

BILL NO. 23-82

ORDINANCE NO. 23.82

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH RAFTELIS FINANCIAL CONSULTANTS, INC (DBA RAFTELIS) FOR A PUBLIC WORKS OPERATIONAL REVIEW AND ASSESSMENT PROJECT IN AN AMOUNT NOT TO EXCEED \$55,000.00

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City a Construction Contract with Raftelis Financial Consultants, INC (DBA Raftelis), under substantially the same or similar terms and conditions as set forth in "Exhibit A".

Section 2. Total expenditures or liability authorized under this Ordinance shall not exceed Fifty-Five Thousand Dollars. (\$55,000.00)

Section 3. The City Administrator is hereby authorized to take such further actions as are necessary to carry out the intent of this Ordinance and Contract.

Section 4. This Ordinance shall be in full force and effect from date of passage and approval by the Mayor.

READ FIRST TIME: November 16, 2023 READ SECOND TIME: November 16, 2023

I hereby certify that the above Ordinance No. 23.82 was duly passed on November 16, 2023, by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: 3

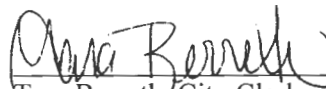
Nays: 3

Abstain: 0

Absent: 0

This Ordinance is hereby transmitted to the Mayor for his signature.

Nov. 16, 2023  
Date

  
Tara Berreth, City Clerk

Approved as to form:

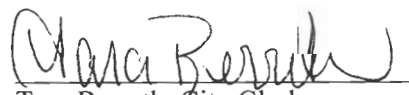
  
Cole Bradbury, City Attorney

I hereby approve Ordinance No. 22.82.

Nov. 16, 2023  
Date

  
Michael Harmison, Mayor  
*Mayor Harmison exercised his duties under 110.020 and voted affirmative to make Ordinance 23.82 with 4 ayes and 3 nays.*

ATTEST:

  
Tara Berreth, City Clerk



## **CITY OF OSAGE BEACH PUBLIC WORKS ASSESSMENT AGREEMENT**

**THIS PUBLIC WORKS ASSESSMENT AGREEMENT** (the "Agreement") states the terms and conditions that govern the contractual relationship between the City of Osage Beach, Missouri ("City") and Raftelis Financial Consultants, Inc. ("Contractor"), on the following terms.

### **I. TERMS**

1. **Definitions.** The following terms shall have these defined meanings:

- a. **"RFP"** shall mean the City's Request for Proposals: Public Works Operational Review and Assessment dated 07/14/2023.
- b. **"Work"** shall mean all of the work described in the "SCOPE OF SERVICES" in the RFP.
- c. **"Schedule"** shall mean the "SCHEDULE" set out in the RFP.

2. **Contractor's Obligations.**

- a. *Work.* Contractor hereby agrees to perform the Work upon the Schedule defined above.
- b. *Professionalism.* Contractor will exercise the care and skill ordinarily used by members of the subject profession practicing under similar circumstances (as defined by the appropriate licensing authority, professional standards, and/or relevant industry practices). Contractor understands that it will be perceived as a representative of the City and will ensure its personnel and any subcontractors will conduct themselves in a thoroughly professional and respectable manner while performing all Work for the City and while on-site. Contractor shall ensure its personnel and any subcontractors comply with all City policies while on-site. Contractor and its personnel and any subcontractors will comply with all reasonable instructions and requests by the City. City property and resources are to be used only in ways that are consistent with their lawful intended purpose.

- c. *Time.* If a specific time of performance of the Work is provided, that time shall control. If a specific time of performance is not provided, Contractor's obligation to perform the Work will be for a period which may reasonably be required for the completion thereof. If City has requested changes in the scope or character of the Work and a specific time was not included in such changes, the time for performance shall be adjusted equitably.
- d. *Insurance.* Contractor shall purchase and maintain insurance as set forth below:
  - i. Commercial General Liability insurance with a limit of \$1,000,000 for each occurrence and \$2,000,000 general aggregate;
  - ii. Workers Compensation and Employer's Liability insurance in accordance with statutory requirements, with a limit of \$1,000,000 for each accident;
  - iii. Professional Liability insurance on a claims-made basis in the amount of \$5,000,000 per claim and \$5,000,000 annual aggregate;
  - iv. Excess or Umbrella Liability insurance in the amount of \$5,000,000 per claim and \$5,000,000 annual aggregate; and
  - v. If Contractor is using a company-owned vehicle to perform the Work, Automobile Liability insurance with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.Upon request, Contractor shall cause City to be named as additional insured for any or all of such policies.
- e. *Licenses, Permits, Taxes.* Contractor must have or obtain a City merchant's license. Contractor shall be responsible for applying for, obtaining, and maintaining all licenses, permits, and other approvals required for itself, including but not limited to the Work. Contractor shall be responsible for paying all sales, income, property, and other taxes required to carry on its business.
- f. *Safety.* Contractor must have a formal safety-training program in place, which addresses issues associated with hazardous situations, proper lifting, operation of equipment, and use of personal protection equipment, and all OSHA Safety Requirements.
- g. *Communication.* Contractor will provide timely replies to City's inquiries and requests for information. Contractor's point of contact for this Agreement is: Michelle Ferguson, Vice President.

