

**CITY OF MARATHON, FLORIDA
RESOLUTION 2012-62**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH RAFTELIS FINANCIAL CONSULTANTS, INC. FOR THE PREPARATION OF WASTEWATER AND STORMWATER FINANCIAL FORECAST AND RELATED SERVICES IN AN AMOUNT NOT TO EXCEED \$50,000.00; FINDING THAT SAID PROFESSIONAL SERVICES AGREEMENT IS EXEMPT FROM THE CITY'S PURCHASING POLICIES AND PROCEDURES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Resolution 2003-134, the City Council of the City of Marathon, Florida (the "City"), adopted Purchasing Policies and Procedures after determining that it was fiscally prudent and in the best interests of the City's residents for the City to adopt policies and procedures for City employees and officials regarding the purchasing and acquisition of contractual services, equipment, goods, professional services and other similar types of services; and

WHEREAS, the City wishes to approve a professional services agreement with Raftelis Financial Consultants, Inc. ("Raftelis") for the preparation of wastewater and stormwater financial forecast and related services (the "Professional Services Agreement"), and finds that the Professional Services Agreement is exempt from the City's purchasing policies and procedures because of the specialized professional services Raftelis will be providing.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and are incorporated herein by this reference.

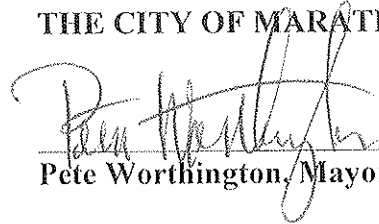
Section 2. The City Council finds that the Professional Services Agreement between the City and Raftelis, for the preparation of the wastewater and stormwater financial forecast and related services, is exempt from the City's purchasing policies and procedures because of the specialized professional services Raftelis will be providing.

Section 3. The Professional Services Agreement between the City and Raftelis attached hereto as Exhibit "A" is hereby approved. The City Manager or is authorized to execute the Agreement and expend budgeted funds on behalf of the City.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 26TH DAY OF JUNE, 2012.

THE CITY OF MARATHON, FLORIDA


Pete Worthington, Mayor

AYES: Cinque, Keating, Ramsay, Snead, Worthington
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:


City Attorney

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

THIS AGREEMENT is made between **Raftelis Financial Consultants, Inc.**, a Florida corporation, (hereinafter the “Consultant”), and the **City of Marathon, Florida** a Florida municipal corporation, (hereinafter the “City”).

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for a Wastewater and Stormwater Financial Forecast (the “Project”); and

WHEREAS, the City desires to engage the Consultant to perform the services specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the City agree as follows.

1. Scope of Services/Deliverables.

- 1.1 The Consultant shall furnish professional services to the City as set forth in the Scope of Services for the Project as specified in Exhibit “A,” attached to this Agreement.
- 1.2 The “Scope of Services” includes a Project Schedule for the Project, which includes a breakdown of tasks, timeline and deliverables to the City.

2. Term/Commencement Date.

- 2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect for one year from the date of execution unless earlier terminated in accordance with Paragraph 8. The City Manager may extend the term of this Agreement up to an additional 180 days by written notice to the Consultant
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in the Project Schedule, unless extended by the City Manager.

3. Compensation and Payment.

- 3.1 The City shall pay to RFC the sum not to exceed \$50,000, which includes professional fees and direct reimbursable expenses incurred in performing the scope of services, as outlined in Exhibit “A.” The parties understand that this sum is based upon the scope of work contained herein at RFC’s current standard hourly rate schedule included in Exhibit “B.” Any expansion of the scope of work by the City shall involve the discussion of additional fees by both parties.

- 3.2 The Consultant shall invoice the City upon the completion of each task or deliverable in accordance with the Project Schedule or on a monthly basis if the Project Schedule does not otherwise specify.
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Subconsultants.**

- 4.1 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Project.
- 4.2 Any subconsultants used on the Project must have the prior written approval of the City Manager or his designee.

5. **City's Responsibilities**

- 5.1 Furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the City.
- 5.2 Arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

- 6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a financial consultant under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Project, it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any stormwater or wastewater issues in the City.

8. **Termination.**

8.1 The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Consultant, or immediately with cause.

8.2 Upon receipt of the City's written notice of termination, Consultant shall stop work on the Project unless directed otherwise by the City Manager or his designee.

8.3 In the event of termination by the City, the Consultant shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in a hard copy and electronic format within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverages shall include a minimum of:

9.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

9.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

- 9.3 Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- 9.4 Professional Liability: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 9.5 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

10. **Nondiscrimination.**

- 10.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys Fees and Waiver of Jury Trial.**

- 11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

- 12.1 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's negligent performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.
- 12.2 The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Roger T. Hernstadt, City Manager
City of Marathon, Florida
9805 Overseas Highway
Marathon, Florida 33050

With a Copy to: John Herin, Jr., Esq
Gray Robinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Ft. Lauderdale, Fl 33301

For The Consultant: Marco H. Rocca
Director of Florida Operations
Raftelis Financial Consultants, Inc.
976 Lake Baldwin Lane, Suite 204
Orlando, Fl 32814

14. **Governing Law.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. **Ownership and Access to Records and Audits.**

16.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

- 16.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.
- 16.3 The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.
17. **Nonassignability.**
- 17.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Consultant, and such firm's familiarity with the City's area, circumstances and desires.
18. **Severability.**
- 18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
19. **Independent Contractor.**
- 19.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.
20. **Compliance with Laws.**
- 20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.
21. **Waiver**
- 21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions**

22.1 Any terms or conditions of this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. **Prohibition Of Contingency Fees.**

23.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Counterparts**

24.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by Consultant by and through its Dir. of Florida Operations, whose representative has been duly authorized to execute same.

