



February 13th, 2025

Demetris Pressley, CSM
Chief Administrative Officer
Town of Eatonville
307 East Kennedy Blvd.
Eatonville, FL 32751

Subject: Proposal to Provide a Stormwater Utility Revenue Sufficiency Study

Dear Mr. Pressley:

Raftelis Financial Consultants, Inc. ("Raftelis") is pleased to submit this proposal in response to the Town of Eatonville's (the "Town") request for a proposal to provide consulting services associated with the development of a Stormwater Utility Revenue Sufficiency Study. Based on our discussions, Raftelis will perform a rate study for the stormwater system. This Task Authorization is pursuant to the terms and conditions of the City of Bartow Master Professional Consulting Services Agreement (RFQ No. CM2023-24-01), dated April 29, 2024 between the City of Bartow and Raftelis (the "Piggyback Agreement") that provides for ongoing utility rate and management consulting services. A copy of the Piggyback Agreement is attached as Attachment D. Based on our understanding of the needs of the City, we propose the following:

PROJECT TEAM AND BILLING RATES

With respect to the performance of this engagement, Henry Thomas will be the Project Director and Shawn Ocasio will be the overall Project Manager and primary contact with the Town. Other analysts and administrative personnel will be utilized during the course of the engagement as needed. The direct labor hourly billing rates relative to this engagement are shown in Attachment A.

SCOPE OF SERVICES

The scope of services for this work order is included herein and shown in Attachment B. The Stormwater Utility Revenue Sufficiency Study is anticipated to be completed within approximately 180 days from the date of receipt of the contract approval and notification to proceed from the Town.

COMPENSATION AND BILLING

Based on the scope of services as summarized herein in Attachment A and the direct hourly labor billing rates as identified on Attachment B, we propose establishing a not-to-exceed contract budget of \$34,700 to provide consulting services associated with the performance of the Stormwater Utility Revenue Sufficiency Study. Attachment C provides a detailed breakdown of the proposed budget by task.

This project budget amount includes the direct cost of personnel anticipated to be assigned to the project as well as any other direct costs such as travel, telephone, and copying, printing and shipping charges. The costs incurred by Raftelis for such other direct costs, if any, will be billed to the Town based on the standard unit costs or reimbursement schedule as reflected in Attachment B. It is proposed that Raftelis will bill monthly for services relative to this engagement based on the hourly amount of time spent by the project team members and any the other direct costs incurred that may be required for the engagement. No additional services above the cost estimate will be performed without the prior written authorization of the Town.

TERM OF AGREEMENT

The terms of this proposed agreement and the associated direct hourly labor billing rates for Raftelis personnel shall be in effect and continue for twelve (12) months after the date of execution of this agreement.

ADDITIONAL TERMS AND CONDITIONS

Additional terms and conditions, that are made part of this proposed agreement, are set forth in Attachment D, which is made a part of this proposal.

We appreciate the opportunity to be of service to the Town.

Sincerely,



Henry L. Thomas
Vice President
407-628-2600
hthomas@raftelis.com

Accepted By:

Town of Eatonville, Florida

Name

Title

Date

ATTACHMENT A

RAFTELIS FINANCIAL CONSULTANTS

SCHEDULE OF DIRECT LABOR HOURLY RATES AND STANDARD COST RATES

DIRECT LABOR HOURLY RATES

Project Team Title	Direct Labor Hourly Rates [*]
Executive Vice President	\$400.00
Vice President	\$360.00
Senior Manager	\$320.00
Manager	\$285.00
Senior Consultant	\$250.00
Consultant	\$220.00
Associate	\$185.00
Administrative	\$100.00

[*] These rates will be in effect for calendar year 2025 and will then increase annually by 3% unless specified otherwise by contract.

STANDARD COST RATES

Expense Description	Standard Rates [*]
Mileage Allowance – Personal Car Use Only	IRS Standard Mileage Rate
Reproduction (Black and White) (In-House)	\$0.05 per Page
Reproduction (Color) (In-House)	\$0.25 per Page
Reproduction (Contracted)	Actual Cost
Computer Time	\$0.00 per Hour
Telephone Charges	Actual Cost
Delivery Charges	Actual Cost
Lodging / Other Travel Costs	Actual Cost
Meals	Not-to-Exceed per Employee: \$8.00 – Breakfast \$12.00 – Lunch \$25.00 – Dinner
Subconsultant Services	Actual Cost plus 5.0%
Other Costs for Services Rendered	Actual Cost

[*] Standard cost rates effective twelve months after the date of execution of the Agreement; where applicable, rates will be adjusted by not more than the net percentage change (but not less than 0%) in the Consumer Price Index – Urban Consumers per annum (rounded to the nearest dollar) or as mutually agreed between parties for invoices rendered after each anniversary date of each year thereafter until project completion or termination of the Agreement between the parties. Any Standard Rate adopted by policy by Client will be substituted for the rates shown above.

ATTACHMENT B

TOWN OF EATONVILLE STORMWATER UTILITY REVNUUE SUFFICIENCY STUDY

SCOPE OF SERVICES

The consulting services under this Work Order to be provided by Raftelis Financial Consultants, Inc. (Raftelis) for the Town of Eatonville (the “Town”) shall include services associated with preparing a stormwater revenue sufficiency study.

