

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE
NORMAN UTILITIES AUTHORITY
AND
RAFTELIS FINANCIAL CONSULTANTS, INC.

This Consulting Agreement (“Agreement”) is entered into this 12th day of May, 2015 (hereinafter referred to as the effective date of the agreement) by and between the Norman Utilities Authority, (the “Client”) and Raftelis Financial Consultants, Inc., 1031 South Caldwell Street, Suite 100, Charlotte, NC 28203 (“RFC”).

Witnesseth

WHEREAS, RFC has substantial skill and experience in water, wastewater and stormwater finance, management, and pricing, and service delivery, and

WHEREAS, The Client desires to hire RFC and RFC 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

RFC shall provide professional consulting services to prepare a Fee Study & Analysis of the City of Norman Wastewater Excise Tax on New Development, Water/Wastewater Connection Fee Amounts, and Proportion & Distribution of Connection Fee Amounts Related to Funding City Water & Wastewater Infrastructure Costs (the Study) for the City of Norman, Oklahoma. RFC will complete these services as set forth in its response to RFP-1415-34 and included herein as Attachment A. Additionally, RFC agrees that its Project Management Structure shall ensure any public presentations made related to the Study will be led by Rick Giardina, Project Manager.

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 RFC the sum not to exceed \$48,540, which includes professional fees and direct expenses incurred in performing the scope of services, as well as an hourly technology expense reimbursement, outlined in Attachment B. 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 Attachment B. Any expansion of the scope of work by the Client shall involve the discussion of additional fees by both parties.

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

Article 4. Additional Services

At the City's request, RFC may submit proposals for additional professional services. Each 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 RFC prior to the commencement of work on any proposed additional services. Each 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 herein.

Article 5. Place of Performance

RFC 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

RFC 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 RFC under this Agreement. RFC shall not be held responsible for any claims caused by the negligence of the Client.

Article 7. Insurance

RFC 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 RFC's Certificates of Insurance and the RFC 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 - \$3,000,000 in the aggregate

Article 8. Confidential Information

RFC acknowledges and agrees that in the course of the performance of the services pursuant to this Agreement, RFC 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.

RFC acknowledges and agrees, except if required by judicial or administrative order, trial, or other governmental proceeding pertaining to this matter, that it will not use, duplicate, or divulge to others any such information belonging to or disclosed to RFC 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 RFC in the performance of this Agreement. All tangible embodiments of such information shall be delivered to the Client by RFC upon termination hereof, or upon request by the Client, whichever occurs first. The Client acknowledges RFC 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 RFC 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, RFC'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. RFC'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 RFC's employees. RFC 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 RFC with certain information and/or data, and that RFC will rely on such information. It is agreed that the accuracy of such information is not within RFC's control and RFC shall not be liable for its accuracy, nor for its verification, except to the extent that such verification is expressly a part of RFC's scope of services.

Article 11. Opinions and Estimates

RFC'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 RFC's expertise and qualifications as a professional. RFC 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. RFC 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 RFC pursuant to this Agreement are the property of Client and shall be delivered to Client at the completion or termination of the Study. Any reuse without specific written verification or adaptation by RFC will be at Client's sole risk and without liability or legal exposure to RFC, and Client shall indemnify and hold harmless RFC 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 RFC, or (b) for cause, if RFC materially breaches this Agreement through no fault of Client and RFC 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 RFC.
2. **By RFC** (a) for cause, if Client materially breaches this Agreement through no fault of RFC and Client neither cures such material breach nor makes reasonable progress toward cure within 15 days after RFC 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 RFC in the aggregate for more than 30 days.
3. **Payment upon Termination**. In the event of termination, RFC 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:
Steve Lewis
General Manager
Norman Utilities Authority
201 West Gray
Norman, Oklahoma 73069

If for RFC:

Richard D. Giardina
Executive Vice President
Raftelis Financial Consultants, Inc.
1031 S. Caldwell St.
Suite 100
Charlotte, NC 28203

Article 16. Compliance with Applicable Laws

RFC 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 RFC, 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 RFC 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 Oklahoma.
- 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.

Norman Utilities Authority

Approved as to form and legality this ____ day of _____, 2015.


General Counsel

By:

Signature
Chairperson

Title


Date

APPROVED BY CITY OF NORMAN LEGAL DEPARTMENT
BY  DATE 5/16/15

Attest: Brenda Hall, Secretary

Raftelis Financial Consultants, Inc.

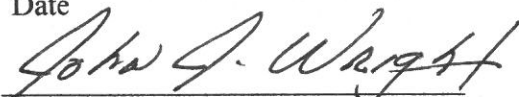
By:


Signature

Executive Vice President
Title

5/15/15

Date



Witness

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

By _____

Title

Seal

Attachment A – RFP – 1415-34

Attachment B – RFC’s Billing Rates

<u>Position</u>	<u>Hourly Billing Rate **</u>
Chair	\$400
Chief Executive Officer/President	\$375
Chief Operating Officer	\$305
Executive Vice President	\$300
Vice President/Principal Consultant	\$270
Senior Manager	\$240
Director of Management Consulting	\$260
Director of Florida Operations	\$205
Manager	\$220
Director of Data Services	\$220
Senior Consultant	\$190
Consultant	\$170
Associate	\$140
Analyst	\$100
Administration	\$70
Technology/Communications Charge*	\$10

* Technology/Communications Charge – 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 webinars, photocopies, etc.

** For services related to the preparation for and participation in deposition and trial/hearing, the standard billing rates listed above will be increased by 50%.