AGREEMENT BETWEEN COUNTY AND CONSULTANT

This Agreement Between County and Consultant, (this "Agreement") made and entered into February 17, 2023 by and between Marion County, a political subdivision of the State of Florida, located at 601 SE 25th Ave, Ocala, FL 34471 (hereinafter referred to as "COUNTY") and **Alfred Benesch & Company**, located at 35 West Wacker dr., Suite 3300, Chicago, IL 60601, with a principal address of 1000 N. Ashley Drive, Tampa, FL 33602, possessing FEIN# 36-2407363 (hereinafter referred to as "CONSULTANT") under seal for the Transportation Impact Fee Update, (hereinafter referred to as the "Project"), and COUNTY and CONSULTANT hereby agreeing as follows:

WITNESSETH:

In consideration of the mutual covenants and promises contained herein, COUNTY and CONSULTANT (singularly referred to as "Party", collectively "Parties") hereto agree as follows:

Section 1 – The Contract Documents. The Contract Documents are defined as this Agreement, the Specifications, the Drawings, all Purchase Orders, Change Orders and Field Orders issued hereafter, any other amendments hero executed by the Parties hereafter, together with the following (if any):

Marion County Bid #23Q-041G – Growth Services Transportation Fee Update, the Offer, Project Bid Scope and or Specifications, Plans and Drawings, any/all Addenda as issued in support of this Bid, Recorded Bonds as required, Certificate of Insurance and Notice to Proceed.

Should any conflict arise between the contract documents and the Agreement, the terms of the Agreement shall govern.

Section 2 – Entire Agreement. The Contract Documents form the agreement between Parties for the Project and the CONSULTANT acknowledges receipt of a copy of each and every Contract Document. The Contract Documents represent the entire and integrated agreement between the Parties and supersede prior negotiations, representations or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than COUNTY and CONSULTANT.

Section 3 – Term. This Agreement shall commence upon Board approval, and shall continue for two (2) years with two (2) additional one (1) year renewals pending mutual agreement ("Term"). **TIME IS OF THE ESSENCE** and CONSULTANT shall perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. All limitations of time set forth in the Contract Documents are of the essence. Work may be presumed abandoned after ninety (90) days if CONSULTANT terminates the Work without just cause or without proper notification to COUNTY, including the reason for termination, or fails to perform Work without just cause for ninety (90) consecutive days. All Work, defined herein, will proceed in a timely manner without delays.

Section 4 – Scope of Services. As per specifications and requirements of project 23Q-041, the CONSULTANT shall complete the scope of services listed below according to the timeframe as noted herein.

Task 1: Background and Methodology Review (13%)

Upon Notice to Proceed, CONSULTANT will coordinate with the County for collection of specific studies, data, related technical reports, ordinances, resolutions, the County Code, current policies and procedures and other information necessary to complete the study. A clear understanding of the current policies and procedures, as well as economic development and growth management goals and objectives will be documented and summarized. It is requested that the County's Project Manager assemble as much of the requested data as possible to be available prior to or at the kickoff meeting.

CONSULTANT will review the background information and facilitate a kickoff meeting with key County staff to confirm study objectives, identify and discuss major technical, legal and policy issues, coordinate staff/CONSULTANT responsibilities and refine the project schedule as necessary. Some of the technical and policy issues that will be discussed include the following:

- Capital improvement plans, master plans and projects and associated funding sources and levels.
- The County's growth patterns and levels, including rate of growth in population and tax base and diversity of tax base.
- Role of impact fees in Marion County.

- Impact fee methodologies available to the County.
- Recent trends in land and construction costs experienced by the County and other jurisdictions in Florida.
- Review of land uses included in the current fee schedule and potential changes, if necessary.
- Other related issues, as applicable.

CONSULTANTS's previous experience with and understanding of the County's current transportation impact fee structure will be supplemented with recent initiatives, policies and studies to better understand the study goals. The input received during this meeting will be incorporated into the remaining tasks.