- 1) *Presentation to Town Council on Stormwater Billing Approaches* – Raftelis will participate in one (1) onsite presentation to the Town Council at the start of the study regarding billing for stormwater service as a non-ad valorem assessment compared to on the monthly utility bill. The pros and cons of each method will be discussed along with other implementation considerations.
- 2) *Data Request and Data Gathering* - Raftelis will prepare a data request for statistical and financial information to be compiled by the Town. Data that will be requested includes: i) historical customer statistical data; ii) planned capital improvements; iii) existing equipment and replacement schedules; iv) utility ordinances, rules, and procedures; iv) stormwater master plans; v) budgeted and historical operating revenues and expenses; and vi) other information as deemed necessary by Raftelis to adequately complete the study. This task will also include one (1) onsite project kickoff meeting with Town Staff to develop the goals and schedule for the project as well as discuss any questions the Town may have regarding the data requests.
- 3) *Development of Customer and Revenue Forecast* – Based on information provided by the Town and the analysis of historical trends, Raftelis will develop a forecast of customer account and growth by class under existing rates for a five-year period. This forecast period will start with Fiscal Year 2025. The customer forecast will be developed by customer class (i.e., residential, commercial, etc.) to the extent of data availability to assist in the calculation of utility rate revenues for the evaluation of the financial needs of the utility system.
- 4) *Development of Projected Revenue Requirements and Proposed Rate Adjustments (Financial Forecast)* - Raftelis will prepare a forecast of the Town’s stormwater system net revenue requirements for the same forecast period outlined in Task 2 above. The net revenue requirement includes projected operating expenses, debt service payments, transfers, and other expenditures of the stormwater system. This forecast will also include a funding projection for stormwater capital improvements and capital equipment replacement. Additionally, the Town’s compliance with its coverage obligations associated with its loan covenants will also be reviewed. Based on the net revenue requirements identified, rate adjustments will be projected during the forecast period. Additionally, it is assumed that the Town will be changing approaches for billing for stormwater service from the monthly utility bill to a non-ad-valorem assessment on the annual property tax bill. This change in billing approach will be reflected in the projection of future revenues as a part of this task.
- 5) *Rate Comparisons with Other Utilities* - Raftelis will survey other neighboring municipalities and provide a comparison of stormwater fees. The comparisons will include both residential and commercial customer classes. The commercial comparisons will include a sample of various sized commercial development. The rates of other municipalities will be compared with both the Town’s existing and the proposed stormwater rates.
- 6) *Report and Briefing Document Preparation* – Raftelis will prepare a letter report delineating the analyses, assumptions and recommendations reached with respect to the sufficiency of the existing

rates and the proposed rates for the forecast period. The financial forecast update report will be provided to the Town in draft form for comment with the final report being delivered to the Town Council for their consideration and approval. This task also includes the development of a PowerPoint presentation to present the results of the study to the Town Council.

- 7) *Meetings* – Raftelis will attend two (2) working meetings with the Town staff. In addition, Raftelis will attend up to one (1) public meeting to present the stormwater rate recommendations to the Town Council for approval.

LIST OF DELIVERABLES

The deliverables to be provided in this engagement include the following items:

- Data Request
- Five-Year Stormwater System Financial Forecast
- Projected Stormwater Rate Adjustments
- Rate Comparison with Other Jurisdictions
- Rate Study Report
- Briefing Document for Presentation to Town Council

ADDITIONAL SERVICES

During the course of this study, the Town may request that Raftelis perform additional services that would extend beyond the budget set forth in this Work Order. The following is an example of additional services that Raftelis considers being in addition to what is described in the above of services:

1. Measurement of impervious surface area statistics on a system-wide or individual basis.
2. Attendance of meetings in addition to what is referenced in this scope of services.
3. Preparation of reports or any analysis related to the issuance of Stormwater System revenue bonds or SRF loans.
4. Third party presentations related to litigation, expert witness services, and similar services.
5. Performance of modifications to the rate study analysis due to the receipt of new information after substantial completion or due to delays in the project schedule that are not due to Raftelis.

ATTACHMENT C

**Town of Eatonville
Stormwater System**

Cost Estimate Associated With Stormwater Utility Revenue Sufficiency Study

Line No.	Description	Task Ref.	Vice President	Senior Manager	Consultant	Clerical and Administration	Totals
1	Direct Labor Rates		\$ 360.00	\$ 320.00	\$ 220.00	\$ 100.00	
	<u>Rate Study:</u>						
2	Presentation to Town Council on Stormwater Billing Approaches	1	1	2	0	0	3
3	Data Request and Data Gathering	2	0	4	8	0	12
4	Development of Customer and Revenue Forecast	3	0	4	8	0	12
5	Development of Projected Revenue Requirements and Proposed Rate Adjustments	4					-
6	Projection of Other Revenues	4	0	1	2	0	3
7	Operating Expense Projections	4	0	4	8	0	12
8	Capital Improvement Program Funding Analysis	4	0	4	8	0	12
9	Projection of Other Revenue Requirements	4	0	1	3	0	4
10	Debt Compliance Analysis	4	0	2	1	0	3
11	Development of Net Revenue Requirements and Revenue Adequacy	4	2	4	2	0	8
12	Rate Comparisons with Other Utilities	5	0	1	6	0	7
13	Report and Briefing Document Preparation (Draft and Final)	6	3	16	4	4	27
	<u>Project Meetings:</u>						
14	Billing Approach Presentation (1 Meeting)	1	1	1	0	0	2
15	Project Kickoff Meeting (1 Meeting)	2	1	1	0	0	2
16	Working Sessions with Town Staff (2 Meetings)	7	2	4	2	0	8
17	Presentation to Town Council (1 Meeting)	7	2	2	0	0	4
18	<u>Project Management</u>	All	2	4	0	2	8
19	Total Hours		14	55	52	6	127
20	Direct Labor Cost		\$ 5,040	\$ 17,600	\$ 11,440	\$ 600	\$ 34,680
21	Average Hourly Rate						\$ 273.07
	<u>Other Direct Costs</u>						
22	Other (e.g., Report / Copy Charges, Telephone, Other Travel Costs)						\$ 20
23	Total Other Direct Costs						\$ 20
24	Total Project Cost						\$ 34,700

ATTACHMENT D

CITY OF BARTOW, FLORIDA MASTER PROFESSIONAL CONSULTING SERVICES AGREEMENT

This *Master Professional Consulting Services Agreement* (“*Master Agreement*”) is made between the City of Bartow, Florida, a Florida municipal corporation (“*City*”) and the following professional consulting services vendor:

Vendor Name and Address:

Raftelis Financial Consultants, Inc.
341 North Maitland Avenue, Suite 300
Maitland, Florida 32751

(“*Vendor*”).

