

CITY COUNCIL RESOLUTION NO. 2022-099

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AUTHORIZING AND RATIFYING THE APPOINTMENT OF A CITY ATTORNEY; PROVIDING FOR THE APPOINTMENT OF THE LAW FIRMS OF ROBINSON, KENNON & KENDRON, P.A., AND FOLDS & WALKER, LLC; PROVIDING FOR THE EXECUTION OF AN AGREEMENT FOR LEGAL SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a vacancy is anticipated in the position of City Attorney of the City of Lake City, Florida (hereinafter the "City"), resulting from the resignation of the most recently appointed City Attorney; and

WHEREAS, the City Council received proposals pursuant to a request for proposals (RFP 2022-20) for legal services; and

WHEREAS, the City Council finds that the award of the work to the law firms of Folds & Walker, LLC, and Robinson, Kennon & Kendron, P.A., (collectively referred to as the "Law Firms") is in the best interests of the City; and

WHEREAS, the City Council finds that it is in the best interest of the City to memorialize the appointment of the Law Firms in accordance with the general terms and conditions of the agreement titled *Legal Services Agreement Between the City of Lake City, Florida, Robinson Kennon & Kendron, P.A., and Folds & Walker, LLC* (hereinafter the "Agreement"), 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 Mayor is hereby authorized to execute for and on behalf of the City the aforementioned Agreement.

Section 3. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the City Council this ____ day of October 2022.

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

**LEGAL SERVICES AGREEMENT BETWEEN THE CITY OF LAKE CITY,
FLORIDA, ROBINSON KENNON & KENDRON, P.A., AND
FOLDS & WALKER, LLC**

This Agreement for Legal Services is entered into between the City of Lake City, Florida (hereinafter the "City"), a municipal corporation, and the law firms of Robinson, Kennon & Kendron, P.A., and Folds & Walker, LLC (hereinafter the "Law Firms") in accordance with the provisions and requirements of the City Charter and City Code, and collectively referred to herein from time to time as the "Parties".

WITNESSETH

WHEREAS, the City Charter requires the City Council to appoint a City Attorney as it deems necessary, and the City Council may appoint assistant City Attorneys, all of whom shall act as legal advisors and provide the City, and its officers and agencies, with legal advice and services required from time to time relating to the operation of the City; and

WHEREAS, the City advertised a solicitation (RFP 2022-20) to procure a City Attorney and a proposal was received from the Law Firms, a copy of which is available in the City Clerk's office; and

WHEREAS, the City Council finds it in the best interests of the City to appoint Robinson, Kennon & Kendron, P.A., as the City Attorney with the understanding that Folds & Walker, LLC shall also be appointed as assistant City Attorneys; and

WHEREAS, the Parties wish to enter into an Agreement memorializing the City and City Attorneys' relationship and specifying the terms and conditions of the legal services arrangement between the Parties as more particularly set forth herein; and

WHEREAS, the Parties to this Agreement believe such a contractual Agreement will be in the best interest of the Parties as well as the citizens of the City.

NOW, THEREFORE, in consideration of the mutual covenants, promises, rights, and responsibilities of the Parties hereto, the Parties covenant and agree as follows:

TERM

1. The effective date of this Agreement shall be the 15th day of October 2022 and shall remain in full force and effect until terminated by either party as provided herein. The City Attorneys recognize and acknowledge that the City reserves the right to terminate the appointment of the City Attorney at any time for cause or no cause upon sixty (60) days' written notice to the City Attorneys. The City Attorneys shall have the right to resign as City Attorney upon sixty (60) days' written notice to the City. Upon the resignation of the City Attorney, the appointment of the City Attorneys' associates as assistant City Attorneys shall also terminate.

2. In the event the City Attorneys are terminated, the City Attorneys shall be entitled to all compensation and expenses billed, and otherwise provided herein, within thirty (30) days of the effective date of termination.

BILLING

1. The City agrees to compensate the City Attorneys for those services rendered and included in the City Attorneys' Proposal to the City's RFP 2022-20, titled "Tab 4: Fee Proposal", a copy of which is attached hereto as "Exhibit A" and hereby incorporated as if fully set forth herein.

2. Each monthly invoice shall itemize the services rendered by providing the nature of the services rendered, the date such service was rendered, and the amount of time expended in providing the services.