Task 1 Completion: Within 30 (thirty) days of receipt of Executed Contract

__Task 2: Technical Analysis (53%)__

This task addresses the update of transportation impact fee variables, which will reflect the cost of providing transportation infrastructure in Marion County.
The County's current methodology is a consumption-based methodology, which charges new growth for the value of the infrastructure it uses. In addition, the fee schedule incorporated CONSULTANTS's Economic Growth Strategy to recognize the existing population's ability to buy down the fees for potential discounts. These methods will be discussed with the County as part of Task 1 and the final methodology will be determined. Based on agreed-upon methodology, cost, credit and demand calculations will be updated.

CONSULTANTS's six subtasks to Task 2 include the following:

Subtask 2.1: Update & Refinement of Land Uses
The demand component of the transportation impact fee will be updated. It is measured in terms of vehicle miles of travel (VMT). CONSULTANT has an extensive database that includes trip characteristics studies for more than 40 land uses, which measure trip generation rate, trip length and capture trips for each land use. CONSULTANT has used this database in previous transportation impact fee and mobility fee studies throughout Florida, including Marion County. Availability of this data enables our clients to meet the State requirements for using localized data, as opposed to relying solely on national data.
The demand component will be updated based on secondary data sources, such as trip length information from the Central Florida Regional Planning Model, the latest ITE Trip Generation Handbook (11th Ed.), CONSULTANT's trip characteristics database, FDOT General Level of Service tables and any other available data.
CONSULTANT will review the existing impact fee schedule to refine the schedule of land uses. This includes clarifying existing land uses, combining similar uses, eliminating uncommon uses or adding new uses that the County is permitting frequently.

Subtask 2.2: Update of the Cost of Additional Roadway Capacity
The cost component for the transportation impact fee will be updated to reflect the current cost of adding capacity in Marion County on roads that are classified as collectors and above. Cost elements reviewed will include design and engineering inspection, construction, right-of-way (ROW) and other related costs. CONSULTANT will review recent bids, recently completed local projects (within the past five years), recent ROW purchases or appraisals and other relevant documents to identify service facility improvement costs that may be considered in the calculation of the cost component of the impact fee formula for the County. This information will be compared to and/or supplemented with CONSULTANT's cost databases that include information from other Florida jurisdictions. This will be documented in the technical report.

Subtask 2.3: Analysis of Other Funding Sources for Capacity Projects
CONSULTANT will review historical and projected capital improvement funding sources and expenditures for ROW, construction, design and engineering inspection and other related expenditures in Marion County for qualified roadway network. Debt service for any bond proceeds used for capacity expansion projects will be reviewed and documented as appropriate. The review will incorporate non-impact fee investment in Marion County. This information will be used to prepare the credit component of the impact fee formula, and alternative calculations for potential changes in the funding sources and levels will be prepared, if needed. This will be documented in the technical report.

Subtask 2.4: Fee Schedule, Indexing and Comparison of Impact Fee Schedules
Based on the findings of Tasks 1 through Task 2.3, an updated fee schedule will be prepared. The calculated fees will be compared to the current adopted fees.

This task will include an "inflation" matrix for annual indexing adjustments based on local and national data on cost indices.
CONSULTANT will prepare a transportation impact fee rate comparison between Marion County and several other jurisdictions, taking into consideration the location, size, and fee program in place for each community. This will be documented in the technical report.

Subtask 2.5: Economic Growth Strategy
CONSULTANT has developed an Economic Growth Strategy that bridges consumption-based fees and needs-based fees. In addition, this model is used by local governments to diversify the fees, provide incentives for target industries and align the impact fee program with their economic growth goals.
CONSULTANT's Economic Growth application evaluates the available funding sources from existing developments and population growth levels and develops a policy reduction to recognize the existing development's contribution in addition to new growth's contribution. This approach was previously used by Marion County and will provide the County with the ability to buy down fees for certain land uses.
More specifically, this approach allows communities to establish policies for reductions in impact fees either for all land uses or targeted land uses due to the overall benefit and need for specific land uses countywide or in targeted geographic areas of the county. A long-term benefit created by these policies also may include improved revenue generation by having a more diverse property tax base, which brings revenue stability in the future. In addition to Marion County, several other jurisdictions have used this tool, including the City of Orlando and Pasco and Indian River counties. This will be included in the technical report.