WHEREAS, the issued *City of Bartow Bid Package RFQ No. CM2023-24-01* (“*RFQ*”) for the purpose of soliciting qualification statements from professional services firms interested in entering into a contract for engineer, design, professional consulting and other professional services with the City for various continuing contract matters and/or specifically named or identified projects described therein; and

WHEREAS, in compliance with the protocol prescribed by the Florida *Consultants’ Competitive Negotiation Act* (“*CCNA*”), codified at § 287.055 of the Florida Statutes, Vendor was selected by the City’s governing body as a qualified short-listed firm to perform the professional consulting services envisioned by the *RFQ*; and

WHEREAS, this *Master Agreement* is the result of the “Competitive Negotiation” phase of the *CCNA* protocol and is determined by the parties to be “fair, competitive and reasonable” for the City and its citizens; and

WHEREAS, the professional consulting services needs for the City to be performed by the Vendor are described more fully in the scope of work exhibit attached hereto as Exhibit ‘A’ (“*Master Agreement Scope of Work*”); and

WHEREAS, the City intends to fulfill its project needs by assigning task orders to the Vendor pursuant to the terms and conditions of this *Master Agreement*; and

WHEREAS, Vendor has agreed to provide professional consulting services to the City upon the terms and conditions as hereinafter set forth;

NOW THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the exchange of which is both acknowledged and deemed sufficient by the parties as binding, and *subject always* to availability of funding as determined by the City’s annual appropriations process specified in § 6.01 of the *Charter of the City of Bartow*, the City agrees to retain Vendor and Vendor agrees to perform professional consulting services for the City on a Task Order basis, and as described in the *RFQ*, upon the following terms and conditions:

ARTICLE I INITIAL PROVISIONS

1.1 Incorporation of Recitals

The foregoing recitals are found factually true by the parties and are incorporated in this *Master Agreement* as if set forth herein in full.

1.2 Agreement Not Exclusive

Vendor acknowledges that this *Master Agreement* does not constitute an exclusive agreement with the City for the performance of professional consulting services and that the City has or may enter into multiple contracts with multiple vendors covering the same or similar continuing contract services or specific project-related services, depending on the circumstance, in compliance with the CCNA and applicable Florida law.

1.3 Time of the Essence in Completion of Work

- (a) Vendor understands and acknowledges that **time is of the essence in completion** of all professional consulting services work assigned under this *Master Agreement* and the City may incur damages if such work is not completed on time. The Vendor shall at all times carry out its duties and responsibilities as expeditiously as possible, consistent with the level of professional skill and care required hereunder and in accordance with any design schedule agreed upon by the Vendor and the City, subject to such delays that are not the fault of the Vendor or anyone working on behalf of Vendor. Vendor represents that it is thoroughly familiar with and understands the requirements of the scope or work in this *Master Agreement* and is experienced in its practice areas within such practice areas or as related to the specific project identified herein, whichever may apply.
- (b) Vendor shall achieve final completion of each Task Order issued pursuant to this *Master Agreement* and each assigned task therein within an agreed time period determined and agreed upon by both parties from the date appearing in the ***Notice To Proceed*** form for the envisioned project. Vendor agrees to begin each assigned task in conformity with the provisions set forth and to prosecute it with all due diligence so as to complete the entire envisioned work and project by the time limits set forth in the agreed time period. With respect to Task Orders that have deadlines, time will be of the essence unless stated otherwise in the individual Task Order.
- (c) Unless otherwise specified in this Master Agreement or in a Task Order issued pursuant to this Master Agreement, when a period of time is specified, provided, or agreed upon and the period is stated in a number of days, the period shall mean calendar days, and the period shall be calculated by: (1) excluding the day of the event that triggers the period, (2) counting every day, including intermediate

Saturdays, Sundays and holidays observed by the City where City Hall is closed for business, and (3) including the last day of the period, but if the last day is a Saturday, Sunday, or holiday observed by the City where City Hall is closed for business, the period continues to run until the end of the next day that is not a Saturday, Sunday, or holiday observed by the City where City Hall is closed for business.

1.4 Vendor's Key Professionals

Vendor shall use the key professionals designated in Exhibit 'B' attached hereto and incorporated herein to manage all work assigned to it by City under this *Master Agreement*. Vendor shall not remove or replace anyone on its key professionals list during the term of this *Master Agreement*, except upon approval by the City in writing based upon good cause shown. Further, if anyone on the Vendor's key professionals list discontinues service for any reason whatsoever, Vendor shall promptly replace such person with an individual approved by the City, in writing, which approval will not be unreasonably withheld.

1.5 Vendor Preparation

(This Section is intentionally left blank as this Vendor does not perform any inspection of facilities.)

1.6 Coordination

(This Section is intentionally left blank as this Vendor does not perform any coordination.)

1.7 Cooperation

Vendor shall endeavor to develop implement and maintain, in consultation with the City and any other party involved in the subject of the Vendor's professional consulting services, a spirit of cooperation, collegiality, and open communication so that the goals and objectives of each are clearly understood, potential problems are resolved promptly and, upon completion, the City's need for professional services is deemed a success.

1.8 Correction of Errors and Omissions

Vendor shall, at no additional cost to the City, immediately make additions, changes and corrections to any documents prepared by Vendor necessitated by errors and omissions in the Vendor's performance of its professional consulting services.

