

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE
CITY OF LAWRENCE
AND
RAFTELIS FINANCIAL CONSULTANTS, INC.

This Consulting Agreement (“Agreement”) is entered into this ___ day of April 2019 (hereinafter referred to as the effective date of the agreement) by and between the City of Lawrence, 6 East 6th Street, Lawrence, KS, 66044, (the “Client”) and Raftelis Financial Consultants, Inc., 227 W. Trade St., Suite 1400, Charlotte, NC, 28202 (the “Contractor” or “Raftelis”).

Witnesseth

WHEREAS, the Contractor has substantial skill and experience in water, wastewater and storm water finance, management, data analysis, and service delivery, and

WHEREAS, the Client desires to hire the Contractor and the Contractor desires to provide services to the Client,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions set forth herein.

Article 1. Statement of Work

Raftelis shall provide professional consulting services to prepare a cost of service review for the Client. Raftelis will perform these services as set forth in our proposal and included herein as Attachment A.

Article 2. Time for Completion

This agreement will commence upon approval by the Client and remain in effect for a period of 120 days. Further renewals of this Agreement are at the option of the Parties and shall be in writing.

Article 3. Compensation

Client shall pay to Raftelis for actual work performed, plus reimbursable expenses, the sum not to exceed \$47,700 as outlined in Attachment B. The parties understand that this sum is based upon the scope of work contained herein at Raftelis’s current standard hourly rate schedule included in Attachment B. Any expansion of the scope of work by the Client shall involve the discussion of additional fees by both parties and a written

Task Order describing the additional work to be performed and pricing thereof, as described in Article 4.

Raftelis shall submit invoices to the Client on a monthly basis for services rendered to the date thereof. Such invoices shall be supported by appropriate documentation; at a minimum, the task performed, the individuals working on such task, the level of each such individual, the individual's hourly rate of pay, and expenses incurred.

Each invoice will contain all hours and expenses from Raftelis for the month. Upon receipt of the monthly invoice, the Client will remit payment of same amount to the Raftelis within 30 days.

Article 4. Additional Services

At the Client's request, the Contractor may submit Task Orders for additional professional services that exceed the annual maximum compensation. Each Task Order submitted shall detail: (1) scope of work for the additional services, (2) period of services to be performed, and (3) method and amount of compensation. The Client shall provide written acceptance and authorization to the Contractor prior to the commencement of work on any proposed additional services. Each Task Order for additional services accepted and approved by the Client shall become part of this Agreement and shall be governed by the terms and conditions contained herein.

Article 5. Place of Performance

The Contractor shall be responsible for maintaining its own office facilities and will not be provided with either office facilities or support by the Client.

Article 6. Indemnification

The Contractor hereby agrees to indemnify the Client and to hold the Client harmless against any and all claims, action, or demands against the Client and against any and all damages for injury to or death of any person and for loss of or damage to any and all property arising out of the negligent acts, errors or omissions of the Contractor under this Agreement. Raftelis shall not be held responsible for any claims caused by the negligence of the Client.

Article 7. Insurance

The Contractor shall maintain the types and levels of insurance during the life of this Agreement as specified below. The Client will be named as additional insured on the

Contractor's Certificates of Insurance and the Contractor will provide the Client with these Certificates of Insurance.

Commercial general liability insurance - \$1,000,000 for each occurrence and \$2,000,000 in the aggregate

Comprehensive automobile liability insurance - \$1,000,000 combined single limit each occurrence

Workers Compensation insurance – Statutory limits

Professional liability insurance - \$2,000,000 in the aggregate

Excess or Umbrella Liability - \$2,000,000 in the aggregate

Article 8. Confidential Information

The Client acknowledges and agrees that in the course of the performance of the services pursuant to this Agreement, the Contractor may be given access to, or come into possession of, confidential information from the Client, of which information may contain privileged material or other confidential information. The Contractor acknowledges and agrees, except if required by judicial or administrative order, trial, or other governmental proceeding pertaining to this matter, to not use, duplicate, or divulge to others any such information belonging to the Client or disclosed to the Contractor by the Client without first obtaining written permission from the Client. "Confidential information" as used herein, includes information, materials, products, and deliverables developed during, and discoveries and contributions made by the Contractor in the performance of this Agreement. All tangible embodiments of such information shall be delivered to the Client by the Contractor upon termination hereof, or upon request by the Client, whichever occurs first. The Client acknowledges the Contractor has the right to maintain its own set of work papers which may contain confidential information.