Subtask 2.6: Analysis of Impact Fee Districts
CONSULTANT will review the existing benefit district structure and evaluate whether any adjustments are necessary. As part of this analysis, district size, natural/man-made boundaries or physical features, variations in rates of growth/urban form, development levels and other similar factors will be evaluated. This will be documented in the technical report.

Task 2 Completion: Within 90 (ninety) days from the receipt of requested data

Task 3: Technical Report & Ordinance Assistance (19%)

Subtask 3.1: Technical Report Preparation
The results of Tasks 1 and 2 will be summarized in a draft technical report. The report will include all information, estimates, projections and data analysis, as well as assumptions made, methodologies employed and the resulting fee schedule.
The technical report will address any recent legislative changes. CONSULTANT will provide information on any proposed legislation that may affect the impact fee program. In addition, implications of fee increase caps established by HB 337 will be incorporated into a spreadsheet tool for the County's use.
Upon receipt of comments from the County, CONSULTANT will make the necessary revisions to the draft report and prepare the final report, which will incorporate input from the County and other community groups and agencies as appropriate. The reports will be submitted electronically.

Subtask 3.2: Ordinance Assistance
CONSULTANT will assist in developing fee scenarios that comply with recently approved HB 337 requirements. We will review the updated transportation impact fee ordinance prepared by the County attorney and provide comments. If needed, sample language from other ordinances will also be provided.

Subtask 3.3: Update of the Administrative Manual
This subtask will update the County's Administrative Manual for the transportation impact fee, reflecting changes to the ordinance, land use categories and other policies or practices.

Task 3 Completion: Within 150 (one hundred fifty) days from the receipt of requested data

Task 4: Meetings & Presentations (15%)

As part of this study, the following five meetings and presentations will be conducted:

- Kick-off meeting (virtual).
- Two meetings with County staff to review study methodology and draft report findings and prepare for public meetings (virtual).

- Three workshops and one adoption hearing with the Board of County Commissioners to present study methodology and study results and obtain input. The third workshop and the adoption hearing will be scheduled on the same day.

For all presentations, CONSULTANT will prepare user-friendly, easy-to-follow materials in PowerPoint. Draft presentations will be provided to County staff for review two weeks prior to the BOCC workshops/meetings. In addition to these formal meetings, CONSULTANT will be in close contact with the County's Project Manager to ensure that the County is aware of the study progress.

Task 4 Completion: Throughout the study

<u>Task 5: Optional Tasks</u>

This task includes the following services and will be provided only upon authorization from the County:

- Three (3) additional in-person meetings.
- Legal services that will be provide by White & Smith, LLP on an hourly basis as requested by the County.

Task 5 Completion: Within 210 (two hundred ten) days of Approval and Execution of Contact for Service

Section 5 – Compensation. COUNTY shall make payment of Eighty-Nine Thousand Nine Hundred Ninety-Five Dollars, ($89,995), (the "Agreement Price"), to CONSULTANT under COUNTY's established procedure and according to the schedule set forth in the Schedule of Values below hereto, upon completion of the Work. There shall be no provisions for pricing adjustments.

MARION COUNTY GROWTH SERVICES IMPACT FEE UPDATE STUDY SCHEDULE OF VALUES:

TASK #	TASK DESCRIPTION	Senior Project Mngr $220.00	Senior Planner $140.00	Planner $95.00	GIS Specialist $90.00	Admin/ Clerical $75.00	TOTAL TASK HOURS	BURDENED COST/ TASK
TASK 1	BACKGROUND & METHODOLOGY REVIEW	20.0	29.0	28.0	8.0	3.0	88.0	$12,065
	Send Data Request Memorandum	1.0	3.0			1.0	5.0	$715
	Review Background Materials	5.0	5.0	2.0		1.0	13.0	$2,065
	Review Study Methodology/Approach	14.0	21.0	26.0	8.0	1.0	70.0	$9,285
TASK 2	TECHNICAL ANALYSIS	61.0	133.0	142.0	16.0	6.0	358.0	$47,420
	Demand Component & Review of Land Uses	9.0	25.0	23.0	4.0	1.0	62.0	$8,100
	Cost Component	12.0	24.0	25.0	6.0	1.0	68.0	$8,990
	Credit Component	11.0	19.0	21.0		1.0	52.0	$7,150
	Fee Schedule, Indexing & Comparison to Other Jurisdictions	9.0	20.0	26.0		1.0	56.0	$7,325
	Economic Growth Strategy	10.0	22.0	27.0	3.0	1.0	63.0	$8,190
	Review of Benefit Districts	10.0	23.0	20.0	3.0	1.0	57.0	$7,665
TASK 3	TECHNICAL REPORT & ORDINANCE ASSISTANCE	34.0	36.0	39.0	5.0	3.0	117.0	$16,900
	Draft & Final Reports	12.0	14.0	16.0	5.0	1.0	48.0	$6,645
	Ordinance Assistance	12.0	6.0	5.0		1.0	24.0	$4,030
	Update of the Administrative Manual	10.0	16.0	18.0		1.0	45.0	$6,225
TASK 4	MEETINGS/PRESENTATIONS	36.0	22.0	15.0	9.0	5.0	87.0	$13,610
	Kick-off Meeting (Virtual)	4.0	4.0	1.0		1.0	10.0	$1,610
	Methodology Review Meeting (Virtual)	4.0	4.0	2.0	1.0	1.0	12.0	$1,795
	BCC Workshop	8.0	4.0	4.0	3.0	1.0	20.0	$3,045
	Draft Report Review Meeting (Virtual)	4.0	4.0	2.0	1.0	1.0	12.0	$1,795
	BCC Workshop	8.0	4.0	4.0	3.0	1.0	20.0	$3,045
	BCC Workshop/Adoption Hearing	8.0	2.0	2.0	1.0		13.0	$2,320
	PROJECT TOTAL (TASKS 1-4)	151.0	220.0	224.0	38.0	17.0	650.0	$89,995
TASK 5	OPTIONAL SERVICES							
	In-Person Meetings (3)	24.0	12.0	12.0	9.0	3.0	60.0	$9,135
	Legal Assistance	Will be provided at hourly rates with an upset limit of $15,000						$15,000
	PROJECT TOTAL (TASKS 1-5)	175.0	232.0	236.0	47.0	20.0	710.0	$114,130

Position	Rate
Technical Study:	
Senior Project Manager	$220
Senior Planner/Engineer	$140
Planner/Engineer	$95
GIS Specialist	$90
Admin/Clerical	$75
Legal Support:	
Tyson Smith or Mark White	$250
Sean Scoopmire	$200

INVOICING:
Invoices will indicate portion of the work completed and will be accompanied by a progress report.

Section 6 – Assignment. CONSULTANT may not subcontract all or any part of this Agreement without written approval by COUNTY.

Section 7 – Laws, Permits, and Regulations. Prior to the performance of any Work hereunder, CONSULTANT shall obtain and pay for all licenses and permits, as required to perform the Work. CONSULTANT shall at all times comply with all appropriate laws, regulations, and ordinances applicable to the Work provided under this Agreement.

Section 8 – Amendments. This Agreement may only be amended by mutual written agreement of both Parties.

Section 9 – Books and Records. CONSULTANT shall keep records of all transactions, including documentation accurately reflecting the time expended by CONSULTANT and its personnel. COUNTY shall have a right to request records from CONSULTANT, and for those records to be made available within a reasonable timeframe depending on method of acquisition.

Section 10 – Public Records Compliance

A. **IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

Public Relations | 601 SE 25th Ave, Ocala, FL 34471
Phone: 352-438-2300 | Fax: 352-438-2309
Email: publicrelations@marionfl.org

B. CONSULTANT shall comply with public records laws, specifically:
- Keep and maintain public records required by COUNTY to perform the Work;
- Upon request from COUNTY's custodian of public records, provide COUNTY 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;
- 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 Term and following completion of this Agreement if CONSULTANT does not transfer the records to COUNTY; and,
- Upon completion of this Agreement, transfer, at no cost, to COUNTY, all public records in possession of CONSULTANT or keep and maintain public records required by COUNTY to perform the Work. If CONSULTANT transfers all public records to COUNTY upon completion of this Agreement, 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 the completion of this Agreement, CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY, upon request from COUNTY's custodian of public records, in a format that is compatible with the information technology systems of COUNTY.