1.9 Professional Standards

- (a) Vendor shall perform its services in accordance with the generally accepted standards and practices customarily utilized by competent consulting services firms furnishing the similar types of services specified herein in this *Master Agreement*, or specified in a Task Order issued pursuant to this *Master Agreement*, in effect at

the time that Vendor's services are rendered.

1.10 Schedule of Work

This is a continuing contract for professional consulting services and it is envisioned by the parties that the City may assign tasks containing multiple units and sections as well as assign multiple Task Orders to Vendor to be performed at any given time during the term hereof. City, in its sole discretion, has the sole right to determine which task, unit, or section of work that Vendor shall execute and in what order. Authorization by the City, either in a Task Order or in a separate writing, shall cover in detail the scope and intent of the proposed services. The City's ability to coordinate tasks, units and sections of Work shall be in the general nature of that of a client obtaining professional services and Vendor shall at all times be responsible for, and in control of, the means and methods of Vendor's work.

1.11 No Equitable Increases in Costs or Price; No Damages For Delay By City

- (a) Vendor shall not be entitled to an equitable increase in the contract price or payment or compensation of any kind from the City for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency or extended overhead, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Vendor agrees that extensions of the contract time, as may be agreed upon by the City, are the sole and exclusive remedy for events of delay.
- (b) If Vendor submits a schedule or expresses an intention to complete tasks or work required by any required milestone or completion date, the City shall not be liable to Vendor for any costs incurred, lost profits, extended overhead, expenses, or other damages of any kind because of delay or hindrance, regardless of whether such delay or hindrance was caused by the City or its elected officials, officers, agents, or employees, should Vendor be unable to complete the work before such milestone or completion date as is described within the schedule.

ARTICLE II BASIC SERVICES

2.1 Basic Professional Consulting services

Vendor shall provide the City with professional consulting services:

- (a) in the various areas of Vendor's practice listed in the *Master Agreement Scope of Work* on a CCNA "continuing contract" basis, if designated therein; or
- (b) related to specifically identified projects listed in the *Master Agreement Scope of*

Work, if such projects are designated therein; or

- (c) both of the above, if designated in the *Master Agreement Scope of Work*.

2.2 Consultation Before Issuance of Task Order

Prior to the issuance of a Task Order, if the Vendor's *Master Agreement Scope of Work* may fulfill a City need for specific professional consulting services, the City may, at its option, consult with Vendor on the proposed scope of the task or series of tasks desired. At the City's request, Vendor shall generate, at no cost to the City, a detailed scoped document that, in addition to a full description of the task or series of tasks to be performed, shall include:

- (a) a proposed cost for the Vendor's services and the manner or method for calculating the same;
- (b) a proposed schedule to accomplish the task or series of tasks
- (c) a list of proposed deliverables to be generated by the Vendor and given to the City; and

After review of the scoped document and the fee comparison analysis, the City may, in its sole discretion, engage Vendor and issue a Task Order for performance of part or all of the proposed scope or determine not to proceed with Vendor, the proposed scope or both. The City may also, in its sole discretion, negotiate with Vendor as to the proposed cost for performance of the Vendor's services. The exercise of the City's consultation rights in this paragraph shall not constitute a Task Order or form the basis for any expectation of future work assignments.

2.3 Task Order

When the City determines it has a need for the Vendor's professional consulting services under this *Master Agreement*, the City shall issue the Vendor a mutually agreeable written authorization to proceed ("Task Order") that provides a full description of the task or series of tasks to be performed.

2.4 Design Services

(This Section is intentionally left blank, as this Vendor does not perform any Design Services.)

2.5 Bidding Services

When instructed by Task Order to perform professional consulting services in the area of bidding services, unless specifically and unequivocally instructed differently in the Task Order, the Vendor shall:

- (a) Assist the City in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment, and services and, when authorized in the applicable Task Order, attend pre-bid conferences;
- (b) Prepare any addenda with accompanying drawings or other material as required by the City and furnish a copy for each set of Contract Documents procured by prospective bidders at no more than the actual cost of reproduction;
- (c) Consult with and advise the City as to (1) the selection of a qualified list of general or specialty contractors for the project or work described in the Task Order and (2) the acceptability of the prime contractor(s) for the project or work as well as subcontractors, suppliers, and other persons and organizations proposed by the prime contractor(s) for those portions of the project or work where determination of such acceptability is required by the bidding documents;

2.6 Construction Phase Services

(This Section is intentionally left blank as this Vendor does not perform any Construction Phase Services.)

ARTICLE III VENDOR COMPENSATION

3.1 Compensation, Generally

For the services described in each Task Order, the City agrees to pay, and the Vendor agrees to accept compensation in accordance with the compensation method and compensation terms provided for by the Task Order. For each proposed Task Order, a mutually acceptable fee shall be negotiated for completion of the services described in the Task Order after the scope of services has been defined, but before the Task Order is issued. In the event that a service is assigned to Vendor by the City and a specific fee is not established in the Task Order, Vendor shall bill the City for professional consulting services performed using the Vendor's hourly rate fee schedule for professional services and master fee schedule for field and lab services attached to this *Master Agreement* as Exhibit C. Notwithstanding anything herein, the City shall only be obligated to pay for those services that the Vendor can demonstrate are reasonable, provable, and within the scope of services of a properly executed Task Order.

3.2 Reimbursable Expenses

City agrees to reimburse Vendor for certain direct out-of-pocket expenses as listed below; these direct charges shall be submitted to the City on a timely basis at actual cost, verified by appropriate bills, invoices and other documents. Each claimed reimbursable expense shall not exceed One Thousand Dollars (\$1,000.00) except when authorized in a Task Order or in an advance writing by the City. Other than the following charges, Vendor shall not be entitled to claim, nor shall Vendor receive, reimbursement for any of its expenses or out-of-pocket charges

incurred while performing services for the City pursuant to this *Master Agreement* and any Task Order issued pursuant thereto:

(a) *Travel and Subsistence*

Vendor shall be reimbursed for travel and subsistence in accordance with § 112.061, Florida Statutes (2023) for any Class A travel or Class B travel required by the terms of this *Master Agreement* or by Task Order. All travel and subsistence claims shall be determined based on travel time and distance from Vendor's closest local office to Bartow, Polk County, Florida. Notwithstanding anything in this *Master Agreement* to the contrary, Vendor shall not claim, and Vendor shall not be entitled to receive, any reimbursement for travel and subsistence claims for Class C travel, travel between any two of Vendor's offices, travel between any of Vendor's offices and any of Vendor's subcontractor's offices, or travel between any of Vendor's offices and Bartow, Polk County, Florida.

