

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
RAFTELIS FINANCIAL CONSULTANTS, INC.**

THIS AGREEMENT is made and entered this ___ day of April, 2022, by and between Pueblo, a Municipal Corporation (hereinafter referred to as "Client") and Raftelis Financial Consultants, Inc., a North Carolina corporation authorized to do business in the State of Colorado (hereinafter referred to as "Consultant") for Consultant to render professional financial consulting and related ancillary services for Client with respect to Project 22a-017, 2022 Financial Plan Update and EPA Financial Assessment, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES

(a) Consultant shall satisfactorily perform the consulting services for the Project described in more detail in Schedule 1 attached hereto and incorporated herein by reference (the "Scope of Services"). Such services shall include all usual and customary professional financial consulting services including any required reports, plans, assessments, etc.

(b) To the extent Consultant performs any of the Project work through subcontractors or subconsultants, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subcontractors or subconsultants as it is for services performed directly by Consultant or Consultant's employees.

(c) To the extent Consultant requires access to private property to perform its services hereunder, Consultant shall be required to make arrangements to obtain such access. However, in the event Client has already secured access for Consultant to any such property through a right of entry agreement, access agreement, letter of consent or other instrument, Consultant shall fully comply with and be subject to the terms and conditions set forth therein. A copy of any such instrument will be provided to Consultant upon request.

SECTION 2. CONSULTANT'S RESPONSIBILITIES

(a) Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including reports and other services, irrespective of Client's approval of or acquiescence in same.

(b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission; except that Consultant hereby irrevocably waives and excuses Client and Client's attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute, whether now existing or hereafter enacted.

(c) Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.

(d) Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall complete all work prior to December 31, 2022 and perform work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of Project work.

(e) Before undertaking any work or incurring any expense which Consultant considers beyond or in addition to the Scope of Work described in Schedule 1 or otherwise contemplated by the terms of this Agreement, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of this Agreement, (ii)

the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. The compensation for such authorized work shall be negotiated, but in the event the parties fail to negotiate or are unable to agree as to compensation, then Consultant shall be compensated for its direct costs and professional time at the rates set forth in Schedule 2 attached hereto.

SECTION 3. FEES FOR SERVICES; PAYMENT

(a) Client will pay to Consultant as full compensation for all services required to be performed by Consultant under this Agreement, except for services for additional work or work beyond the scope of this Agreement, the maximum sum of U.S. \$54, 042.00, computed as set forth in Schedule 2.

(b) Consultant shall submit periodic, but not more frequently than monthly, applications for payment, aggregating to not more than the maximum amount set forth above, for actual professional services rendered and for reimbursable expenses incurred. Applications for payment shall be submitted based upon the hourly rates and expense reimbursement provisions set forth in Schedule 2 attached hereto and shall contain appropriate documentation that such services have been performed and such expenses incurred. Thereafter, Client shall pay Consultant for the amount of the application within 45 days of the date such application is received.

(c) No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time or similar expenses unless otherwise provided and listed in Schedule 2.

(d) No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.

(e) Compensation for authorized work beyond the scope of this Agreement shall be governed by the provisions of Section 2(e).

(f) In the event services under this Agreement are extended beyond December 31, 2022 and to be performed in more than one fiscal year or are subject to annual appropriation, Consultant acknowledges that funds only in the amount of initial appropriation are available and it shall confirm availability of funds before proceeding with work exceeding initial and subsequent annual appropriations.

SECTION 4. CLIENT'S RESPONSIBILITIES

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.

(b) Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy, nor to contract for additions or obligations exceeding a value which is the lesser of \$5000 or 5% of the maximum contract price.

(c) Client shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.

(d) Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 46 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

SECTION 5. TERMINATION

(a) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress.

(b) Upon termination of this Agreement for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered and reasonable costs incurred to date of termination; together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(c) In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of (a) the reasonable value of completed work to Client or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed and reimbursable expenses reasonably incurred, prior to date of termination.

(d) Consultant's professional responsibility for its completed work and services shall survive any termination.