C. If CONSULTANT fails to provide the public records to COUNTY within a reasonable time, CONSULTANT may be subject to penalties under Section 119.10 Florida Statutes and may be subject to unilateral cancellation of this Agreement by COUNTY. This section shall survive the termination of the Agreement.

Section 11 – Indemnification. CONSULTANT shall indemnify and hold harmless COUNTY, its officers, employees, and agents from all suits, claims, or actions of every name and description brought against COUNTY for liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONSULTANT and other persons employed or utilized by CONSULTANT in the performance of this Agreement. This Section shall not be construed in any way to alter COUNTY's waiver of sovereign immunity or the limits established in Section 768.28, Florida Statutes. This section shall survive the termination of the Agreement.

Section 12 – Insurance. As applicable, during the period of Work, insurance policies shall be with a company or companies authorized to do business in the State of Florida. COUNTY shall be notified if any policy limit has eroded to one half its annual aggregate. CONSULTANT shall provide, within the timeframe noted in the Award Letter, a Certificate of Insurance, issued by a company authorized to do business in the State of Florida and with an A.M. Best Company rating of at least A-. Self-Insured companies that cannot be rated, will also be considered. All policies must include all requirements listed below, reference the project number and show Marion County as additional insured. The Certificate should also provide for 30-day cancellation notice to the Procurement Director's address, set forth herein.

WORKERS COMPENSATION AND EMPLOYER'S LIABILITY

Coverage to apply for all employees at STATUTORY Limits in compliance with applicable state and federal laws.

- Employer's Liability limits for not less than $100,000 each accident $500,000 disease policy limit and $100,000 disease each employee must be included.
- The CONSULTANT, and its insurance carrier, waives all subrogation rights against Marion County, a political subdivision of the State of Florida, its officials, employees and volunteers for all losses or damages which occur during the contract and for any events occurring during the contract period, whether the suit is brought during the contract period or not.
- The County requires all policies to be endorsed with WC00 03 13 Waiver of our Right to Recover from others or equivalent.

COMMERCIAL GENERAL LIABILITY

Coverage must be afforded under a Commercial General Liability policy with limits not less than

- $1,000,000 each occurrence for Bodily Injury, Property Damage and Personal and Advertising Injury
- $2,000,000 each occurrence for Products and Completed Operations

BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded including coverage for all Owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than $1,000,000 combined single limit each accident.

- In the event the CONSULTANT does not own vehicles, the CONSULTANT shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Section 13 – Independent Contractor. In the performance of this Agreement, CONSULTANT will be acting in the capacity of an "Independent Contractor" and not as an agent, employee, partner, joint venture, or associate of COUNTY. CONSULTANT shall be solely responsible for the means, methods, techniques, sequences, and procedures utilized by CONSULTANT in the full performance of this Agreement.

Section 14 – Default/Termination. In the event CONSULTANT fails to comply with any of the provisions of this Agreement, COUNTY may terminate this Agreement for cause by first notifying CONSULTANT in writing, specifying the nature of the default and providing CONSULTANT with a reasonable period of time in which to rectify such default. In the event the default is not cured within the time period given, COUNTY thereafter may terminate this Agreement for cause upon written notice to CONSULTANT without prejudice to COUNTY. In the event of termination of this Agreement for cause, COUNTY will then be responsible to compensate CONSULTANT only for those services timely and satisfactorily performed pursuant to this Agreement up to the date of termination. COUNTY may terminate this Agreement without cause providing at least thirty (30) days written notice to CONSULTANT. In the event of termination of this Agreement without cause, COUNTY will compensate CONSULTANT for all services timely and satisfactorily performed pursuant to this Agreement up to and including the date of termination. Notwithstanding any other provision of this Agreement, this Agreement may be terminated if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining COUNTY or other public entity obligations under this Agreement. COUNTY shall have no further obligation to CONSULTANT, other than to pay for services rendered prior to termination. Neither CONSULTANT, nor its subconsultants shall be responsible for errors or omissions in documents which are incomplete as the result of an early termination under this agreement.

