

AGREEMENT FOR FIRE FEE ASSESSMENT STUDY

THIS AGREEMENT FOR FIRE FEE ASSESSMENT STUDY ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City") and **ALFRED BENESCH & COMPANY** a foreign profit corporation duly organized in the state of Illinois and authorized to do business in the state of Florida (EIN: 36-2407363) ("Consultant").

WHEREAS, on April 5, 2018, City and Tindale-Oliver & Associates, Inc. entered into an Agreement for Fire Fee Assessment Study for a term of one year, from April 4, 2018 to April 3, 2019, with two (2) optional one-year renewal terms; and

WHEREAS, in December 2021, Tindale-Oliver & Associates, Inc. was acquired by Alfred Benesch & Company; and

WHEREAS, in January 2023, the Budget Department of the City of Ocala sought a procurement exception which would allow the City to utilize Alfred Benesch & Company to prepare a study reviewing the fire service fee and providing alternative methods of funding fire services for Fiscal Year 2023-2024.

WHEREAS, after consideration of the fact that the fire study is required to begin in April to meet the September 15th implementation deadline; and

WHEREAS, after further consideration that the process to solicit responsive and responsible consultants for the provision of fire fee assessment study services would require the redaction of HIPPA-protected information and considerable time to prepare the redacted documents and to issue and award the contract for same; and

WHEREAS, after further consideration that Alfred Benesch & Company already has access to six (6) years of call data and would require only the current year's information to provide fire fee assessment study services for Fiscal Year 2023-2024; and

WHEREAS, based on the foregoing, the City's Contracting Officer determined that the City has been afforded best value via past use of Alfred Benesch & Company for fire fee assessment study services and that it would be in the best interest of the City to utilize Alfred Benesch & Company for the provision of fire fee assessment study services for Fiscal Year 2023-2024; and

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Consultant agree as follows:

1. **RECITALS.** City and Consultant hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire understanding between City and Consultant shall only include this Agreement and those documents listed in this section as Exhibits to this Agreement. Each of these documents are incorporated herein by reference for all purposes. If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

Exhibits to Agreement: The Exhibits to this Agreement are as follows:

Exhibit A: Consultant Proposal (A-1 through A-3)

3. **SCOPE OF SERVICES.** Consultant shall provide all materials, labor, supervision, tools, accessories, equipment, and permits necessary for Consultant to perform its obligations under this Agreement as set forth the attached **Exhibit A - Consultant Proposal** and Contract Documents. The Scope of Work under this Agreement may only be adjusted by written amendment executed by both parties.

4. **COMPENSATION.** City shall pay Consultant an amount not to exceed **FIFTY-NINE THOUSAND, FIVE HUNDRED NINETY AND NO/100 DOLLARS (\$59,590)** (the "Contract Sum") as full and complete compensation for the timely and satisfactory performance of services to the City over the Initial Term of the Agreement in accordance with the Contract Documents.
 - A. **Invoice Submission.** Invoices submitted by Consultant shall include the City Contract Number, an assigned Invoice Number, an Invoice Date and Description of Services. Consultant shall submit the original invoice through the responsible City Project Manager at: **City of Ocala Office of Budget Management**, 110 SE Watula Avenue, Ocala, Florida 34471 Attn: **Tammi Haslam**, E-Mail: thaslam@ocalafl.org; Telephone: 352-629-8297.
 - B. **Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed. Payments by City shall be made no later than the time periods established in section 218.735, Florida Statutes.
 - C. **Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Consultant; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager; or (iii) which fails to comply with any term, condition, or other requirement under this Agreement. Any payment withheld shall be released and remitted to Consultant within **THIRTY (30)** calendar days of the Consultant's remedy or resolution of the inadequacy or defect.
 - D. **Excess Funds.** If due to mistake or any other reason Consultant receives payment under this Agreement in excess of what is provided for by the Agreement, Consultant shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Consultant's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.
 - E. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Consultant shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Consultant be authorized to use City's Tax Exemption Number for securing materials listed herein.
5. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective and commence on **APRIL 5, 2023** and continue for a term of **ONE (1) YEAR**, through and including **APRIL 4, 2024**.
6. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, pandemics, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.
 - A. The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof as soon as it becomes aware.