SECTION 6. SITE ACCESS

In the event the Project will require access to property not under the control of Client, Consultant and Consultant's employees and consultants shall obtain all additional necessary approval and clearances required for access to such property. Client shall assist Consultant in obtaining access to such property at reasonable times but makes no warranty or representation whatsoever regarding access to such property. Notwithstanding the foregoing, Consultant understands and agrees that entry to some property by Consultant may be subject to compliance by Consultant with the terms and conditions of an access agreement in accordance with section 1(c) of this Agreement.

SECTION 7. USE OF DOCUMENTS

(a) Plans, drawings, designs, specifications, reports and all other documents prepared or provided by Consultant hereunder shall become the sole property of Client, subject to applicable federal grant requirements, and Client shall be vested with all rights therein of whatever kind and however created, whether by common law, statute or equity. Client shall have access at all reasonable times to inspect and make copies of all notes, designs, drawings, specifications, and all other technical data or other documents pertaining to the work to be performed under this Agreement. In no event shall Consultant publish work product developed pursuant to this Agreement except (i) with advance written consent of Client, which consent may be granted or withheld in Client's sole and absolute discretion and (ii) in full compliance with the requirements of this Agreement and applicable federal regulations.

SECTION 8. INSURANCE AND INDEMNITY

(a) Consultant agrees that it shall procure and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph (b).

(b) The minimum insurance coverage which Consultant shall obtain and keep in force is as follows:

(i) Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the Client.

(ii) Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this agreement/contract and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by him and all his subcontractors under the agreement/ contract, to be written on a comprehensive policy form. This insurance shall be written in amounts not less than \$1,000,000 for each occurrence and aggregate for personal injury including death and bodily injury and \$1,000,000 for each occurrence and aggregate for property damage. This policy of insurance shall name the City of Pueblo, its agents, officers and employees as additional insureds. This policy shall have all necessary endorsements to provide coverage without exclusion for explosion and collapse hazards, underground property damage hazard, blanket contractual coverage, as well as Owner's and Contractor's Protective Liability (OCP) coverage. The policy shall also provide coverage for contractual liability assumed by Consultant under the provisions of the Agreement/Contract, and "Completed Operations and Projects Liability" coverage.

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000 in a form and with a deductible acceptable to owner.

(iv) Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the agreement/contract and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.

(c) Consultant agrees to hold harmless, defend and indemnify Client from and against any liability to third parties, arising out of negligent acts or omissions of Consultant, its employees, subcontractors and consultants.

SECTION 9. SUBCONTRACTS

(a) Client acknowledges that Consultant is the prime contractor and the only party with whom Client has a contractual relationship under this Agreement. To the extent Consultant performs any Project activities through subconsultants or subcontractors, Consultant shall contractually bind each of its subconsultants and subcontractors by subcontract agreement to all of the terms of this Agreement which are for the benefit of Client, and Client shall be a third-party beneficiary of those subcontract provisions.

(b) Consultant shall indemnify and defend Client from all claims and demands for payment for services provided by subcontractors of Consultant.

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

SECTION 10. MISCELLANEOUS

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client, City of Pueblo Wastewater Department, Attention: Andra Ahrens, 1300 S. Queens Ave., Pueblo, CO 81001 or to Consultant, Raftelis Financial Consultants, Inc., 227 West Trade Street, Suite 1400, Charlotte, NC 28202. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

(b) Entire Agreement. This instrument contains the entire agreement between Consultant and Client respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either Client or Consultant in relation thereto not expressly set forth in this instrument and its attachments is null and void. In the case of any conflict between the terms of this Agreement for Professional Services and terms of Schedule 1 or any other attachment hereto, the terms of this Agreement shall govern.

(c) Successors and Assigns. This Agreement shall be binding on the parties hereto and on their successors and assigns; provided, however, neither this Agreement, nor any part thereof, nor any moneys due or to become due hereunder to Consultant may be assigned by it without the written consent of Client, which consent may be withheld in Client's sole and absolute discretion. Any assignment or attempted assignment in violation of this subsection shall be void.

(d) Amendments. No amendment to this Agreement shall be made nor be enforceable unless made by written amendment signed by an authorized representative of Consultant and by Client in accordance with the requirements of Section 4(b) of this Agreement or upon authorization of Client's governing board.

(e) Choice of Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Colorado. Any unresolved dispute arising from or concerning any breach of this Agreement shall be decided in a state court of competent jurisdiction located in Pueblo, Colorado.

