

**CITY COUNCIL RESOLUTION NO. 2021-135**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, RESCINDING AN AWARD OF A PROJECT RELATED TO THE PURCHASE AND INSTALLATION OF FIELD FENCE AT THE KICKLIGHTER WASTEWATER TREATMENT FACILITY, AND AWARDING THE PROJECT TO DMC CONSTRUCTION, LLC; PROVIDING FOR A CONTRACT PRICE NOT TO EXCEED \$30,097.50; PROVIDING FOR THE EXECUTION OF THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lake City, Florida (hereinafter the “City”) requires the purchase and installation of 7,500 feet of 4-foot field fence at the Kicklighter Wastewater Treatment Facility (hereinafter the “Project”); 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 Project, an Invitation to Bid ((ITB-024-2021) hereinafter “ITB”) was advertised; and

**WHEREAS**, the city administration recommends the rescission of the award made pursuant to City Council Resolution No. 2021-110, due to the contractor requesting the rescission due to COVID-19; and

**WHEREAS**, the city administration recommends that the Project be awarded to DMC Construction, LLC (hereinafter “DMC”); and

**WHEREAS**, the City Council finds that it is in the City’s best interest to rescind the award made pursuant to City Council Resolution No. 2021-110, and award the contract to DMC for the aforementioned Project pursuant to and in accordance with the terms, provisions, conditions, and requirements of the “*Contract between the City of Lake City, Florida and DMC CONSTRUCTION, LLC*” (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 Contract is awarded to DMC and the execution of the same is authorized.

**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 DMC 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 DMC shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions, and additions.

*[Remainder of this page left blank intentionally.]*

**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 September 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

## **EXHIBIT A**

### **CONTRACT BETWEEN THE CITY OF LAKE CITY, FLORIDA, AND DMC CONSTRUCTION, LLC.**

**THIS CONTRACT** made and entered into this \_\_\_\_day of September 2021, by and between the CITY OF LAKE CITY, FLORIDA, a municipal corporation, located at 205 North Marion Avenue, Lake City, Florida 32055, and having a mailing address of 205 North Marion Avenue, Lake City, Florida 32055 (herein referred to as "City") and DMC Construction, LLC, having a mailing address of 184 North Marion Avenue, Lake City, Florida 32055 (herein referred to as "Contractor").

**WHEREAS**, the City desires Contractor to purchase and install seven thousand five hundred (7,500) feet of four (4) foot field fence at the City's Kicklighter Wastewater Treatment Facility (hereinafter "Kicklighter" or "Kicklighter Facility") located off of Sisters Welcome Road in Columbia County, Florida; and

**WHEREAS**, the City invited competitive bids through an Invitation to Bid (ITB-024-2021) and the Contractor was selected as the lowest responsible bidder; and

**WHEREAS**, the City desires to enter into a 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 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 Invitation to Bid and its addendum (hereinafter collectively referred to as "ITB-024-2021" or "ITB"), reasonably inferred to the City and general conditions, all of which are incorporated herein and made an essential part of this agreement between the parties.

c. "CONTRACTOR" means the individual or firm offering professional services, 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 professional services for the purchase and installation field fence at the Kicklighter Facility, and the services and responsibilities listed within the ITB.

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 ITB.

4. **Term of Contract:** The Contractor shall fully complete all work required under this Contract within thirty (30) calendar days immediately following delivery of the equipment necessary to substantially perform the services. The Contractor shall not commence any work until the Contractor has provided the City's Procurement Department with proof of insurance coverages. The term of this Contract may be extended only by a written agreement of the parties.

5. **Compensation and Method of Payment:** City agrees to pay the Contractor compensation for its services rendered to the City not to exceed the amounts shown in Contractor's Bid which is a total of thirty thousand ninety-seven dollars and fifty cents (\$30,097.50). One payment shall be made to Contractor upon receipt of Contractor's one invoice which shall be submitted at the completion and acceptance of the Contractor's work. 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, in addition to any listed in the ITB, 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 per occurrence and aggregate, 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 the limits provided for in the ITB; and

- c. Worker's compensation insurance for the benefit of the employees of Contractor, as required by the laws of the State of Florida.

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 subcontractor engaged by the Contractor.

10. **Timely Accomplishment of Services and Liquidated Damages:**

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, and 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.

Time is of the essence in the Contract and all obligations thereunder. If the Contractor fails to complete the Services within thirty (30) calendar days after delivery of the necessary equipment, the City shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the sum of three hundred dollars and zero cents (\$100.00) per calendar day, commencing on the first day following expiration of the contract time and

continuing until the actual date of completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the City will incur as a result of delayed completion of the Services. The City may deduct liquidated damages as described in this paragraph from any unpaid amounts then or thereafter due the Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the City at the demand of the City, together with interest from the date of the demand at the maximum allowable rate.

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 Invitation to Bid (ITB-024-2021) and all addendum, and all attachments thereto, and the Contractor's response to the ITB. 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. **Effective Date:** It is agreed by City and Contractor that the effective date is that date first written above.

*[Remainder of page left blank intentionally. Signature page to follow.]*



**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: \_\_\_\_\_  
Frederick L. Koberlein, Jr.,  
City Attorney

**DMC CONSTRUCTION LLC**

By: \_\_\_\_\_  
Stephen M. Douglas,  
President