Section 15 – Termination for Loss of Funding/Cancellation for Unappropriated Funds. The obligation of COUNTY for payment to CONSULTANT is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

Section 16 – Use of Other Contracts. COUNTY reserves the right to utilize any COUNTY contract, State of Florida contract, city or county governmental agencies, school board, community college/state university system, or cooperative bid agreement. COUNTY reserves the right to separately bid any single order or to purchase any item on this Agreement if it is in the best interest of COUNTY.

Section 17 – Employee Eligibility Verification. COUNTY hereby affirm CONSULTANTs it is duly registered, uses, and adheres to the practices of the E-Verify system, including those outlined in the clauses below.

Beginning January 1, 2021, Section 448.095, F.S., requires CONSULTANT to register and use the E-Verify system to verify the work authorization status of all newly hired employees and prohibits CONSULTANT from entering into this Agreement unless it is in compliance therewith. Information provided by CONSULTANT is subject to review for the most current version of the State or Federal policies at the time of the award of this Agreement.

By previously signing the ITB Acknowledgment and Addenda Certification Form, and this Contract, CONSULTANT has agreed to perform in accordance with the requirements of this subsection and agrees:

a) It is registered and uses the E-Verify system to verify work authorization status of all newly hired employees.
b) COUNTY shall immediately terminate CONSULTANT if COUNTY has a good faith belief that CONSULTANT has knowingly violated Section 448.09(1), F.S., that is, that CONSULTANT knowingly employed, hired, recruited, or referred either for itself or on behalf of another, private or public employment within the State an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.
c) If CONSULTANT enters into a contract with a subcontractor, CONSULTANT shall obtain from the subcontractor an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.
d) CONSULTANT shall maintain a copy of such affidavit for the duration of this Agreement and provide it to COUNTY upon request.
e) CONSULTANT shall immediately terminate the subcontractor if CONSULTANT has a good faith belief that the subcontractor has knowingly violated Section 448.09(1), F.S., as set forth above.
f) If COUNTY has a good faith belief that CONSULTANT's subcontractor has knowingly violated Section 448.095, F.S., but that CONSULTANT has otherwise complied, COUNTY shall promptly order CONSULTANT to terminate the subcontractor. CONSULTANT agrees that upon such an order, CONSULTANT shall immediately terminate the subcontractor. CONSULTANT agrees that if it should fail to comply with such an order, COUNTY shall immediately terminate CONSULTANT.
g) If COUNTY terminates this Agreement with CONSULTANT, CONSULTANT may not be awarded a public Agreement for at least one (1) year after the date of termination.
h) CONSULTANT is liable for any additional costs incurred by COUNTY as a result of a termination under this subsection.
i) Any such termination under this subsection is not a breach of this Agreement and may not be considered as such.
j) CONSULTANT shall maintain records of its registration, use, and compliance with the provisions of the E-Verify system, including the registration and use by its subcontractors, and to make such records available to COUNTY or other authorized governmental entity.
k) To comply with the terms of this Employment Eligibility Verification provision is made an express condition of this Agreement and COUNTY may treat a failure to comply as a material breach of this Contract.

Section 18 – Force Majeure. Neither CONSULTANT nor COUNTY shall be considered to be in default in the performance of its obligations under this Agreement, except obligations to make payments with respect to amounts already accrued, to the extent that performance of any such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control and not a result of the fault or negligence of, the affected

Party (a "Force Majeure Event"). If a Party is prevented or delayed in the performance of any such obligations by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be consulted in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. A Force Majeure Event shall include, but not be limited to acts of civil or military authority (including courts or regulatory agencies), acts of God, war, riot, or insurrection, inability to obtain required permits or licenses, hurricanes and severe floods, pandemics and epidemics.