- B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Consultant performance shall be extended for a number of days equal to the duration of the force majeure.
 - C. Consultant shall be entitled to an extension of time only and, in no event, shall Consultant be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.
7. **INSPECTION AND ACCEPTANCE OF THE WORK.** All services, work, and materials provided by Consultant under this Agreement shall be provided under the direction and to the satisfaction and approval of the Project Manager.
- A. The Project Manager shall decide all questions regarding the quality, acceptability, and/or fitness of materials, the rate of progress of the work, and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Consultant in its proposal. The authority vested in the Project Manager pursuant to this paragraph shall be confined to the direction or specification of what is to be performed under this Agreement and shall not extend to the actual execution of the Services.
 - B. Neither the Project Manager's review of Consultant's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Consultant's work in progress or for the means, methods, techniques, sequences, or safety precautions or programs incident to Consultant's provision of Services under this Agreement.
8. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Documents, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.
- A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Consultant to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Consultant written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Consultant by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:
 - (1) Consultant's performance or workmanship falls below acceptable City or trade standards;
 - (2) Consultant fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
 - (3) Consultant provides material that does not meet the specifications of the Agreement;
 - (4) Consultant fails to complete the work required within the time stipulated in the Agreement; or
 - (5) Consultant fails to make progress in the performance of the Agreement and/or gives City reason to believe that Consultant cannot or will not perform to the requirements of the Agreement.
 - B. **Consultant's Opportunity to Cure Default.** City may, in its sole discretion, provide Consultant with an opportunity to cure the violations set forth in City's notice of default to

Consultant. Consultant shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Consultant to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.

- C. **City's Remedies Upon Consultant Default.** In the event Consultant fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:
 - (1) City shall be entitled to terminate this Agreement without further notice;
 - (2) City shall be entitled to hire another vendor to complete the required work in accordance with the needs of City;
 - (3) City shall be entitled to recover from Consultant all damages, costs, and attorney's fees arising from Consultant's default prior to termination; and
 - (4) City shall be entitled to recovery from Consultant any actual excess costs by: (i) deduction from any unpaid balances owed to Consultant; or (ii) any other remedy as provided by law.
 - D. **Termination for Non-Funding.** In the event that budgeted funds to finance this Agreement are reduced, terminated, or otherwise become unavailable, City may terminate this Agreement upon written notice to Consultant without penalty or expense to City. City shall be the final authority as to the availability of budgeted funds.
 - E. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Consultant shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Consultant shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Consultant as permitted under this Agreement and approved by City.
9. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Consultant's performance. Any such evaluation will become public record.
10. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any Consultant who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of **ONE (1)** year and bid debarment for a period of up to **THREE (3)** years for serious contract failures.
11. **CONSULTANT REPRESENTATIONS.** Consultant expressly represents that:
- A. Consultant has read and is fully familiar with all of the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Consultant under this Agreement.
 - B. Consultant has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Consultant in the Contract Documents, and that the City's written resolution of same is acceptable to Consultant.

- C. Consultant has had an opportunity to visit, has visited, and has had an opportunity to examine and ask questions regarding the sites upon which the work is to be performed and is satisfied with the site conditions that may affect cost, progress, and performance of the work, as observable or determinable by Consultant's own investigation.
- D. Consultant is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
- E. **Public Entity Crimes.** Neither Consultant, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors or executives, nor any of its affiliates, contractors, suppliers, subcontractors, or consultants under this Agreement have been placed on the convicted vendor list following a conviction of a public entity crime. Consultant understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Consultant further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime: (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

12. **CONSULTANT RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Consultant:

- A. Consultant shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
- B. Consultant shall be solely responsible for the means, methods, techniques, sequences, or procedures, and safety precautions or programs incident thereto.
- C. Consultant shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
- D. Consultant shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, and be responsible for all costs associated with same.
- E. Consultant shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Consultant and City may otherwise agree in writing.

13. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Consultant or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.

14. **STORAGE OF MATERIALS/EQUIPMENT.** Consultant shall be fully responsible for receipt, inspection, acceptance, handling, and storage of equipment and materials (whether furnished by Consultant or City) to be utilized in the performance of or incorporated into the work.