Article 9. Independent Contractor Status

It is understood and agreed that the Contractor will provide the services under this Agreement on a professional basis as an independent contractor and that during the performance of the services under this Agreement, Raftelis's employees will not be considered employees of the Client within the meaning or the applications of any federal, state, or local laws or regulations including, but not limited to, laws or regulations covering unemployment insurance, old age benefits, worker's compensation, industrial accident,

labor, or taxes of any kind. The Contractor's employees shall not be entitled to benefits that may be afforded from time to time to Client employees, including without limitation, vacation, holidays, sick leave, worker's compensation, and unemployment insurance. Further, the Client shall not be responsible for withholding or paying any taxes or social security on behalf of the Contractor's employees. The Contractor shall be fully responsible for any such withholding or paying of taxes or social security.

Article 10. Reliance on Data

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

Article 11. Opinions and Estimates

The Contractor's opinions, estimates, projections, and forecasts of current and future costs, revenues, other levels of any sort, and events shall be made on the basis of available information and Raftelis's expertise and qualifications as a professional. The Contractor does not warrant or guarantee that its opinions, estimates, projections or forecasts of current and future levels and events will not vary from the Client's estimates or forecasts or from actual outcomes. The Contractor identifies costs, allocates costs to customer classes and provides rate models. It does not establish rates, which is the legislative responsibility of the Client.

Article 12. No Consequential Damages

To the fullest extent permitted by law, neither party shall be liable to the other for any special, indirect, consequential, punitive or exemplary damages resulting from the performance or non-performance of this Agreement notwithstanding the fault, tort (including negligence), strict liability or other basis of legal liability of the party so released or whose liability is so limited and shall extend to the officers, directors, employees, licensors, agents, subcontractors, vendors and related entities of such party.

Article 13. Reuse of Documents

All documents including drawings, calculations, work sheets, survey notes and specifications prepared by Raftelis pursuant to this Agreement are the property of the Client and shall be delivered to the Client at the completion or termination of the Agreement. Any reuse without specific written verification or adaptation by the Contractor will be at the

Client's sole risk and without liability or legal exposure to the Contractor, and the Client shall, to the extent permitted by law, indemnify and hold harmless the Contractor from all claims, damages, losses and expenses including attorney's fees arising out of or resulting there from.

Article 14. Termination of Work

This Agreement may be terminated as follows:

1. **By Client** (a) for its convenience on 30 days' notice to the Contractor, or (b) for cause, if the Contractor materially breaches this Agreement through no fault of Client and the Contractor neither cures such material breach nor makes reasonable progress toward cure within 15 days after Client has given written notice of the alleged breach to Raftelis.
2. **By the Contractor** (a) for cause, if Client materially breaches this Agreement through no fault of Raftelis and Client neither cures such material breach nor makes reasonable progress toward cure within 15 days after the Contractor has given written notice of the alleged breach to Client, or (b) upon five days' notice if Work under this Agreement has been suspended by either Client or the Contractor in the aggregate for more than 30 days.
3. **Payment upon Termination.** In the event of termination, the Contractor shall be compensated for all work performed prior to the effective date of termination.

Article 15. Notices

All notices required or permitted under this Agreement shall be in writing and shall be deemed deliverable when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

If for the Client:

City of Lawrence

6 East 6th Street
Lawrence, KS 66044

If for the Contractor:

Raftelis Financial Consultants, Inc.
Thomas A. Beckley
Senior Manager
3013 Main Street
Kansas City, MO 64108

Article 16. Compliance with Applicable Laws

The Contractor agrees not to discriminate in its employment practices and will render services under this Agreement without regard to race, color, religion, sex, national origin, age, veteran status, political affiliation, sexual orientation, gender identity or disabilities.

Any act of discrimination committed by the Contractor, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this Agreement.

Article 17. General Provisions

- A. Entire Agreement: This Agreement represents the entire and sole agreement between the Parties with respect to the subject matter hereof.
- B. Waiver: The failure of either Party to require performance by the other of any provision hereof shall in no way affect the right to require performance at any time thereafter, nor shall the waiver of a breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy available at law or in equity.
- C. Relationship: Nothing herein contained shall be construed to imply a joint venture, partnership, or principal-agent relationship between the Contractor and the Client; and neither Party shall have the right, power, or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing.