3. Each monthly invoice shall itemize all expenses and costs incurred and identified within the "Reimbursement of Costs" section of Exhibit A.

4. The invoice shall be due upon receipt. The City agrees to pay the bill no later than the thirtieth (30th) day from the date it was submitted to the City. All invoices not paid within thirty (30) days from the billing shall bear interest on the unpaid balance at one and one-half percent (1 1/2%) per month. Interest will be applied monthly to any unpaid balance. The City further agrees to timely pay all invoices as required by and be subject to the provisions of Part VII, Chapter 218, Florida Statutes, referred to as the "Local Government Prompt Payment Act". The failure to pay any invoice for fees and costs rendered to the City in accordance with this Agreement will constitute a default by the City. In the event of default, the City consents to the City Attorney's immediate cessation of all legal services on the City's behalf and to the City Attorney's withdrawal as the City's counsel from all pending litigation.

GENERAL

1. The City Attorneys shall keep the City informed of the status of the City's matters and will send the City copies of all correspondence and pleadings related to the representation of the City, so that the City Council, City administration may be aware of the City's legal affairs.

2. During the course of certain City matters, the City may be required to provide to the City Attorneys documents such as tax records, expense records, bank records, deeds, etcetera. The City Attorneys will hold the records for the City during the pendency of the City's action. The City shall not provide the City Attorneys with original records unless specifically requested, in writing, to do so by the City Attorneys.

3. The City Attorneys shall strive to complete the City's work as expeditiously as possible at a fair and reasonable cost in accordance with the aforementioned rates.

4. In the event the City Attorney is unavailable to attend any meetings of the City, the City Attorney will designate one of the City Attorneys' associates who has been appointed as an assistant City Attorney to attend the meeting. At times, the City Attorneys may find that outside legal services are necessary to provide the highest quality of legal services to the City, and the City Attorneys and City Manager shall strive to find competent outside legal services pursuant to the City's procurement policy. Additionally, the City Attorneys shall oversee all legal services provided by any outside legal service provider. If requested by the City Manager, legal fees and costs incurred by any such outside attorney shall be invoiced to the City in care of the City Attorneys, the amount of which shall be included on the City Attorneys' invoice for services rendered and remitted to the outside attorney by the City Attorneys.

BENEFITS

The City Attorneys are an independent contractor and neither they nor any of their associates who have been appointed assistant City Attorneys shall be entitled to those benefits afforded to full-time City employees.

CONTINUING LEGAL EDUCATION

The City agrees to reimburse the City Attorney for the costs associated with continuing professional development and education in the area of local government by reimbursing the City Attorney for the costs associated with registration fees, lodging, travel, and meals associated with a total of two annual continuing legal education conferences in the legal area of government law. Should the City desire to have the City Attorney, or an assistant City Attorney, attend additional special educational programs, which would be of special benefit to the City with respect to legal issues, the City agrees to reimburse the City Attorney for the costs associated with registration fees, lodging, and meals

associated with any additional special educational programs requested and approved by the City.

TERMINATION

Either party may terminate this Agreement upon providing sixty (60) days' written notice to the other party, which notice shall include the effective date of termination.

REPRESENTATION - CONFLICT OF INTEREST

1. The parties agree that the City Attorneys and assistant City Attorney will not undertake future representation nor to continue the present legal representation of any person or entity in a matter adverse to the City's legal interest relating to City matters during the term of this Agreement.

2. The City Attorneys agree not to represent or provide legal services to any third-party in any matters adverse to and constitute a conflict of interest to the City. If the City Attorneys become aware of any such conflict of interest, they will advise the City Manager and recuse themselves from any representation relating to the matter creating the conflict.

INSURANCE - PROFESSIONAL LIABILITY

The City Attorneys and each assistant City Attorney shall, during the term of this Agreement, maintain professional liability insurance in a sum of no less than \$1,000,000.00, aggregate claims, and shall upon request provide a copy of the policy or certificate thereof to the City. If the City Attorneys' professional liability policy covers the assistant City Attorneys, it shall not be necessary for each assistant City Attorney to maintain separate coverage.