15. **COMMERCIAL AUTO LIABILITY INSURANCE.** Consultant shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement a policy of commercial auto liability insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage arising out of Consultant’s operations and covering all owned, hired, scheduled, and non-owned automobiles utilized in said operations. If Consultant does not own vehicles, Consultant shall maintain coverage for hired and non-owned automobile liability, which may be satisfied by way of endorsement to Consultant’s Commercial General Liability policy or separate Commercial Automobile Liability policy.
16. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Consultant shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement a policy of commercial general liability insurance with limits not less than:
 - A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate (or project aggregate, if a construction project) for bodily injury, property damage, and personal and advertising injury; and
 - B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate (or project aggregate, if a construction project) for products and completed operations.
 - C. Policy must include coverage for contractual liability and independent contractors.
 - D. The City, a Florida municipal corporation, and its officials, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liabilities arising out of activities performed by or on behalf of Consultant. This coverage shall contain no special limitation on the scope of protection to be afforded to the City, its officials, employees, and volunteers.
17. **WORKERS’ COMPENSATION AND EMPLOYER’S LIABILITY.** Consultant shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement adequate workers’ compensation and employer’s liability insurance covering all of its employees in at least such amounts as required by Chapter 440, Florida Statutes, and all other state and federal workers’ compensation laws, including the U.S. Longshore Harbor Workers’ Act and the Jones Act, if applicable. Consultant shall similarly require any and all of its subcontractors to afford such coverage for all of its employees as required by applicable law. Consultant shall waive and shall ensure that Consultant’s insurance carrier waives, all subrogation rights against the City of Ocala and its officers, employees, and volunteers for all losses or damages. Consultant’s policy shall be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or its equivalent. **Exceptions and exemptions to this Section may be allowed at the discretion of the City’s Risk Manager on a case-by-case basis in accordance with Florida Statutes and shall be evidenced by a separate waiver.**
18. **PROFESSIONAL LIABILITY AND/OR ERRORS AND OMISSIONS INSURANCE COVERAGE.** Consultant shall procure, maintain, and keep in full force, effect, and good standing - until the third anniversary of the expiration of this Agreement or the third anniversary of acceptance of work by City - professional liability or errors and omissions insurance coverage for wrongful acts in an amount not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) aggregate, exclusive of defense costs. It is recognized that this type of insurance is only available on a claims-made basis and additional insured endorsements are not available.
19. **MISCELLANEOUS INSURANCE PROVISIONS.**

- A. Consultant's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by Consultant shall not be interpreted as limiting Consultant's liability or obligations under this Agreement. City does not in any way represent that these types or amounts of insurance are sufficient or adequate enough to protect Consultant's interests or liabilities or to protect Consultant from claims that may arise out of or result from the negligent acts, errors, or omissions of Consultant, any of its agents or subcontractors, or for anyone whose negligent act(s) Consultant may be liable.
- B. No insurance shall be provided by the City for Consultant under this Agreement and Consultant shall be fully and solely responsible for any costs or expenses incurred as a result of a coverage deductible, co-insurance penalty, or self-insured retention to include any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation.
- C. Certificates of Insurance. No work shall be commenced by Consultant under this Agreement until the required Certificate of Insurance and endorsements have been provided nor shall Consultant allow any subcontractor to commence work until all similarly required certificates and endorsements of the subcontractor have also been provided. Work shall not continue after expiration (or cancellation) of the Certificate of Insurance and work shall not resume until a new Certificate of Insurance has been provided. Consultant shall provide evidence of insurance in the form of a valid Certificate of Insurance (binders are unacceptable) prior to the start of work contemplated under this Agreement to: City of Ocala. Attention: Procurement & Contracting Department, Address: 110 SE Watula Avenue, Third Floor, Ocala Florida 34471, E-Mail: vendors@ocalafl.org. Consultant's Certificate of Insurance and required endorsements shall be issued by an agency authorized to do business in the State of Florida with an A.M. Best Rating of A or better. The Certificate of Insurance shall indicate whether coverage is being provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- D. Failure to Maintain Coverage. In the event Consultant fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Consultant under this Agreement, Consultant shall be considered to be in default of this Agreement.
- E. City as an Additional Insured. The City of Ocala shall be named as an Additional Insured and Certificate Holder on all liability policies identified in this Section with the exception of Workers' Compensation and Professional Liability policies.
- F. Notice of Cancellation of Insurance. Consultant's Certificate of Insurance shall provide **THIRTY (30) DAY** notice of cancellation, **TEN (10) DAY** notice if cancellation is for non-payment of premium. In the event that Consultant's insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Consultant to provide the proper notice. Such notification shall be in writing by registered mail, return receipt requested, and addressed to the certificate holder. Additional copies may be sent to the City of Ocala at vendors@ocalafl.org.
- G. Failure to Maintain Coverage. The insurance policies and coverages set forth above are required and providing proof of and maintaining insurance of the types and with such terms and limits set forth above is a material obligation of Consultant. Consultant's failure to obtain or maintain in full force and effect any insurance coverage required under this Agreement shall constitute material breach of this Agreement.