Attest:

CITY OF MARATHON

Diane Clavier
Diane Clavier, City Clerk

By: Roger Hernstadt
Roger Hernstadt, City Manager

Date: June 26, 2012

Witness:

CONSULTANT

By: Antly Heuston

By: Marco Roca

Date: July 9, 2012

Date: July 9, 2012

EXHIBIT "A"

SCOPE OF SERVICES

Project.

Raftelis Financial Consultants, Inc. (RFC) shall provide a five year Wastewater and Stormwater Financial Forecast and associated professional services with regard to utility rate and financial policy.

Scope of Services.

The following outlines the Scope of Services by Task:

1. Data acquisition and Review: RFC will coordinate with City staff to obtain current and recent wastewater and stormwater financial data including customer billing data, assessment data, capital expenditures, loan accruals, loan documents, and other pertinent information in order to complete the financial analysis as enumerated herein.
2. Wastewater and stormwater assessment revenue analysis: This task includes a review of recently assessed parcels as a basis for future revenue projections.
3. Wastewater customer billing and revenue analysis: This task includes current and recent customer trends (EDUs, customers, and usage) and projected five year revenue from existing rates. This task will consider the remaining connection schedule and any future development projections available from the City.
4. Capital funding analysis: RFC will review the City's capital expenditure schedules to date and projected remaining capital expenditures. RFC will also review existing loan draws and other capital funding sources for the purpose of updating the City's capital financing plan.
5. Summary of Existing and Projected Debt Service Obligations: RFC will summarize the City's existing debt service along with future debt service schedules based on estimated loan terms and other information provided by the City and its financial advisor.
6. Projection of Operating Expenses: RFC will review the year to date expenditure trends and project operating expenses on a budget line-item basis for a five year period. Individual projections for the wastewater and stormwater systems will be provided.
7. Revenue Sufficiency and Debt Service Analysis: A five year revenue sufficiency and debt service analysis will be completed based on the forecast of wastewater and stormwater revenues at existing rates. Any projected system-wide adjustments to rates will be identified. This task does not include rate design to recommend specific

adjustments to wastewater base charges, volume charges, volume charge caps, and stormwater or wastewater assessments.

8. Financial Forecast Report. RFC will summarize the results in a draft report for review by staff and final report for distribution to the City Council. The financial forecast will provide the basis for the City to complete a capital financing plan for SRF loan application. RFC is available to assist the City with the actual completion of the forms required by FDEP for a SRF capital financing plan as a separate task, if requested.
9. New development fees. RFC will review the embedded capital investment on a unit (EDU) basis for all customers, along with any incremental costs that are specific to new development that has not been assessed according to its planned use. RFC will calculate such fees consistent using established impact fee methodology. RFC will coordinate with staff on the most appropriate basis for development fee basis (i.e. EDUs, connections, units, etc.), and the timing of such payments (e.g. development review, CO, etc.). RFC will provide an option to develop an accrued revenue fee that captures the cumulative cost of carrying unused capacity by new development. RFC will provide a draft report for review by staff and a final report.

The scope of services anticipates one (1) onsite meeting by RFC staff and attendance at one (1) public meeting.

Project Phasing and Not-to-Exceed Budget:

The scope of services outlined above will be completed in the following phases with associated budget amounts shown below. The project schedule is contingent on the City’s Notice-to-Proceed date, data availability, and ongoing City project schedule requirements:

Project Phase	Description	Not to Exceed
I. Data Collection and Review (includes Task 1)	Data collection and review of utility policies, data collection, project schedule, and objectives. Completion within 14 days of Notice-to-Proceed.	\$3,500
II. Customer Analysis (includes Task 2 and 3)	Wastewater customer billing analysis and revenue forecast. Completion within 30 days of Notice-to-Proceed.	\$7,500
III. Capital funding analysis (includes Task 4 and 5)	Five-year capital finance plan, renewal & replacement funding plan, debt service projections, and assessment projections. Completion within 45 days of Notice-to-Proceed.	\$7,500
IV. Financial Forecast (includes Task 6 through 8)	Five-year operating expense projections, revenue requirement projections, revenue sufficiency analysis, debt service coverage analysis, and financial forecast report. Completion within 60	\$12,500

	days of Notice-to-Proceed.	
V. Development fee analysis <i>(includes Task 9)</i>	Review of development and redevelopment trends, existing assessment methodology, calculation of fees for new development and redevelopment, recommendation and report. Completion within 90 days of Notice-to-Proceed.	\$12,000
VI. Assist City with other utility financial issues and policies <i>(Tasks as to be assigned by City)</i>	During the course of the project, City staff may request additional support regarding specific utility policy issues. Project schedule based on City requirements through December 31, 2012	\$7,000
	Total Not-to-Exceed Total Budget	\$50,000

Compensation shall be based on actual time and materials utilized billed on a monthly basis and not-to-exceed the total project budget.

EXHIBIT "B"

RFC 2012 BILLING RATES

<u>Position</u>	<u>Hourly Billing Rate</u>
Vice President	\$250
Senior Manager	\$225
Director of FI Operations	\$200
Manager/Senior Consultant	\$175
Consultant	\$155
Associate	\$130
Analyst	\$95
Administration	\$60
Technology Expense	\$10 *

* Technology/Communications Expense – this is an hourly fee charged monthly for each hour worked on the project to recover telephone, facsimile, computer, postage/overnight delivery, conference calls, electronic/computer (i.e. WebEx, GoToMeetings), photocopies, etc. This charge is in lieu of direct billing for such costs that will occur during the course of the Project.