- D. Assignment and Delegation: Neither Party shall assign or delegate this Agreement or any rights, duties, or obligations hereunder without the express written consent of the other. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, legal representatives, and assignees of the Parties hereto.

- E. Severability: If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

- F. Governing Law: This Agreement shall be governed by, and construed in accordance with, the laws of the State of Kansas.

- G. Paragraph Headings: The paragraph headings set forth in this Agreement are for the convenience of the Parties, and in no way define, limit, or describe the scope or intent of this Agreement and are to be given no legal effect.

- H. Third Party Rights: Nothing in this Agreement shall be construed to create or confer any rights or interest to any third party or third party beneficiary. It is the intent of the parties that no other outside, non-party claimant shall have any legal right to enforce the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

City of Lawrence

By: _____
Signature

Title

Date

Raftelis Financial Consultants, Inc.

By:

John A. Kelly
Signature

Senior Manager
Title

April 2, 2019
Date

This is to certify that an appropriation in the amount of this Agreement is available therefore and that _____ has been authorized to execute the contract and approve all requisitions and change orders.

By _____

Title

Seal

ATTACHMENT A – PROJECT SCOPE

The following project scope is based on our discussions with City staff as well as our extensive experience with financial planning, cost of service studies, and rate model development for stormwater utilities across the country.

Task 0 – Project Initiation

The Project Initiation task will ensure that the project progresses in an efficient and deliberate manner. Task 1 will include a Kick-Off Meeting and the collection and review of all relevant data and documents.

TASK 0.1 – KICK-OFF MEETING WITH CITY STAFF

The Kick-Off Meeting provides a solid foundation for the project. The meeting serves as a forum in which City staff can provide input on the project's approach, work plan, schedule, and priorities. A successful meeting ensures that project participants are in mutual agreement as to the project's goals and expectations. RFC will develop a Kick-Off Meeting package that contains the meeting agenda and presentation materials to guide the discussion. We will review the data needed for the study during this meeting.

Included in this meeting will be the finalization of the project schedule to meet the City's requirements and objectives.

TASK 0.2 – DATA AND DOCUMENT REVIEW

As part of this task, RFC will also conduct interviews with City staff to obtain a thorough understanding of the current financial, operational, regulatory, and political environment for each utility. The operating, rate, and financial philosophies used to develop the current rate structures will be reviewed and discussed.

Historical information will be reviewed related to costs, customers, units of service (ERUs), capital spending, and revenues generated to gain a better understanding of recent trends in operating characteristics and to develop the information and materials required to facilitate later tasks.

Following our project approach is a preliminary data request list which contains items typically required for a study of this nature. Providing the data in advance will allow time for our review and ensure a productive Kick-Off Meeting.

TASK 0.3 – ONGOING PROJECT MANAGEMENT

The proposed project approach entails several distinct, yet interrelated, work efforts that will require effective coordination between City staff and the RFC Team. Our management approach stresses communication, teamwork, objectivity, and accountability for meeting project objectives. This task involves consistent and competent project management to ensure that all deadlines and objectives are met in a timely and efficient manner.

TASK 0.4 – INITIATION OF THE QUALITY ASSURANCE/QUALITY CONTROL PROCESS

The Project Team will initiate its QA plan during Project Initiation. The QA plan addresses two levels of review and oversight: a detailed technical review of the Models, documents, and deliverables and a second, broader conceptual review of the approaches and procedures used to develop the analyses. Our Project Director will have overall responsibility of the QA plan, which will include regular project reviews with our Project Manager and members of our Project Team as well as discussions with City staff.

Task 0 Deliverables:

- Kick-Off Meeting agenda
- Kick-Off Meeting presentation
- Kick-Off Meeting summary memorandum

Task 1 – Develop Financial Plan

We will develop a financial plan for the stormwater utility that projects operating and maintenance expense as well as capital expenditures over a multi-year forecast period. This financial forecast will be consistent with the financial forecasts we have previously developed for the water and wastewater utilities. These financial plans will provide the City with overall levels of revenue necessary to fund the stormwater utility over the multi-year forecast period, including overall revenue increases necessary.