H. Severability of Interests. Consultant shall arrange for its liability insurance to include, or be endorsed to include a severability of interests/cross-liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.

20. **SAFETY/ENVIRONMENTAL**. Consultant shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. Consultant shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- A. All employees on the work and other persons that may be affected thereby;
- B. All work, materials, and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.

All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Consultant, any subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Consultant. Consultant's duties and responsibilities for the safety and protection of the work shall continue until such time as the work is completed and accepted by City.

21. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES**. During the performance of the contract, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

22. **SUBCONTRACTORS**. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Consultant or any other persons or organizations having a direct contract with Consultant, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Consultant or any other persons or organizations having a direct contract with Consultant, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any Consultant, subcontractor, or of any of their agents or employees. nor shall it create any obligation on the part of City or its representatives to pay or to seek the payment of any monies to any subcontractor or other person or organization, except as may otherwise be required by law.

23. **INDEPENDENT CONTRACTOR STATUS**. Consultant acknowledges and agrees that under this Agreement, Consultant and any agent or employee of Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Consultant nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Consultant nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion

over the manner or methods employed by Consultant in its performance of its obligations under this Agreement.

24. **ACCESS TO FACILITIES.** City shall provide Consultant with access to all City facilities as is reasonably necessary for Consultant to perform its obligations under this Agreement.
25. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
26. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Consultant under this Agreement be abandoned, or should Consultant become insolvent, or if Consultant shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager. The City Project Manager's certification as to the amount of such liability shall be final and conclusive.
27. **PUBLIC RECORDS.** Consultant shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Consultant shall:
 - A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency 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 Chapter 119, Florida Statutes, or as otherwise provided by law.
 - 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 contract term and following completion of the contract if Consultant does not transfer the records to the public agency.
 - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Consultant or keep and maintain public records required by the public agency to perform the service. If Consultant transfers all public records to the public agency upon completion of the contract, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the contract, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

28. **AUDIT.** Consultant shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
29. **PUBLICITY.** Consultant shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
30. **E-VERIFY.** Pursuant to section 448.095, Consultant shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Consultant shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Consultant certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Consultant understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Consultant may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Consultant shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit www.e-verify.gov for more information regarding the E-Verify System.
31. **CONFLICT OF INTEREST.** Consultant is required to have disclosed, with the submission of their bid, the name of any officer, director, or agent who may be employed by the City. Consultant shall further disclose the name of any City employee who owns, directly or indirectly, any interest in Consultant's business or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
32. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
33. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
34. **INDEMNITY.** Consultant shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term

of this Agreement to the extent attributable to the actions of Consultant, its agents, and employees.

35. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
36. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Consultant: Alfred Benesch & Company
Attention: Nilgun Kamp
35 West Wacker Dr., Suite 3300
Chicago, IL 60601
Phone: 813-825-1225
E-mail: nkamp@benesch.com

If to City of Ocala: Daphne M. Robinson, Esq. - Contracting Officer
City of Ocala
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-629-8343
E-mail: notices@ocalafl.org

Copy to: William E. Sexton, Esq., City Attorney
City of Ocala
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-401-3972
E-mail: cityattorney@ocalafl.org

37. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.
38. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR

RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

39. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
40. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
41. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
42. **MUTUALITY OF NEGOTIATION.** Consultant and City acknowledge that this Agreement is a result of negotiations between Consultant and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
43. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
44. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
45. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
46. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

- 47. **ELECTRONIC SIGNATURE(S).** Consultant, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
- 48. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
- 49. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on _____.