(b) *Printing and Reproduction*

The actual cost of reproduction of reports, plans and specifications except as otherwise provided for in or required by this *Master Agreement*.

(c) *Services of Others*

The actual cost of services for others when authorized by the City.

3.3 No Equitable Increases in Compensation

Notwithstanding anything appearing in this *Master Agreement*, in any Task Order issued pursuant to this *Master Agreement*, or in any form of agreement or contract executed between the City and a construction contractor, Vendor's compensation by the City shall not be equitably increased under any circumstance.

3.4 Amendments to Hourly Rate Schedule

During the term of this *Master Agreement*, Vendor's hourly rate schedule, attached to this *Master Agreement* as Exhibit C, may only be amended by mutual agreement of the Vendor and the City in writing.

**ARTICLE IV
PAYMENTS TO VENDOR**

4.1 Payments, Generally

City shall pay Vendor for services rendered in accordance with the terms and conditions of the *Local Government Prompt Payment Act*, Part VII, Chapter 218, Florida Statutes (the "Act").

As used in the Act, the term “interest” shall mean one percent (1%).

4.2 Withheld Payments

When the City has reasonable ground for belief, or information to believe, that (a) Vendor will be unable to perform the assigned services under any Task Order within the related time frame or (b) a meritorious claim exists against Vendor or the City arising out of Vendor’s negligence or Vendor’s breach of any provision of this *Master Agreement* or any Task Order, City may withhold a payment otherwise due and payable to Vendor. Any payment so withheld may be retained by the City for such period as it deems advisable to protect the City against any loss or deprivation that the City may incur. This provision is intended solely for the benefit of the City and no person shall have any right against the City, or its agents, employees or officials, by reason of the City’s withholding of Payments. Interest no greater than one percent (1%) simple interest, per month shall only be payable by the City on amounts withheld under this provision if the City has acted without justification. This provision shall not be construed to limit or in any way prejudice any other right that may accrue to the City.

4.3 Payment at Termination

Upon the termination of this *Master Agreement*, Vendor shall prepare a final and complete statement for all services and reimbursable expenses incurred since the posting of the last statement to and through the date of termination.

4.4 Final Payment

The acceptance by Vendor, its successors, or assigns, of any final payment due upon termination of this *Master Agreement* or termination of any Task Order, shall constitute a full and complete release of the City from any and all claims or demands regarding further compensation for authorized services rendered prior to such final payment that Vendor, its successors, or assigns have or may have against the City under the provisions of this *Master Agreement* or Task Order, unless otherwise previously and properly filed pursuant to the provisions of this *Master Agreement* in a court of competent jurisdiction. This subsection does not affect any other portion of this *Master Agreement* that extends obligations of the parties beyond final payment.

4.5 Sales Tax

Under Florida law, City is exempt from sales taxes imposed upon professional services when City purchases such services directly. Vendor agrees to pay actual taxes imposed or assessed as a result of the provision of any services provided under this *Master Agreement* or any Task Order issued hereunder. City and Vendor agree that this subsection may be modified by a duly executed amendment in the event of future changes to Florida law that affect the parties, terms, or conditions of this *Master Agreement*.

4.6 Payment Disputes

In accordance with the Act, § 218.76(2), Florida Statutes, any dispute arising with respect to payment by the City pursuant to this *Master Agreement*, or any Task Order issued hereunder, shall not constitute a material breach of this *Master Agreement* but shall, instead, be subject to the dispute resolution procedure provided for by local law. In the absence of such procedure, a dispute shall be subject to mediation before any party may terminate this *Master Agreement* for cause, or institute litigation.

ARTICLE V TERM OF AGREEMENT, SUSPENSION OF WORK AND TERMINATION

5.1 Term of Agreement

This *Master Agreement* shall be effective on the day it is executed by both parties (“Effective Date”). The initial term of this *Master Agreement* shall begin on its Effective Date and end on September 30 of the third full municipal fiscal year thereafter. Upon expiration of the initial term, or of any renewal term, this *Master Agreement* may be renewed for a new term of three (3) fiscal years by mutual agreement of the parties.

5.2 Suspension of Work

Work being performed under this *Master Agreement* may be suspended as follows:

(a) *By City*

By written notice to Vendor, City may suspend all or a portion of Vendor’s work under this *Master Agreement*, including any Task Order issued hereunder, if unforeseen circumstances beyond the City’s control make normal progress impracticable. If the suspension is greater than sixty (60) days, Vendor shall have the right to terminate this *Master Agreement* in accordance with Paragraph 5.3(c) below. The City’s suspension of work hereunder shall be without prejudice to any other remedy of the City at law or equity.

(b) *By Vendor*

By written notice to the City, Vendor may suspend work under this *Master Agreement*, including any Task Order hereunder, if it reasonably determines that working conditions at a work site that are outside of its control are unsafe or in violation of applicable laws. If the suspension is greater than sixty (60) days, the City shall have the right to terminate this *Master Agreement* in accordance with Paragraph 5.3(c) below. The Vendor’s suspension of work hereunder shall be without prejudice to any other remedy it may have at law or equity.