### 3. City's Obligations.

- a. *Payment.* City hereby agrees to pay Contractor for the Work as follows:
  - i. the sum not to exceed **\$55,000**, which includes professional fees and direct expenses incurred in performing the scope of services included in Attachment A. The parties understand that this sum is based upon the scope of work contained herein at Contractor's current standard hourly rate schedule included in Attachment B. Any expansion of the scope of work by the City shall involve discussion of and agreement about additional fees and time by both parties.

Said amounts shall be payable in monthly installments on the first Friday of the month following the month in which services were rendered. City will pay Contractor not more frequently than monthly unless otherwise agreed in writing.

- b. *Criteria and Direction.* City will provide Contractor with all criteria and full information as to City's requirements for the Work, including objectives, design, capacity, performance, and budgetary requirements and limitations.
- c. *Access.* Unless otherwise specified in the RFP, City will arrange for access to and make all provisions for Contractor to enter upon public and private property as required to perform the Work.
- d. *Cooperation.* City will examine alternative solutions, reports, drawings, specifications, and other documents presented by Contractor and render timely decisions pertaining to the documents. City will participate in conferences, meetings, bid openings, and other similar aspects of the Project as requested by Contractor.
- e. *Permitting and Approvals.* City will provide timely reviews, approvals, licenses, and permits from where it has jurisdiction over components or phases of the Work. Such approvals are contingent upon Contractor meeting the requirements therefor.
- f. City will provide timely replies to Contractor's inquiries and requests for information. City's point of contact for this Agreement is: Mike Welty, Assistant City Administrator.

## II. STANDARD CONDITIONS

The following conditions are standard in all City of Osage Beach contracts and are only to be modified with substantial justification, and then only as much as necessary to accommodate such justification.

4. **Appropriations.** The continuation of this Agreement is contingent upon annual appropriation of funds by the Osage Beach Board of Aldermen. In the event the Board of Aldermen shall not budget and appropriate, specifically with respect to this Agreement, on or before January 1, subsequent years of the contract moneys sufficient to make all payments under this Agreement, the City shall not be obligated to make those payments.
5. **Pre-Contract Expense.** The City shall not be obligated to pay or liable for any cost incurred by Contractor prior to execution of this Agreement. All costs to prepare and submit a response to this and any other RFQ, RFP, or IFB shall be borne by the proposer.
6. **Assignment or Transfer.** Neither this Agreement, nor any portion thereof, shall be transferred or assigned without formal written approval by the City.
7. **Discrimination Policy.** The City of Osage Beach advises the public that it does not discriminate on the basis of disability, race or color, national origin, religion, age, or sex in employment or the provision of municipal services. Contractor shall not discriminate on any prohibited basis and shall comply with all applicable employment laws.
8. **Laws, Ordinances, and Regulations.** Contractor shall conform to all Federal, State, and local regulations, ordinances, and laws applicable to Contractor, the City, or the subject matter of this Agreement. The City shall not be responsible for any fees, charges, money, or other obligations due as result of from any service provided under this Agreement. Contractor shall conform to all changes made to this Agreement as a result of any ordinance, law and/or directive issued by the Federal, State, or local authority having jurisdiction over this Agreement, Contractor, or the City.
9. **E-Verify.** If this Agreement is for an aggregate value in excess of \$5,000.00, Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection to the contracted services. Contractor shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection to the Work. See R.S.Mo. § 285.530.
10. **Anti-Israel Discrimination.** Contractor certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. See R.S.Mo. § 34.600.
11. **Indemnification by Contractor.** Contractor shall indemnify, save, and hold harmless the City, its employees, and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or

omission by Contractor or its employees, agents, subcontractors, or assignees arising out of this Agreement.