ATTEST:

CITY OF OCALA

 Angel B. Jacobs
 City Clerk

 James P. Hilty
 City Council President

Approved as to form and legality:

ALFRED BENESCH & COMPANY

 William E. Sexton
 City Attorney

 By: _____
 (Printed Name)

Title: _____
 (Title)

City of Ocala Fire Assessment Study



The City of Ocala implemented a fire assessment program in 2021 to support its fire rescue services, which is charged to all properties in the city. The assessment program structure was later refined to provide a more equitable rate schedule and last updated in 2022. At this time, the City is interested in updating the fire assessment study.

Benesch (formerly Tindale Oliver) and Susan Schoettle-Gumm have extensive understanding of fire operations funding options and associated legal requirements and limitations, which enables providing the scope of services in which the City is interested.

PROJECT APPROACH

This section provides a description of the tasks to be undertaken by the Benesch Team for the City of Ocala Fire Assessment study. The methodology included in this scope of services conforms with applicable laws, administrative rules, and regulations of the State of Florida—specifically, the following and other related Florida Statutory and case law requirements for a valid special assessment:

- > The service provided must confer a special benefit to the property being assessed.
- > The costs assessed must be fairly and reasonably appropriated among the properties that receive the special benefit.
- > The apportionment or exemption from apportionment of non-ad valorem assessments to the various classifications of governmental entities as defined by Florida law.

The following paragraphs outline tasks that will be completed as part of the study.

Task 1 – Background Review and Kickoff Meeting

Upon receipt of the notice to proceed, the Benesch Team will conduct a kick-off meeting with the City staff and administration to discuss study goals, methodology and any issues/concerns regarding the current assessment structure, schedule, and other issues/questions.

Incident data for 2022 and adopted budget for FY 2023 will be obtained from the City. For property units and classification, data maintained by the Marion County Property Appraiser’s Office will be used. Benesch has extensive experience in working with the property appraiser databases and understands variations that are important to incorporate into the assessment program.

Task 2 – Technical Study

Update of the fire assessment program will be completed

using the City’s current methodology and include the following subtasks.

Task 2a – Analysis of Budget Information

Benesch will evaluate Ocala Fire Rescue’s current adopted budget and budget request for Fiscal Year 2024 (if available).

Similar to previous studies, the full cost of providing fire service delivery that includes all direct and indirect costs will be identified. The analysis will take into consideration any outstanding funding needs, as well as fluctuations in the budget due to larger non-recurring expenditures. The budget used for the study will incorporate the full costs of services, including:

- > Net fire rescue services
- > Fair apportioning to include equipment/capital improvements and associated financing costs if bonds/capital loans are used to fund the necessary capital
- > Implementing programs
- > Collecting assessments
- > Creating assessment rolls

Given that special assessments are limited to fire prevention/suspension and first response medical service related expenses, expenses related to advanced life support services will be excluded in identifying the assessable budget.

Any dedicated revenues (such as fire impact fees, fire inspection fees, etc.) that need to be accounted for will be identified.

Task 2b – Analysis of Service Demand Using Proposed Methodology

The Benesch Team will obtain fire rescue call response data for 2022 from Ocala Fire Rescue to determine the appropriate service demand using the current adopted assessment methodology. This data will be added to the incident data used in the 2022 study to achieve a larger sample size.

Benesch will analyze the historical call data to identify the calls that should be excluded from the analysis and determine a trend in the distribution of remaining incidents between the different assessment rate classes. This analysis also will include a review of the different incident types and on-scene procedures to ensure that only those incidents appropriate for use in the service demand analysis are included.

Finally, the frequency and the level of staff and vehicle time

City of Ocala Fire Assessment Study



used for each type of incident/property will be evaluated. Certain types of land uses or buildings may not request assistance frequently, but their response duration may be longer.

Any agreements with other service providers or entities, reports, and other data pertaining to the provision of fire rescue services will be evaluated.

Task 2c – Calculation of Development Units

To determine the number of development units for each assessment rate class, Benesch will obtain the most recent copy of City properties from the Marion County Property Appraiser database.

Each property will be assigned an appropriate assessment rate class. Properties that need to be exempted, such as agricultural land, unbuildable land, very small parcels, parking structures, etc., will be identified and excluded.

Task 2d – Calculation of Rates, Revenue Requirements, and Rate Calculator

Based on the current adopted methodology and the apportioned costs for each land use and calculated development units, a rate schedule will be developed. A preliminary assessment roll will be developed.

In addition, a rate calculator will be developed to assist the City in analyzing different rate scenarios and revenue projections.