5.3 Termination of Agreement

(a) *By City*

This *Master Agreement* may be terminated by the City as follows:

- (1) for its convenience on thirty (30) days' written notice to Vendor; or
- (2) for cause, if Vendor or any entity utilized by Vendor to provide services under this *Master Agreement* materially breaches this *Master Agreement* through no fault of the City and Vendor neither cures such material breach nor makes reasonable progress toward cure within fifteen (15) days after City has given written notice of the alleged breach to Vendor.

(b) *By Vendor*

This *Master Agreement* may be terminated by Vendor as follows:

- (1) for its convenience on ninety (90) days' written notice to City; or
- (2) for cause, if the City materially breaches this *Master Agreement* through no fault of Vendor and the City neither cures such material breach nor makes reasonable progress toward cure within fifteen (15) days after Vendor has given written notice of the alleged breach to the City.

(c) *Termination After Suspension*

If work under this *Master Agreement* has been suspended under the provisions of Paragraph 5.2 for more than sixty (60) days in the aggregate, the party with a right of termination may, for its convenience and upon five (5) days' notice to the other party, terminate this *Master Agreement*.

ARTICLE VI DOCUMENTS AND INSTRUMENTS OF SERVICE

6.1 Documents; Ownership and Reuse

All documents, including without limitation, drawings, test results, recommendations, technical specifications, and reports, whether in hard copy or electronic form, which are prepared by Vendor solely as a result of or for the purposes of this *Master Agreement*, shall become the property of the City when Vendor has been fully compensated for its services under each Task Order. The City's alteration of Vendor's work product or its use for any other purpose shall be at the City's own risk and the City shall hold harmless and indemnify, in an amount not to exceed the monetary limits of Florida's waiver of sovereign immunity announced in § 768.28(5), Florida Statutes (2023) in total regardless of the theory or cause of action, against all losses, damages,

costs and expenses, including attorneys' fees, that may arise out of or relate directly to any such alteration or unauthorized use. Nothing contained herein or in any task order shall be deemed a transfer, assignment or divestiture by Vendor of its trade secrets, know-how or intellectual property.

6.2 Electronic Documents

As an accommodation to the City, Vendor shall make copies of its work product documents available in standardized electronic computer-readable media. These documents will duplicate the original documents provided as work product pursuant to Task Orders. During the performance of work under this *Master Agreement* Vendor will maintain an official copy of each of its work product documents in electronic form, which shall serve as the official archived electronic record. Upon receipt of final payment, Vendor shall transfer to the City all of its official archived electronic records. Vendor may keep and use a copy of the City's official archived electronic records for its own purposes.

ARTICLE VII INDEMNIFICATION

7.1 Vendor's Indemnification

To the fullest extent permitted by law, and in consideration of the amount stated on any Task Order, Vendor shall indemnify and hold harmless the City and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Vendor and other persons employed or utilized by the Vendor in the performance of this *Master Agreement* and in each Task Order issued hereunder.

Without limiting the generality of the foregoing, the City and the Vendor agree that, as used in this indemnification:

- (a) the phrase "liabilities, damages, losses, and costs" shall include by way of explanation and not of limitation: (1) charges or expenses for professional services inclusive of the professional services of others; (2) any and all charges or expenses incurred in court and dispute resolution proceedings including the charges and expenses of mediators; (3) any and all monetary, tangible and real liabilities, judgments, required payments and voluntary settlement payments for bodily injuries, sickness, disease, death, and injury to or destruction of tangible property including the loss of use resulting therefrom; and (4) any and all monetary, tangible and real liabilities, damages, losses and costs incurred, received, or sustained by any person or persons during any operations under this *Master Agreement*, any Task Order issued hereunder, and any project, task or work performed hereunder;
- (b) the phrase "reasonable attorneys' fees" shall include by way of explanation and not of limitation any and all fees, charges, and expenses for the professional services

of attorneys and their offices in any and all pre-suit, trial, appellate and bankruptcy proceedings or otherwise; and

- (c) the phrase “negligence, recklessness, or intentionally wrongful conduct” shall include by way of explanation and not of limitation the negligent, reckless, or intentional violation of any applicable federal, state, county, or local law, by-law, statute, ordinance or regulation and the negligent, reckless, or intentional acts or omissions of the Vendor, any person or organization directly employed by Vendor, and anyone for whose acts any of them may be liable, during the performance of any services as may be described or provided in this *Master Agreement*, any Task Order issued hereunder, or in any project, task or work performed hereunder.

In any and all claims against the City, or any of its officers and employees, by any person employed or utilized by the Vendor in the performance of this *Master Agreement* or in the performance of any Task Order issued hereunder, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Vendor or any other person or organization under workers’ or workmen’s compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the City, the Vendor or any other person or organization.

The City and the Vendor agree that to the extent the written terms of this indemnification conflict with any provisions of Florida laws or statutes, in particular Sections 725.06 and 725.08, Florida Statutes, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes, to contain any limited conditions or limitations of liability, and to not contain any unenforceable or prohibited term or terms, such that this indemnification shall be enforceable in accordance with and to the greatest extent permitted by Florida law.

7.2 Guarantee Against Infringement

The Vendor guarantees that all services provided under this *Master Agreement* shall be free from claims of patent, copyright, and trademark infringement. Notwithstanding any other provision of this *Master Agreement*, Vendor shall indemnify, hold harmless, and defend the City, its elected officials, officers, directors, employees, agents, assigns, and servants from and against liability and liabilities, including expenses, costs, and legal fees (including but not limited to attorneys’ fees at pre-suit, trial, appellate, and bankruptcy proceedings or otherwise), for actual or alleged infringement of any patent, copyright, and trademark by Vendor resulting from the use of any goods, services, or other item provided to the City under this *Master Agreement*, and of which Vendor is not the patentee, assignee, licensee, or lawfully entitled to sell same. In addition, the Vendor shall indemnify, hold harmless, and defend the City, its elected officials, officers, directors, employees, agents, assigns, and servants, from any suit or claim which results from the incorporation of any patented or unpatented invention, device, process, or system. Notwithstanding the foregoing, Vendor may elect to provide non-infringing services at its expense.