PUBLIC RECORDS

PUBLIC RECORDS CUSTODIAN

IF THE CITY ATTORNEYS OR ASSISTANT CITY ATTORNEYS HAVE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CITY ATTORNEY'S OR ASSISTANT CITY ATTORNEYS' 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

1. The City Attorneys and each assistant City Attorney shall comply with all laws allowing the public access to public records, specifically including, but not limited to Sections 119.0701, and 119.07(1), Florida Statutes Section 24(a) of Art. I of the Florida State Constitution. Notwithstanding any other termination provision in this Agreement, the City may unilaterally cancel this Agreement for refusal by the City Attorneys and each assistant City Attorney to comply with this section by not allowing public access to all documents, papers, letters, or other material made or received by the City Attorneys and each assistant City Attorney in conjunction with this Agreement, unless the records are exempt. The City Attorneys and each assistant City Attorney agree to comply with any requirements of law including:

A. Keep and maintain public records required by the City in order to perform the service.

B. Upon request from the City's custodian of public records, provide the City with a copy of 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 Chapter 119, Florida Statutes or as otherwise provided by law. The City may be billed in accordance with the rates reflected herein for the City Attorneys' or assistant City Attorney's time.

C. 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 agreement term and following termination of the Agreement if the City Attorneys and each assistant City Attorney does not transfer the records to the City.

If the City Attorneys and assistant City Attorneys consider 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, City Attorneys and assistant City Attorneys 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 shall be clearly titled "Confidential." The redacted copy should only redact those portions of material that the City- Attorneys and Assistant City Attorney claim are confidential, proprietary, trade secret or otherwise not subject to disclosure.

D. Upon termination of this Agreement, transfer all public records in possession of the City Attorney and assistant City Attorneys, or keep and maintain public records required by the City to perform the service. If the City- Attorneys and assistant City Attorneys, transfers all

public records to the City upon termination of the Agreement, the City Attorneys and assistant City Attorneys, shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the City Attorneys and assistant City Attorneys, keep and maintain public records upon termination of the Agreement, the City Attorneys and assistant City Attorneys, 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.

E. Failure of the City Attorneys and assistant City Attorneys, to provide the above-described public records to the City within a reasonable time may subject City Attorneys and assistant City Attorneys, to penalties under 119.10, Florida Statutes, as amended.

E-VERIFY

1. As a condition precedent to entering into this Agreement, and in compliance with Section 448.095, Fla. Stat., the City Attorneys and their subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

A. The City Attorneys shall require each of their subcontractors to provide the City Attorneys with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The City Attorneys shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this Agreement.

B. The City, City Attorneys, 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 the City Attorneys otherwise complied, shall promptly notify the City Attorneys and the City Attorneys shall immediately terminate the contract with the subcontractor.

D. A termination of this Agreement 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. The City Attorneys acknowledge that upon termination of this Agreement by the City for a violation of this section by the City Attorneys, the City Attorneys may not be awarded a public contract for at least one (1) year. The City Attorneys

further acknowledges that the City Attorneys are liable for any additional costs incurred by the City as a result of the termination of any contract for a violation of this section.

E. The City Attorneys 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. The City Attorneys shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in this section.

CONTROLLING LAW AND VENUE

The laws of the State of Florida shall govern the construction and interpretation of this Agreement. In the event of a dispute over terms hereof, the parties agree that venue shall be in Columbia County, Florida, and the parties agree to waive a jury trial.

ENTIRE AGREEMENT, SEVERABILITY, AND ELECTRONIC SIGNATURE ACT

1. The City and the City Attorneys agree that this Agreement, the City's solicitation (RFP 2022-20), and the proposal of the City Attorneys encompasses the Parties understanding of their relationship and contractual obligations and that any promises made by one party to the other party which are not included within this written Agreement are not binding upon the other party.

2. The Parties agree that should any portion of this Agreement and the City Attorneys' proposal conflict then the provisions of this Agreement shall be controlling.

3. The Parties agree that should any portion of this Agreement be found to be ineffective, stricken, or null and void during any dispute over this Agreement, that portion found ineffective, stricken, or null and void shall not cause the remainder of this Agreement to be held the same, and such remaining portions of this Agreement shall remain in full force and effect.

4. 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.

[Remainder of the page left blank intentionally.]