Task 3 – Review of Legal Sufficiency and Development of Technical Report

Susan Schoettle-Gumm will provide a legal sufficiency review and ensure that the approach used complies with all legal requirements.

The results of the Tasks 1, 2, and 3 analyses will be provided in a technical report. The Benesch Team will present the study results to City staff and administrators.

Based on input received from the City, a final report will be submitted. Benesch will present the study results to the City Council and respond to questions.

Task 4 – Implementation Assistance

Based on the input received from the City, Benesch and Susan Schoettle-Gumm will assist the City in the implementation of the program. More specifically, the following will be provided:

- > One City Council Workshop to present study results and

respond to questions.

- > Two public meetings to assist with the adoption of the study and rates.
- > Assistance with resolution update and accounting policies.
- > Assistance in responding public comments/questions.
- > Certification of the fire assessment roll in accordance with Florida Statutes.

All deliverables and source files will be provided to the City in Microsoft Word and Excel file formats.

PROJECT BUDGET

As shown in the detailed budget table on the next page, the professional fees and expenses associated with the City of Ocala Fire Assessment Study contract are estimated at \$59,590, which includes two virtual and three in-person meetings.

This is a lump sum budget which includes all services. The City will be invoiced monthly for the portion of the work completed and only for meetings that are used.

Any additional meetings will be invoiced at the following rates.

- > Benesch: \$3,200 per in-person meeting; \$2,000 per virtual meeting.
- > Susan Schoettle-Gumm: \$1,365 per in-person meeting; \$500 per virtual meeting.

Benesch will be happy to respond to any questions from the City of Ocala staff to clarify our proposed cost and/or provide additional information as necessary.

City of Ocala Fire Assessment Study



City of Ocala Fire Assessment Study
Benesch Proposed Project Budget

TASK #	SUBTASK DESCRIPTION	Project Director/ Sr. Project Manager \$220.00	Legal Attorney \$195.00	Senior Eng/Pln \$120.00	Planner/ GIS Specialist \$85.00	Admin/ Clerical \$60.00	TOTAL TASK HOURS	BURDENED COST/ TASK
TASK 1	BACKGROUND REVIEW / DATA COLLECTION	7.0	1.0	6.0	2.0	3.0	19.0	\$2,805
1.1	Send Data Request Memorandum	1.0		2.0		1.0	4.0	\$520
1.2	Review Background Materials	4.0		4.0	2.0	1.0	11.0	\$1,590
1.3	Kick-off Meeting (Virtual)	2.0	1.0			1.0	4.0	\$695
TASK 2	UPDATE OF SPECIAL ASSESSMENT METHOD	50.0	0.0	66.0	71.0	4.0	191.0	\$25,195
2.1	Service Demand Analysis	12.0		18.0	15.0	1.0	46.0	\$6,135
2.2	Fire/Rescue Budget Analysis	11.0		8.0	9.0	1.0	29.0	\$4,205
2.3	Calculation of Development Units	15.0		25.0	29.0	1.0	70.0	\$8,825
2.4	Calculation of Rates and Revenue Requirements	12.0		15.0	18.0	1.0	46.0	\$6,030
TASK 3	REVIEW LEGAL SUFFICIENCY AND TECHNICAL REPORT	21.0	8.0	14.0	8.0	3.0	54.0	\$8,720
3.1	Technical Report Review for Legal Sufficiency	5.0	6.5			1.0	12.5	\$2,428
3.2	Development of the Draft and Final Technical Reports	10.0		12.0	6.0	1.0	29.0	\$4,210
3.3	Draft Report Review Meeting with City Staff & Administration (Virtual)	6.0	1.5	2.0	2.0	1.0	12.5	\$2,083
TASK 4	IMPLEMENTATION ASSISTANCE	41.0	46.0	24.0	20.0	5.0	136.0	\$22,870
4.1	Development of the Final Assessment Roll	6.0		15.0	13.0	1.0	35.0	\$4,285
4.2	Legal Assistance	8.0	23.0	2.0		1.0	34.0	\$6,545
4.3	Addressing Public Comments	6.0	2.0	3.0	3.0	1.0	15.0	\$2,385
4.4	Public Meetings (3)	21.0	21.0	4.0	4.0	2.0	52.0	\$9,655
TOTAL PROJECT BUDGET		119.0	55.0	110.0	101.0	15.0	400.0	\$59,590