The financial plan will also include a capital financing component to show how capital will be financed over the multi-year forecast period. The capital financing component will allow for scenario analysis of different capital plans to assess the impact of different levels of capital expenditures and timing of capital projects as well as different approaches to financing the improvements, including the potential use of debt if desired by the City.

We will meet with City Staff in Lawrence to review the draft financial plan and discuss all assumptions and outcomes to develop a proposed financial plan for the stormwater utility.

Task 2 Deliverable:

- Multi-year financial plan for stormwater utility, including capital financing plan

Task 2 – Stormwater Rate Determination

Based on the financial plans developed in Task 1 we will determine the appropriate stormwater rates to providing funding for the stormwater utility over the forecast period. We will provide a recommendation based on the City's existing equivalent residential unit ("ERU") based rate structure, which charges \$4.37 per ERU currently.

We will also discuss the City's objectives and examine if changes to the City's rate structure may be appropriate to more equitably recover the cost of stormwater services from the City's residents or to better address the City's pricing objectives for the stormwater utility. We expect that an ERU basis will remain, but there may be changes to the determination of ERU's that could be considered, to credit programs, or other policies related to how the City assesses and collects stormwater rates.

Task 2 Deliverables:

- ERU based stormwater rate consistent with existing methodology
- Memorandum outlining any proposed changes to the stormwater rates that may address the City's pricing objectives

Task 3 – Rate Model Development

Throughout the project we will develop an Excel based stormwater rate model consistent with the models previously developed for the water and wastewater utilities by Raftelis. This rate model will allow the City to update the financial plans and rate calculations on an ongoing basis as well as allow for the City to examine alternative scenarios related to operating and maintenance expenses as well as capital expenditures.

Task 3 Deliverables:

- Microsoft Excel based rate model for the City's future use and update

Task 4 – Meetings, Reports, and Presentations

In addition to the kick-off meeting with City staff discussed in Task 0 we will meet in Lawrence for periodic review meetings to review the proposed financial plans and stormwater rates before establishing proposed rates to be presented to the City's leadership.

We will prepare a draft report for the City outlining the project objectives, approach, methodology, assumptions, findings, and proposed rates. The City will be provided this draft report for their review and comment. We will then prepare a final report incorporating the City's comments and feedback.

This proposed scope and pricing includes one presentation of the findings of this study to the Lawrence City Council. We will prepare a Microsoft PowerPoint presentation that will be provided to City Staff for their review and comment prior to the City Council meeting.

Task 4 Deliverables:

- Draft Report in Microsoft Word and/or Adobe Acrobat format(s)
- Final Report in Microsoft Word and/or Adobe Acrobat format(s)
- Presentation for City Council in Microsoft PowerPoint

Schedule

The schedule for this project will be finalized with the City during the kick-off meeting in Task 0, we expect to complete the project through creation of the draft report in approximately six weeks, scheduling of the final report and presentation to City Council may be determined at the kick-off meeting.

Attachment B – Project Budget and Raftelis’ Standard Hourly Billing Rates

	Thomas Beckley, Project Manager	Collin Drat, Consultant	Administrative Support
Task 1 - Financial Plan	24	48	
Task 2 - Stormwater Rate Determination	12	24	
Task 3 - Rate Model Development	4	24	
Task 4 - Meetings, Reports and Presentations	24	40	8
	64	136	8
Hourly rates	\$ 260	\$ 205	\$ 75
Consultant Fees	\$ 16,640	\$ 27,880	\$ 600
Estimated Fees			\$ 45,120
Technology and Communication Charges			\$ 2,080
Travel and Other Expenses			\$ 500
Total Estimated Fees and Expenses			\$ 47,700

Raftelis’ Standard Hourly Billing Rates

<u>Position</u>	<u>Hourly Billing Rate **</u>
Chair	\$415
Chief Executive Officer/President	\$370
Executive Vice President	\$325
Vice President/Principal Consultant	\$290
Director of Governmental Services	\$290
Senior Manager	\$260
Director of Florida Operations	\$220
Manager	\$235
Director of Data Services	\$235
Senior Consultant	\$205
Consultant	\$180
Associate	\$150
Analyst	\$110
Administration	\$75
Technology/Communications Charge*	\$10

* Technology/Communications Charge – this is an hourly fee charged monthly for each hour worked on the project to recover telephone, facsimilie, computer, postage/overnight delivery, conference calls, electronic/computer webinars, photocopies, etc.