The foregoing shall not apply to information provided by the City, nor shall it apply in the event the City uses any goods, services or items provided under this *Master Agreement* for any purpose other than that for which the Vendor created it.

7.3 Payment of Claims

In the event of any liabilities, damages, losses, costs, expenditures, fines or fees which fall within the indemnities set forth above in paragraphs 7.1 and 7.2 of this *Master Agreement*, payment of any amount due pursuant thereto shall, after receipt of written notice by Vendor from the City that such amount is due, be made by Vendor prior to the City being required to pay same, Vendor shall promptly reimburse the City for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the day of the City's payment. To the extent considered necessary by the City, any sums due to Vendor under this *Master Agreement* and any Task Order issued hereunder may be retained by City until all of the City's claims for indemnification pursuant to this *Master Agreement* have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by the City.

7.4 Consideration for Indemnifications

(a) Vendor acknowledges that the consideration provided to it by the City, in the form of the amount stated on a Task Order, or payable pursuant to a Task Order, or payable under this *Master Agreement*, is sufficient for all contractual indemnifications given by it to the City in this Article VII.

(b) To the extent a monetary limitation on indemnification in connection with a project or work on real property owned by the City is required to be stated by the parties in this *Master Agreement* or in a relevant Task Order under Florida laws and statutes, and in particular Sections 725.06 and 725.08, Florida Statutes, and only in the event of such circumstances and to such extent, the parties agree that the applicable monetary limitation shall bear a reasonable commercial relationship to the project or work and be:

- (1) for services provided that are for a City project or work valued at less than \$1 million at the time of service, not less than the statutory amount of \$1 million per occurrence; and
- (2) for services provided that are for a City project or work valued at greater than \$1 million at the time of service, not less than the value of the project or work per occurrence.

ARTICLE VIII INSURANCE

8.1 Insurance, Generally

Vendor shall purchase, maintain, and keep in full force, effect, and good standing, policies

of insurance with general lines insurance carriers licensed to do business in the State of Florida rated B+ or better by A.M. Best, and any other insurance necessary, to fully protect it from claims of the nature that are detailed below, that may arise out of, or result from, its operations, performance, or services, or all of these things, or any of these things in combination, whether such operations, performance or services are by Vendor, any of its officers, employees, agents or subcontractors, or anyone for whose act or acts it may be liable:

- (a) Claims under Workers Compensation, disability benefit, or other (similar) employee benefit acts; and
- (d) Claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees; and
- (e) Claims for damages for personal injury; and
- (f) Claims for damages because of injury to or destruction of tangible property, including the loss of property use resulting therefrom.

8.2 Limits of Liability and Specific Requirements

The insurance required by this *Master Agreement* shall be written for not less than the limits of liability specified below, or required by law, ***whichever is greater***, and shall include contractual liability insurance as applicable to Vendor's obligation under Paragraph 8.1, above.

(a) *Worker's Compensation*

Coverage is to apply for all employees for statutory limits in compliance with applicable state and federal laws. The policy must include Employers' Liability with a limit of not less than \$500,000 each accident, not less than \$500,000 each employee, and not less than \$500,000 policy limit for disease.

(b) *Commercial General Liability*

Vendor shall maintain commercial general liability ("CGL") insurance with a limit of not less than \$500,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to the location or project in the amount of not less than \$1,000,000. Products and completed operations aggregate shall be in the amount of not less than \$1,000,000. CGL insurance shall be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x,c,u) exposures, personal injury and advertising injury. Fire damage liability shall be included at not less than \$100,000.

(c) *Commercial Automobile Liability Insurance*

Vendor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (included owned, hired and non-owned autos). The policy shall be endorsed to provide contractual liability coverage.

(d) *Errors and Omissions*

Vendor shall also purchase, maintain, and keep in full force, effect, and good standing, a professional liability/errors and omissions insurance policy having minimum limits of not less than \$1,000,000, with a \$500,000 self-insured retention or, Vendor shall provide the City with policy coverage wherein the insurer agrees to pay claims (up to the limits of coverage) and will thereafter recover the self-insured retention from the insured. The errors and omissions policy shall be in effect and shall insure Vendor's performance on City projects in accordance with the terms thereof. The coverage must respond to all claims reported within four (4) years following the period in which coverage is required.

8.3 Insurance Administration

Vendor shall file insurance certificates with the City, evidencing all insurance coverages referred to in this Article, at least ten (10) calendar days after the Effective Date of this *Master Agreement*. The certificates shall be fully acceptable to the City in both form and content, and shall provide and specify that the related insurance coverage shall not be canceled or changed without at least thirty (30) calendar days prior written notice having been given to the City. Vendor further agrees that no material modification or reduction shall be made to any insurance policy coverage referred to in this *Master Agreement*, unless Vendor gives written notice to the City within seven (7) calendar days of Vendor having been given notice by the insurer of such material modification or reduction. "Material modification" shall mean but not be limited to, reduction in the limit of liability by endorsement to the policy during the policy period, change and types of claims payable, or any other change that significantly reduces the coverage originally provided in the policy's terms. Vendor shall have thirty (30) calendar days following any such modification to file a revised insurance certificate with the City demonstrating that the particular coverage has either been reinstated, or has been provided through one or more other insurers that are acceptable to the City. Failure of Vendor to obtain the City's approval, or to satisfy the City with respect to the form and content of Vendor insurance certificates, shall be grounds for termination of the *Master Agreement* as specified in Paragraph 5.3(a)(2). It is also understood and agreed that it is Vendor's sole burden and responsibility to coordinate activities between itself, the City, and its insurers so that certificates are acceptable to and accepted by the City within the time limits described herein.