REPRESENTATIONS AND COVENANTS OF CITY ATTORNEY

The City Attorneys represent and warrant the following to the City:

A. That the Law Firms' attorneys are duly licensed and authorized to practice law in the State of Florida and are in good standing under the rules and regulations of The Florida Bar; and

B. That the Law Firms' attorneys have no pending complaints or grievances filed against them with The Florida Bar.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ___ day of October 2022.

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

FOLDS & WALKER, LLC

By: _____
Stuart Scott Walker,
Manager Member

By: _____
Allison E. Folds,
Manager Member

**ROBINSON KENNON & KENDRON,
P.A.**

By: _____
Bruce Robinson,
Director

By: _____
Thomas J. Kennon, III
Director

Tab 4: Fee Proposal

Given our qualifications, depth of personnel, and experience, the following fee proposal is submitted:

GENERAL SERVICES

Folds Walker, LLC and Robinson, Kennon & Kendron, P.A would serve as the City Attorney and provide all routine legal services requested, including, but not limited to:

- Attendance at the regular meetings of the Lake City city council and the Lake City Planning & Zoning Board Code Enforcement Board, Preservation Board, and Board of Adjustments;
- Attendance at special meetings of the Lake City - City Council and the Lake City Planning & Historic Preservation Board when requested by the Mayor or majority of the City Council;
- Preparation of ordinances and resolutions when requested by the Mayor or majority of the City Council;
- Preparation and/or review of all contracts, proposed amendments to the City Charter, Code of Ordinances, Land Development Code, and proposed amendments to the Comprehensive Plan for legal sufficiency;
- Providing legal advice to the City Council and City employees on matters of concern when authorized by the Mayor or majority of the City Council;
- Monitoring litigation when the City is a party but represented by other counsel when requested by the Mayor or a majority of the City Council; and
- Preparation of leases.

In addition, Folds Walker, LLC and Robinson, Kennon & Kendron, P.A will provide the following additional services included in the Retainer:

- Provide annual Ethics, Sunshine Law and Public Records training session;
- Provide new Councilperson orientation sessions (as needed); and
- Cooperating and communicating on a routine basis with City staff and elected officials to achieve the lawful legislative and policy directives of the City Council.

SPECIAL SERVICES

Folds Walker, LLC and Robinson, Kennon & Kendron, P.A would provide all special non-retainer services as needed and requested by the City, including, but not limited to the following:

- Prosecuting or defending litigation involving the City for matters which the Firm serves as counsel of record for the City that are initiated by a filing in an administrative tribunal or a state or federal court, including all arbitration and mediation proceedings brought under the Administrative Proceedings Act, Public Employees Relations Commission Act, or any other administrative proceedings;
- Providing legislative consulting services if requested by the City;
- Preparation of documents related to real property transactions and issuing title insurance commitments and policies if requested by the City for real property transactions;
- Representing the City in all negotiations with third parties and in the acquisition and disposition of real property rights and interests, including accepting or obtaining right-of-way easements, and other conveyances.
- Preparation of municipal financing matters and any other services not specifically included above.

COMPENSATION

Compensation

Folds Walker, LLC and Robinson, Kennon & Kendron, P.A proposes as its compensation for services, as they are outlined above, hourly rates billed in six-minute increments at an Attorney Rate of \$170 per hour, a \$190 per hour litigation rate, and \$70 per hour rate for other staff.

Reimbursement of Costs

Folds Walker, LLC and Robinson, Kennon & Kendron, P.A will not charge the City for routine electronic legal research services, facsimiles, travel time or travel-related costs from our Gainesville office to Lake City, but shall be reimbursed for actual costs incurred on all other travel performed for the City, and other actual charges incurred in providing services to the City including, but not limited to, extraordinary copy costs, conference call charges and express mail.

Provision for Rate Increases

Folds Walker, LLC and Robinson, Kennon & Kendron, P.A proposes a 3% increase in the annual lump sum amount at the beginning of the 2023-2024 fiscal year and every year thereafter. In addition, there will be an annual cost of living adjustment to be determined at the beginning of every budget allocation in accordance with the Consumer Price Index (CPI-U) by multiplying the then current administrative billing rate for services by the total percentage increase in the CPI-U for the prior twelve-month period as published by the U.S. Department Labor, Bureau of Labor Statistics.