

**PROFESSIONAL SERVICES AGREEMENT BETWEEN INDIAN RIVER COUNTY, FLORIDA AND RAFTELIS
FINANCIAL CONSULTANTS, INC.
FOR
A WATER AND WASTEWATER IMPACT FEE STUDY**

This Consulting Agreement (“Agreement”) is entered into this ___ day of _____, 2017 (hereinafter referred to as the Effective Date) by and between Indian River County, Florida (the “County” or “Client”) and Raftelis Financial Consultants, Inc., 227 W. Trade Street, Suite 1400, Charlotte, NC 28202 (“Raftelis” or “Consultant”).

Witnesseth

WHEREAS, Consultant has substantial skill and experience in water and wastewater finance, management, and pricing; and

WHEREAS, the Client desires to hire Raftelis, and Raftelis 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 utility rate study for the Client. Raftelis will perform these services as set forth in more detail in Attachment A.

Article 2. Time for Completion

This Agreement will commence upon approval by the Client and remain in effect for a period of one year. 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 the sum not to exceed Sixty-Five Thousand One Hundred Dollars (\$65,100.00), which includes professional fees and direct expenses incurred in performing the scope of services outlined in Attachment A. This sum is based upon the scope of work contained herein at Raftelis’ current standard hourly rate schedule included in Attachment B. .

The Consultant shall invoice the Client 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. The Client shall pay Consultant in accordance with the Local Government Prompt Payment Act.

Article 4. Additional Services

At the Client’s request, Raftelis may submit change orders or proposals for additional professional services. Each change order or proposal 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 Raftelis prior to the commencement of work on any proposed additional services. Each change order or proposal 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 in this Agreement.

Article 5. Place of Performance

Raftelis 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

Raftelis hereby agrees to indemnify the Client, its commissioners, officers, employees, and agents and to hold the Client, its commissioners, officers, employees, and agents 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 Raftelis under this Agreement. Raftelis shall not be held responsible for any claims caused by the negligence of the Client.

Article 7. Insurance

Consultant shall maintain the types and levels of insurance during the life of this Agreement as specified below. The Client will be named as additionally insured on the Raftelis' Certificates of Insurance, and Raftelis will provide the Client with these Certificates of Insurance by July 28, 2017.

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-\$1,000,000 in the aggregate

Excess or Umbrella Liability-\$3,000,000 in the aggregate

Article 8. Public Records Compliance

A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. Raftelis shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the 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 or as otherwise provided by law.
- (3) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor, or keep and maintain public records required by the County to perform the service.

If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

B. IF RAFTELIS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424

publicrecords@ircgov.com

**Indian River County Office of the County Attorney
1801 27th Street
Vero Beach, FL 32960**

C. Failure of Raftelis to comply with these requirements shall be a material breach of this Agreement.

Article 9. Independent Contractor Status

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

Article 11. Opinions and Estimates

Raftelis' 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' expertise and qualifications as a professional. Raftelis 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. Raftelis 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. Termination of Work

This Agreement may be terminated as follows:

1. **By Client** (a) for its convenience on 30 days' notice to Raftelis, or (b) for cause, if Raftelis materially breaches this Agreement through no fault of Client, and Raftelis 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 Raftelis** (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 Raftelis 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 Raftelis in the aggregate for more than 30 days.
3. **Payment upon Termination.** In the event of termination, Raftelis shall be compensated for all work performed prior to the effective date of termination.

Article 14. 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:

Vincent M. Burke, PE
Director
Indian River County Department of Utility Services
1801 27th Street
Vero Beach, FL 32960

If for Raftelis:

Marco H. Rocca, CMC
Principal Consultant
Raftelis Financial Consultants, Inc.
950 S. Winter Park Drive
Suite 240
Casselberry, FL 32707

Article 15. Compliance with Applicable Laws

Raftelis agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, national origin, veteran status, political affiliation or disabilities.

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

Article 16. 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 Raftelis 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 Florida. Venue and jurisdiction shall be in Indian River County, Florida, Circuit Court.
- 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.

INDIAN RIVER COUNTY, FLORIDA

By: _____
Signature

Joseph E. Flescher
Print Name

Chairman, Board of County Commissioners
Title

Date

RAFTELIS FINANCIAL CONSULTANTS, INC.

By: Marco H. Rocca
Signature

Marco H. Rocca
Print Name

Principal Consultant
Title

July 11, 2017
Date

**ATTACHMENT A
WATER AND WASTEWATER IMPACT FEE STUDY**

**SECTION I
SCOPE OF SERVICES**

This impact fee review and update study addresses the County's objective that water and wastewater impact fees materially reflect the current cost, less applicable credits, per level of service (LOS) and are in compliance with F.S. 163.31801.