Section 19 – Counterparts. Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the Parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. COUNTY shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

Section 20 – CONSULTANT Conduct: These Guidelines govern CONSULTANT while doing work on COUNTY property, as well as its employees, agents, consultants, and others on COUNTY property in connection with CONSULTANT's work or at CONSULTANT's express or implied invitation.

- **Courtesy and Respect:** COUNTY is a diverse government institution and it is critical that CONSULTANT and its employees conduct themselves in a manner that is lawful, courteous, businesslike, and respectful of all staff, guests, or visitors.
- **Language and Behavior:** CONSULTANT and its employees cannot engage in behavior that is rude, threatening, or offensive. Use of profane or insulting language is prohibited. Harassment of any type, including sexual harassment is strictly prohibited. Abusive, derogatory, obscene or improper language, gestures, remarks, whistling, cat calls or other disrespectful behavior cannot be tolerated. Roughhousing, fighting, fisticuffs, physical threats, destruction of property, vandalism, littering, or physical abuse of anyone on COUNTY property is not permitted under any circumstance.
- **No Weapons, Alcohol, or Drugs**: The use, possession, distribution, or sale of any weapon, alcohol, illegal drug, or controlled dangerous substance by CONSULTANT or its employees is prohibited. Offenders will be removed from COUNTY property and/or reported to law enforcement.
- **Smoking**: CONSULTANT and its employees are not permitted to smoke in or near any COUNTY buildings.
- **Fraternization**: CONSULTANT and its employees may not fraternize or socialize with COUNTY staff.
- **Appearance**: CONSULTANT and its employees are required to wear appropriate work wear, hard hats and safety footwear, as the case may be, while on the job. Articles of clothing must be neat and tidy in appearance, and cannot display offensive or inappropriate language, symbols or graphics. COUNTY has the right to decide if such clothing is inappropriate.

CONSULTANT is responsible for its employees, agents, consultants and guests. If prohibited conduct does occur, CONSULTANT will take all necessary steps to stop and prevent any future occurrence. Any breach of these conditions will result in the removal of the person responsible from COUNTY property and prohibited actions could result in the immediate termination of any or all of CONSULTANT's contracts with COUNTY.

Section 21 – Authority to Obligate. 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 bind and obligate such Party with respect to all provisions contained in this Agreement.

Section 22 – Law, Venue, Waiver of Jury Trial, Attorney's Fees. This Agreement and all the Contract Documents shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. In the event of any legal proceeding arising from or related to this Agreement; (1) venue for state or federal legal proceedings shall be in Marion County, Florida, (2) for civil proceedings, the parties consent to trial by the court and waive right to jury trial, (3) the prevailing party shall be entitled to recover all of its costs, including attorney fees. This section shall survive the termination of the Agreement.

Section 23 – Scrutinized Companies, pursuant to Section 287.135, F.S.

A. Certification.

1. If this Agreement is for One Million Dollars or more, CONSULTANT certifies that at the time it submitted its bid or proposal for this Agreement or before entering into this Agreement or renewing same, CONSULTANT was not then and is not now:
    a. On the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S., or
    b. Engaged in business operations in Cuba or Syria.
2. If this Agreement is for any amount, CONSULTANT certifies that at the time it submitted its bid or proposal for this Agreement or before entering into this Agreement or renewing same, CONSULTANT was not then and is not now:
    a. On the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or
    b. Engaged in a boycott of Israel.

B. Termination, Threshold Amount. COUNTY may, entirely at its option, terminate this Agreement if it is for One Million Dollars and CONSULTANT meets any of the following criteria.
1. Was entered into or renewed on or after July 1, 2011, through June 30, 2012, and CONSULTANT is found to meet any of the following prohibitions:
    a. Submitted a false certification as provided under Section 287.135(5), F.S., or
    b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.
2. Was entered into or renewed on or after July 1, 2012, through September 30, 2016, and CONSULTANT is found to meet any of the following prohibitions:
    a. Submitted a false certification as provided under Section 287.135(5), F.S.;
    b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.; or
    c. Been engaged in business operations in Cuba or Syria.
3. Was entered into or renewed on or after October 1, 2016, through June 30, 2018, and CONSULTANT is found to meet any of the following conditions:
    a. Submitted a false certification as provided under Section 287.135(5), F.S.;
    b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.;
    c. Been engaged in business operations in Cuba or Syria; or
    d. Been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel.
4. Was entered into or renewed on or after July 1, 2018, and CONSULTANT is found to meet any of the following prohibitions:
    a. Submitted a false certification as provided under Section 287.135(5), F.S.;
    b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.; or
    c. Been engaged in business operations in Cuba or Syria.