12. **No Indemnification by City.** Nothing in this Agreement shall be construed to require the City to indemnify Contractor. Such indemnification is illegal under Missouri law. See Mo. A.G. Opinion 138-87 (1987).
13. **Sunshine Law.** All material submitted to the City will likely become public record and will be subject to the Missouri Sunshine Law, R.S.Mo. Chapter 610. Any material requested to be treated as proprietary or confidential must be clearly identified and easily separable from other materials. Contractor must include justification for the request. The City's obligation to comply with the Sunshine Law supersedes any request by Contractor that material be treated as proprietary or confidential.
14. **Ownership of Work Product.** All documents and other work product created by Contractor under this Agreement shall become the property of City once the invoice for the preparation of such document or work product has been paid.
15. **Termination.** The City reserves the right to terminate this Agreement without cause by giving 30 days' written notice to Contractor. City may terminate this Agreement upon written notice of any violation of this Agreement if such violation is not cured within 7 calendar days of such notice. City may immediately terminate this Agreement for any material violation or any violation which creates a risk to the health, safety, or welfare of any person or property.
16. **Notices.** All formal notices or other documents required by this Agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at:

For City:

City Clerk  
1000 City Parkway  
Osage Beach, MO 65065

For Contractor:

Raftelis Financial Consultants, Inc.  
227 W. Trade St., Suite 1400  
Charlotte, NC 28202

City may also serve written notice to Contractor by personal delivery to any of its owners, officers, or employees.

17. **Necessary Documents.** The parties agree to execute and deliver without additional consideration such instruments and documents and to take such further actions as they may reasonably request in order to fulfill the intent of and give effect to this Agreement and the transactions contemplated thereby.

18. **Entire Agreement.** This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.
19. **Non-Waiver.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein.
20. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
21. **Governing Law; Venue for Disputes.** This Agreement was made in the State of Missouri and shall be interpreted under and governed by the laws of the State of Missouri. Any action arising out of this Agreement or its subject matter shall be filed in the Circuit Court for Camden County, Missouri or the Associate Division thereof and the parties hereby consent and agree to the exclusive personal and subject-matter jurisdiction of that Court.
22. **WAIVER OF RIGHT TO JURY TRIAL.** THE PARTIES HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND IRREVOCABLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER DOCUMENT OR TRANSACTION CONTEMPLATED HEREBY OR THEREBY, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY.
23. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies under or by reason of this Agreement.
24. **Severability.** If any provision in this Agreement shall be found to be void, the other provisions of this Agreement shall survive and remain enforceable.
25. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A facsimile or electronic (such as .PDF) copy of this Agreement or a signature thereto shall have the same force and effect as an original.
26. **Binding Effect.** This Agreement, subject to the above conditions of assignment, shall be binding upon and inure to the benefit of all parties and their respective legal representatives, successors, heirs, and assigns.

### III. SPECIAL CONDITIONS

The following conditions are special to this Agreement. Any Special Condition which conflicts with or varies a Standard Condition shall be strictly construed in favor of the City.

27. **Confidential Information.** Contractor acknowledges and agrees that in the course of the performance of the services pursuant to this Agreement, Contractor may be given access to, or come into possession of, confidential information from the City, of which information may contain privileged material or other confidential information. Contractor acknowledges and agrees, except as required by judicial or administrative order, trial, or other governmental proceeding, that it will not use, duplicate, or divulge to others any such information marked as "confidential" disclosed to Contractor by the City ("Confidential Information") without first obtaining written permission from the City. All tangible embodiments of such information shall be delivered to the City or the destination of such information by Contractor requested by the City. The City acknowledges Contractor has the right to maintain its own set of work papers which may contain Confidential Information.

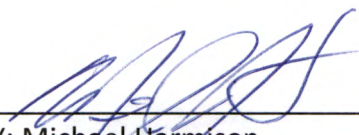
28. **Reliance on Data.** In performance of the services, it is understood that the City and/or others may supply Contractor with certain information and/or data, and that Contractor will rely on such information. It is agreed that the accuracy of such information is not within Contractor control and Contractor shall not be liable for its accuracy, nor for its verification, except to the extent that such verification is expressly a part of Contractor Scope of services.

#### IV. ACCEPTANCE

**THIS AGREEMENT CONTAINS A WAIVER OF THE PARTIES' RIGHTS TO TRIAL BY JURY. THE UNDERSIGNED HEREBY MUTUALLY RELINQUISH AND WAIVE THEIR RIGHT TO TRIAL BY JURY.**

**CITY:**  
**CITY OF OSAGE BEACH, MISSOURI**

**CONTRACTOR:**  
**RAFTELIS FINANCIAL CONSULTANTS, INC.**

  
BY: Michael Harmison  
ITS: Mayor  
Date 11/20/23

  
BY: Michelle Ferguson  
ITS: Michelle Ferguson  
Date 12/8/23

**Attest:**

  
BY: Tara Berreth  
ITS: City Clerk  
Date 11/20/23