METHODOLOGY

This impact fee review and update utilizes a "Buy-In/Consumption" based methodology, which assumes that new service connections utilize portions of both existing and new facilities. The methodology provides that costs for Treatment and Transmission assets for each functional service are identified on a per gallon per day of capacity basis, by using adjusted facility costs and average day capacity of such facilities. Adjusted facility costs consist of local current cost plus financing expenses less amounts provided by other revenue sources.

PROJECT APPROACH

The Consultant will coordinate with County staff to obtain or develop historic, current and projected information, data and assumptions necessary to formulate findings and conclusions relative to the stated methodology.

Activities include:

- a) Identifying original and current costs associated with water and wastewater Treatment and Transmission assets;
- b) Reviewing the historic and forecasted funding for water and wastewater Treatment and Transmission assets;
- c) Formulating total asset costs and appropriate credit provisions from other revenue sources;
- d) Reviewing the design capacity and actual demand characteristics of the water and wastewater systems;
- e) Reviewing the ordinance provisions for application of Treatment and Transmission impact fees;
- f) Development of a computer rate model to manage data and calculate the Treatment and Transmission impact fees;
- g) Reviewing findings with County staff; and
- h) Meetings, discussions and presentations to County staff.

ITEM 1. IMPACT FEE STUDY TASKS

1. **Project Initiation** – A meeting with County staff will be held to initiate the study process and in general includes:
 - a) Discussion of primary goals and objectives;
 - b) Data availability and acquisition;
 - c) Administrative policies and procedures;
 - d) Future funding assumptions;
 - e) Current and future economic constraints;
 - f) Capital improvements;
 - g) Consultant/County communications; and
 - h) Time schedules, meetings and deliverable formats.
2. **Data Collection** – A request will be made to obtain data and information concerning: (i) the current costs for property, plant and equipment; (ii) probable near term system expansion improvements; (iii) system component capacities and associated design criteria relative to maximum day, average day, line loss, inflow/infiltration, and/or other related capacity criteria; (iv) system and customer demands,

flows and equivalencies; (v) sources and related terms of funding for existing and proposed system capacity expansion improvements; and (vi) other data as such becomes evident.

3. **Data Analysis** – Capital costs for existing and proposed property, plant and equipment will be reviewed and accumulated pursuant to major functional system categories, (i.e., source of supply, treatment, transmission, disposal, general plant, etc). Original costs may be adjusted to current replacement costs pursuant to an appropriate nationally published construction inflation index or current cost information maintained by the County, County’s Utility Engineer and/or Consulting Engineer. System and customer demands, capacities and relevant criteria will be reviewed to identify the appropriate determinants for use in the development of each impact fee. Existing and proposed financing costs associated with expansion related facilities will be identified and included as appropriate. County staff will be included in the process of clarifying information and data concerning the costs, capacities, useful lives and condition of the existing facilities, probable near term system expansion capital improvements and customer demands. Upon completion of the data analysis, a meeting will be scheduled with County staff to review and obtain concurrence with the findings.
4. **Impact Fee Development** – The development of impact fees will be based on the information and data obtained and developed for this study. The approach, in addition to current facility costs, will include necessary adjustments to reflect financing costs and credits as applicable. Additionally, a schedule will be developed comparing existing and proposed single family water and wastewater impact fees of the County to those of nearby communities.
5. **Level of Service Appropriateness** – A billing frequency, engineering design and industry data will be utilized in reviewing the appropriateness of the LOS criteria assigned to an equivalency for each utility service.
6. **Presentation of Preliminary Findings** – A meeting with County staff will be requested to present the findings associated with this Scope of Service items 1 through 5. The objective of the meeting will be to obtain concurrence any direction from County staff with respect to the salient items affecting the preparation of a draft report.
7. **Draft Report** – Pursuant to consideration of comments from County staff concerning the preliminary findings, a draft report will be prepared containing discussions, tables, schedules and supporting documentation of the study process, methodology, approach, facility costs, development of impact fees, comparisons, findings and conclusions. The draft report will be provided to County staff for review and comments in electronic format.
8. **Draft Report Meeting** – One meeting will be held with County staff to present the draft report. It is anticipated that upon completion of the draft report meeting County staff will provide sufficient level of comments and directions to finalize the report.
9. **Final Report** – A signed electronic copy of the final report will be provided to the County.
10. **Assist with Draft Ordinance** – Assist County staff with preparation of draft ordinance/resolution together with providing reviews and comments of the final ordinance/resolution as prepared by County.
11. **Public Presentation**– Attendance at one public hearing to presenting the findings and respond to questions from the County Commission.

Deliverables for Items 1 and 2:

- 1) **Data request letter.**
- 2) **Draft Report.**

- 3) PowerPoint presentations as applicable for scheduled public meetings.
- 4) Draft ordinance provisions and/or comments.
- 5) Final Report.

