsible, and liable for providing and performing any and all of the services and 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, that the Contractor shall provide professional engineering services, all to be performed by Contractor or sub-contractors the Contractor may engage to provide, perform and complete the services required pursuant to the covenants, terms, and provisions of this Contract, any and all amendments to this Contract, and task assignments consistent with this Contract.

(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 and within the RFQ.

4. **Term of Contract:** The term of this Contract shall be as follows:

(a) The term of this Contract shall be for three (3) years. The City reserves the right to extend the contract period for two (2) additional one (1) year periods upon mutual agreement with the Contractor. Any extension shall be contingent upon the availability of funds, satisfactory performance

by the Contractor, and approval by the appropriate City representatives.

The Contractor shall not commence 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 Consultant compensation for its services rendered to the City for each specific service requested by City in an amount and method negotiated between City and Consultant, which amount and method may be based on a lump sum, raw hourly rate times a factor, plus reimbursable expenses, stipulated hourly rates, plus reimbursable expenses, cost plus a fixed fee, or any other method as provided for in each Task Assignment. Consultant shall submit bills for fees, services, or expenses in detail sufficient enough for a proper pre-audit and post-audit. The City reserves the right to request additional documentation. City expects to compensate Consultant based upon timely submitted accurate invoices for the work completed. City agrees to pay invoices rendered to City by Contractor for its services within thirty (30) days, unless there is any dispute with respect to any amount or amounts included in any invoice, in which case the City and Contractor shall resolve any such dispute in a timely manner so that the proper amount of the invoice can then be promptly paid. A Subcontractor or materialman may not bill the City directly. City reserves the right to withhold an amount City deems necessary to pay any claims for labor and services rendered and materials provided to Contractor or sub-Contractor in furtherance of this Contract.

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 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 \$500,000.00 per occurrence and \$1,000,000.00 property damage and personal injury; 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, 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 and any and all damages,

losses, and expenses to the City caused by the Contractor's negligent performance of any of its obligations contained in this Contract. The Contractor shall be liable and agrees to be liable for and shall indemnify and hold City harmless for any and all claims, suits judgments, or damages, losses and expenses, including court costs, expert witness and professional consultation services, and attorney fees arising out of the Contractor's errors, omissions, negligence, breaches of contract or delays, or those of any and all sub-contractors engaged by the Contractor during the providing, performing and furnishing of services 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. **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.

11. **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.

12. **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.

13. **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
1-386-752-2031**

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.

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.

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. 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(5)(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 Proposals (RFQ-017-2023) and all addendum, and all attachments thereto, and the Contractor's response to the RFQ, copies of which are available in the City Clerk's office. 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 become 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. **Execution in Counterparts and Authority to Sign:** This Agreement, any amendments, or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

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

[Remainder of this page left blank intentionally.]

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

ATTEST:

Approved as to form and legality:

By: _____
Audrey Sikes, City Clerk

By: _____
Thomas J. Kennon, III,
City Attorney

TOCOI ENGINEERING, L.L.C.

By: _____