C. Termination, Any Amount. COUNTY may, entirely at its option, terminate this Agreement if it is for any amount and meets any of the following criteria.
1. Was entered into or renewed on or after July 1, 2018, and
2. CONSULTANT is found to have been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel.

D. Comply; Inoperative. The Parties agree to comply with Section 287.135, F.S., as it may change from time to time during the Term. The contracting prohibitions in this Section become inoperative on the date that Federal law ceases to authorize the State of Florida to adopt and enforce such contracting prohibitions.

Section 24 – Sovereign Immunity. Nothing in the Agreement shall be deemed to waive the sovereign immunity protections provided COUNTY pursuant to Florida law. Notwithstanding anything stated to the contrary in the Agreement, any obligation of COUNTY to indemnify CONSULTANT, if provided, is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes. This Section shall survive the termination of the Agreement. This section shall survive the termination of the Agreement.

Section 25 – On-Going Compliance. The Parties acknowledge that the Agreement may contain provisions prescribed by laws, statutes, and regulations that can change during the Term of the Agreement. The Parties understand and agree that the Agreement is intended to reflect and require the Parties' compliance with all laws at all times. The Parties expressly and specifically agree to perform the Agreement in full compliance with the governing laws, statutes, and regulations, as same may change from time to time during the term of this Agreement

Section 26 – Notices. The Agreement provides for Notices and all other communications to be in writing and sent by certified mail return receipt requested or by hand delivery. CONSULTANT's and COUNTY's representatives and addresses for notice purposes are:

CONSULTANT: Alfred Benesch & Company
1000 N. Ashley Drive, Tampa, FL 33602
CONTACT PERSON: Nilgun Kamp | Phone: 813-825-1225

COUNTY: Marion County Facilities Management
c/o Marion County, a political subdivision of the State of Florida
601 SE 25th Ave, Ocala, FL 34471

A copy of all notices to COUNTY hereunder shall also be sent to:

Procurement Services Director
Marion County Procurement Services Department
2631 SE 3rd St., Ocala, FL 34471

Alternatively, the parties may elect to receive said notices by e-mail. COUNTY hereby elects to receive all notices solely by email and designates its email address as procurement@marionfl.org. If CONSULTANT agrees to accept all notices solely by e-mail and acknowledges and accepts the inherent risks that come with accepting notices solely by e-mail, CONSULTANT may designate up to two (2) e-mail addresses: nkamp@benesch.com and bball@benesch.com. Designation signifies CONSULTANT's election to accept notices solely by e-mail.

IN WITNESS WHEREOF the Parties have entered into this Agreement, as approved by the Marion County Board of County Commissioners, on the date of the last signature below.

ATTEST:

3/21/2023
GREGORY C. HARRELL, DATE
MARION COUNTY CLERK OF COURT

MARION COUNTY, A POLITICAL SUB-DIVISION OF THE STATE OF FLORIDA

3/21/2023
CRAIG CURRY DATE
CHAIRMAN

FOR USE AND RELIANCE OF MARION COUNTY ONLY, APPROVED AS TO FORM AND LEGAL SUFFICIENCY

4/17/2023
FOR: MATTHEW G. MINTER, DATE
MARION COUNTY ATTORNEY

BCC APPROVED: 3/21/2023
23Q-041 | Transportation Impact Fee Update

WITNESS:

SIGNATURE
Elisabeth Schuck, AICP
PRINTED NAME

ALFRED BENESCH & COMPANY

April 13, 2023
BY: DATE
Robert E. Cursey, Jr., AICP
PRINTED:
Multimodal Group Manager, Principal Associate
ITS: (TITLE)

WITNESS:

SIGNATURE
Christina Gomez
PRINTED NAME