ITEM 2. ADDITIONAL SERVICES

Additional Services will be provided as specifically requested by the County for related matters concerning impact fees, such as but not limited to: development of reclaimed water impact fees; preparation and attendance at public workshop meeting; additional meetings including individually with County Commissioners and/or representatives of concerned organizations; meetings with County staff not included in the above Scope of Service Items 1 through 11; modification to the impact fees after the preparation of the draft report; request to fully draft portions of the ordinance; and/or calculation of special circumstances.

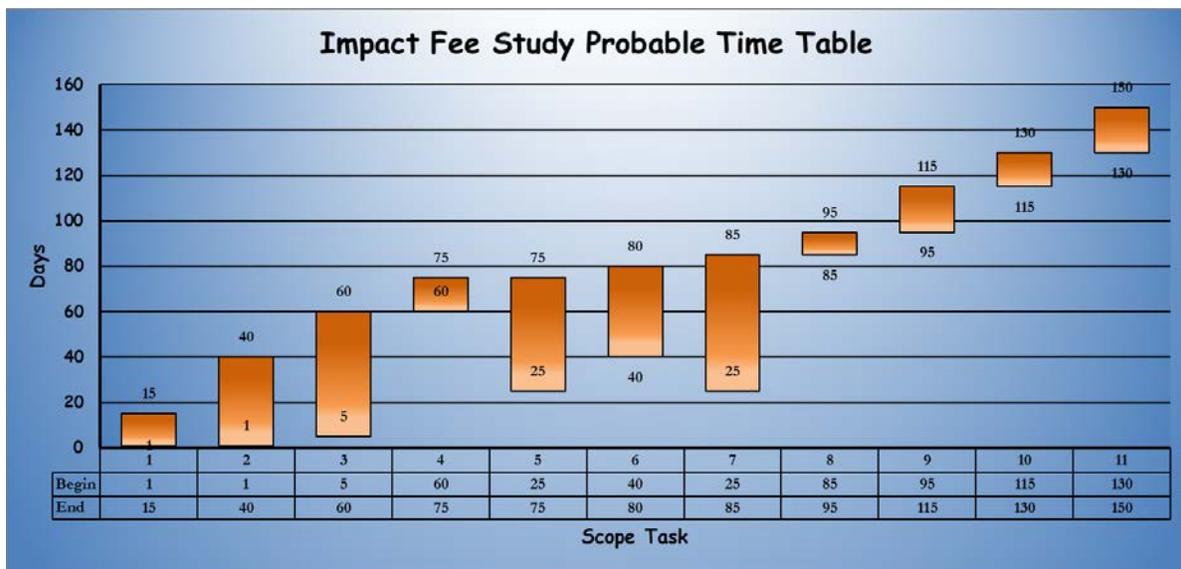
ITEM 3. ITEMS TO BE FURNISHED AT NO EXPENSE TO THE CONSULTANT

The County will assist the Consultant by furnishing, at no cost to the Consultant, all available pertinent information including but not limited to listing of all utility fixed assets by functional system (water and wastewater) with date of original installation, original cost, size, capacity, type of material if applicable, funding, agreements, ordinances, codes, and any other data relative to performance of the above services for the project. It is agreed and understood that the accuracy and veracity of said information and data may be relied upon by the Consultant without independent verification of the same.

The County will designate in writing a person to act as the County's representative with respect to the services to be performed for this project. Such person shall have complete authority to transmit instructions, receive information, interpret and define the County's policies and decisions with respect to materials, equipment, elements and systems pertinent to the Consultant's services.

**SECTION II
TIME OF PERFORMANCE**

Scope of Services for Item I will be completed within one hundred and fifty (150) calendar days from receipt of Notice to Proceed except for delays beyond the reasonable control of the Consultant. Item I Study Tasks 1 through 8 of the Scope of Services are anticipated to be completed within ninety (90) days. Item I Study Tasks 9 through 11 and Item II of the Scope of Services will be completed as mutually agreed. The probable time table by tasks for the study is provided below in the graph.



SECTION III COMPENSATION

For Item 1 of the Scope of Services the Consultant will be paid based on the Hourly Rate Schedule, with the amount not to exceed Sixty-Five Thousand One Hundred Dollars (\$65,100.00) including reimbursable expenses and as per the services authorized and performed in accordance with Section I of the Agreement.

For Item 2 of the Scope of Services, Additional Services, compensation will be as mutually agreed and issued in the form of a change order.

Attachment B - Raftelis' 2017 Billing Rates

<u>Position</u>	<u>Rate</u>
Administrative Support Personnel	\$62
Technician	\$98
Associate	\$136
Consultant	\$165
Senior Consultant	\$187
Manager	\$200
Senior Manager	\$255
Principal Consultant	\$213
Senior Manager	\$255