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or age. Consultant shall endeavor to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void, and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

SECTION 11. STATE-IMPOSED MANDATES PROHIBITING WORKERS WITHOUT AUTHORIZATION FROM PERFORMING WORK

(a) At or prior to the time for execution of this Contract, Consultant shall submit to the Purchasing Agent of the City its certification that it does not knowingly employ or contract with a "Worker Without Authorization", as that term is defined within §8-17.5-101 (9), C.R.S. (herein "Worker Without Authorization"), who will perform work under this Contract and that the Consultant will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

- (b) Consultant shall not:
- (i) Knowingly employ or contract with a Worker Without Authorization to perform work under this Contract;
 - (ii) Enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with a Worker Without Authorization to perform work under this Contract.
- (c) The following state-imposed requirements apply to this Contract:
- (i) The Consultant shall have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-Verify Program or Department Program.
 - (ii) The Consultant is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
 - (iii) If the Consultant obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with a Worker Without Authorization to perform work under this Contract, the Consultant shall be required to:
 - A. Notify the subcontractor and the Purchasing Agent of the City within three (3) days that the Consultant has actual knowledge that the subcontractor is employing or contracting with a Worker Without Authorization; and
 - B. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (c)(iii)A. above, the subcontractor does not stop employing or contracting with the Worker Without Authorization ; except that the Consultant shall not terminate the contract with the subcontractor if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a Worker Without Authorization.
 - (iv) The Consultant is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as “CDLE”) made in the course of an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.
- (d) Violation of this Section by the Consultant shall constitute a breach of contract and grounds for termination. In the event of such termination, the Consultant shall be liable for City’s actual and consequential damages.
- (e) Nothing in this Section shall be construed as requiring the Consultant to violate any terms of participation in the E-Verify Program.

SECTION 12. PERA LIABILITY

Consultant shall reimburse the City for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees’ Retirement Association (“PERA”) for salary or other compensation paid to a PERA retiree performing contracted services for the City under this Agreement. The Consultant shall fill out the Colorado PERA Questionnaire attached hereto and submit the completed form to City as part of the signed Agreement.

(Signature section on following page.)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY OF PUEBLO, A MUNICIPAL CORPORATION

RAFTELIS FINANCIAL CONSULTANTS, INC.

By _____
Naomi Hedden, Director of Purchasing

By: _____
Name/Title: _____

Attest: _____
City Clerk

[S E A L]

BALANCE OF APPROPRIATION EXISTS FOR THIS CONTRACT AND FUNDS ARE AVAILABLE.

Director of Finance

APPROVED AS TO FORM:

City Attorney

Attachments: Schedule 1: Scope of Services
 Schedule 2: Fee Schedule
 Additional Information for Agreement

SCHEDULE 1

Scope of Services

Excerpt from Proposal to the City of Pueblo dated March 21, 2022, pages 1 - 3

2022 Financial Plan Update and EPA Financial Assessment

Basic Services

Raftelis will complete the following Basic Services to update the City's wastewater financial plan and complete the Environmental Protection Agency's (EPA) Financial Capability Assessment (FCA). This includes analysis of the relative affordability services excluding and including Selenium mitigation requirements required by the EPA and the Colorado Department of Public Health and Environment (CDPHE). Raftelis will use the City's existing financial planning model to complete the Basic Services. If requested, Raftelis will develop a separate financial planning model as an optional service.

Task 1 – Project Orientation

- a. Data Request. Provide data request list detailing information needed to complete study.
- b. Project Orientation Workshop. Meet with City representatives to review data request list status, discuss pertinent City policies, confirm study objectives and expectations, and finalize study schedule.

Task 2 – Financial Plan Update

- a. Revenue under Existing Rates. Determine revenue from existing 2022 rates for the 11-year forecast period 2022 through 2032.
- b. Revenue under Adopted Rates. Determine revenue under adopted 2022 – 2024 rates for the 11-year forecast period 2022 through 2032.
- c. Revenue from Miscellaneous Charges. Determine revenue from plant investment fees and sanitary sewer collection fees, and other miscellaneous revenue sources during forecast period.
- d. Operating Expense Projections. Project operation and maintenance expenses (O&M) based on:
 - o Line-item budget and cost trends
 - o Rates of growth
 - o Changes in personnel and salary requirements
 - o Changes in operations
- e. Capital Improvement Program Funding. Identify sources of funds applicable to the capital improvement program (CIP) that result in lowest impact on utility rates. Separate CIP into collection system and treatment plant projects.
- f. Revenue Requirements. Project revenue requirements including O&M, debt service, and routine and major capital improvements for each year of forecast period.
- g. Financial Plan Scenarios. Prepare up to three (3) cash flow scenarios that vary the timing and amount of revenue adjustments needed to meet revenue requirements, maintain debt service coverage and adequate reserves, and fund the CIP.
- h. Financial Plan Workshop. Facilitate one (1) meeting with City representatives to review findings of financial plan.

Task 3 – EPA Financial Capacity Assessment

- a. Identify available census and City data to support analysis, previous City analysis on income and other available demographic information to support the wastewater bill affordability assessment.
 - b. Evaluate affordability of wastewater utility services using EPA guidelines documented in the *CSO Guidelines for Financial Capacity Assessment and Schedule Development* issued in 1997, updated in 2014, and augmented the *Proposed 2022 Clean Water Act Financial Capacity Assessment Guidance*.
 - a. Current residential bill as a percent of City-wide median household income (MHI)
 - b. Forecasted residential bill as a percent of forecasted City-wide MHI that excludes Selenium mitigation capital improvements, debt service and O&M using forecasts future requirements and projected increases to rates over the 11-year forecast period developed in Task 2.
 - c. Forecasted residential bill as a percent of forecasted City-wide MHI that includes Selenium mitigation capital improvements, debt service and O&M using forecasts future requirements and projected increases to rates over the 11-year forecast period developed in Task 2.
 - d. Include other metrics as necessary such as the Financial Capability Indicator (FCI) and/or the Lowest Quintile Poverty Indicator (LQPI)
 - c. Evaluate secondary financial capacity indicators the current bill and forecasted bills excluding and including Selenium mitigation capital projects. Secondary factors will use an EPA rating criteria of Strong (3), Mid-Range (2) and Weak (1) for capacity areas as follows:
 - a. City bond rating for revenue bonds (if recent issue is available) and General Obligation Bonds
 - b. Overall net debt as a percent of full market property value
 - c. Unemployment rate
 - d. City MHI relative to the United States MHI
 - e. Property tax as a percent of full market property value
 - f. Property tax revenue collection rate
 - g. Historical and projected population trends
 - h. Household size, including household size with incomes in the Lowest Quintile
 - d. The results of the assessment will be document in a technical memorandum. Raftelis will issue one (1) draft technical memorandum and one (1) final technical memorandum incorporating City feedback and comments. It is anticipated that the final document will be incorporated as an appendix to the report completed in Task 4, but may also serve as a stand-alone document.
 - e. Financial Capacity Workshop. Facilitate one (1) meeting with City representatives to review Task 3 findings and draft technical memorandum.
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Task 4 – Reports

- a. Draft Report. Prepare one (1) version of draft report that documents study assumptions, procedures, findings and recommendations.
- b. Final Report. Prepare final report to reflect comments received from City staff.

(Continue to next page.)

SCHEDULE 2

Fee Schedule

Excerpt from Proposal to the City of Pueblo dated March 21, 2022, pages 1 - 3

Fee Estimate

Raftelis will complete the Basic Services tasks for a not-to-exceed fee of \$54,042. Our fee includes labor costs using our standard hourly billing rates (Exhibit 3) and direct expenses, at cost. The following tabulation shows the fee and hours by task.

Task Description	Hours	Cost
1. Project Orientation	37	\$8,125
2. Financial Plan	54	12,200
3. Financial Capacity Assessment	89	20,345
4. Reports	54	13,372
Total	255	\$54,042

Hourly Fee Schedule

Position	Hourly Billing Rate
Executive Vice President	\$350
Principal Consultant	\$275
Senior Manager	\$285
Manager	\$250
Senior Consultant	\$220
Consultant	\$190
Associate	\$160
Administration	\$85
Technology/Communications Charge ^(a)	\$10

(a) Applicable to each hour worked on the project to recover telephone, facsimile, computer, postage/overnight delivery, conference calls, electronic/computer webinars, photocopies, etc.