8.4 City to be Additional Insured; Vendor to be Primary Insured

The City shall be listed as an additional insured on all insurance coverage required by this *Master Agreement*, except worker's compensation and professional liability/errors and omissions

insurance. Furthermore, all other insurance policies pertaining to the services to be performed under this *Master Agreement* and any Task Order issued hereunder shall memorialize that the insurance provided by Vendor, Vendor's subcontractors, or all of these entities ("primary insureds") shall apply on a primary basis, and that any other insurance maintained by the City shall be in excess of and shall not contribute to or be commingled with the primary insureds' insurance.

8.5 Insurance to be Without Recourse

Vendor shall ensure that any company issuing insurance to cover the requirements contained in this *Master Agreement* agrees that they shall have no recourse against the City for payment or assessments in any form on any policy of insurance. All required insurance policies shall preclude any insurer's rights of recovery or subrogation against the City with the express intention of the parties being that the required insurance coverages protect both parties as the primary coverages for any and all losses covered by the above-described insurance. Violation of the terms of this paragraph and its subparts shall constitute a breach of this *Master Agreement*, and the City, at its sole discretion, may cancel the *Master Agreement* and all rights, title and interest of the Vendor shall thereupon cease and terminate.

8.6 City's Right to Require Additional Insurance

(This Section is intentionally left blank by mutual agreement of the Parties.)

8.7 Insurance Required Before Commencement of Activity

Vendor shall not commence performance of duties under this *Master Agreement* or any Task Order issued hereunder until it has obtained all insurance coverages required under this Article and all certificates of insurance have been approved by the City. Further, Vendor shall not allow any of its subcontractors to commence performance of duties under any contract or agreement with the City until all similar such insurance coverages and certificates of insurance required have been obtained and approved.

8.8 City's Right of Inspection

Vendor shall, upon thirty (30) days written request from the City, deliver copies to the City of any or all insurance policies that are required in this *Master Agreement*; ***provided however*** that Vendor shall be entitled to redact all confidential information on copies of all such policies of insurance that are delivered to the City, other than appropriate and relevant coverage information, policy limits, policy deductibles, insurance exclusions and information related thereto.

ARTICLE IX MUNICIPAL PROVISIONS

9.1 Sovereign Immunity

City is a sovereign Florida municipal government. Nothing contained in this *Master*

Agreement, nor any City indemnification made herein if any such indemnification exists, is intended or shall be construed to waive the City's sovereign immunity. With respect to the matter of compensation for work performed, the parties agree that the total liability of the City to Vendor shall not exceed the agreed-upon price established in each Task Order issued hereunder. For all other matters, the parties agree that the total liability of the City to Vendor shall not exceed the City's limits of liability as set forth in § 768.28(5), Florida Statutes (2023), regardless of whether any such obligations are based in tort, contract, statute, strict liability, or negligence, product liability or otherwise.

9.2 Audit Rights

The City reserves the right to audit the records of Vendor related to compensation issues associated with an authorized Task Order at any time during the execution of the Task Order and for a period of one (1) year after final payment is made. Failure of Vendor to maintain sufficient auditable records will authorize the City to determine, at its sole and conclusive discretion, the time and cost expended from information maintained by Vendor relevant to the Task Orders, work and projects performed pursuant to this *Master Agreement*.

9.3 Public Records

Pursuant to Florida law, § 119.0701, Florida Statutes, Vendor must comply with Florida's public records laws, specifically to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the services herein.
- (b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of Vendor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City agency in a format that is compatible with the City's information technology systems.

Notice Required by F.S. § 119.0701:

IF THE CONTRACTOR 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 863-534-0100, JPOOLE.CLERKS@CITYOFBARTOW.NET, 450 N. WILSON AVE., BARTOW, FL 33830.

**ARTICLE X
GENERAL PROVISIONS**

10.1 No Assignment

This *Master Agreement* is binding on the heirs, successors, and assigns of the parties hereto. This *Master Agreement* may not be assigned by Vendor or the City without prior, written consent of the other. Vendor shall not sublet, assign, or transfer any work under this *Master Agreement* without prior written consent of the City.

10.2 No Benefit for Third Parties

The services to be performed by Vendor under this *Master Agreement* are intended solely for the benefit of the City, and no benefit is conferred on, nor is any contractual relationship established with any person or entity not a party to this *Master Agreement*.

10.3 Compliance with Applicable Laws; New Regulations; Ethical Warranty

- (a) Vendor agrees to comply with all applicable federal, state, and local laws or ordinances applicable to all of the provisions of this *Master Agreement* and all Task Orders issued hereunder.
- (b) Vendor agrees that at such time as the applicable local, state, or federal agencies modify their grant procedures in order for the City or Vendor to qualify for local, state or federal funding for the services to be rendered by Vendor hereunder, then vendor shall consent to and make such modifications or amendments in a timely manner. If Vendor is unable to comply with applicable local, state, or federal laws and regulations governing the grant of such funds for services to be rendered herein, then the City shall have the right, by written notice to Vendor, to terminate this *Master Agreement* for convenience.
- (c) Vendor represents and warrants unto the City that no officer, employee, or agent of the City has any interest, either directly or indirectly, in the business of Vendor to be conducted hereunder. Vendor further represents and warrants unto the City that it has not employed or retained any company or person, other than a bona fide employee working solely for Vendor, to solicit or secure this *Master Agreement*, or any Task Order issued hereunder and that it has not paid, or agreed to pay, or given or offered any fee, commission, percentage, gift, loan, or anything of value to any person, company, corporation, individual, or firm, other than a bona fide employee

working solely for Vendor, in consideration for or contingent upon, or resulting from the award or making of this *Master Agreement*. Further, Vendor also acknowledges that it has not agreed, as an expressed or implied condition for obtaining this *Master Agreement*, to employ or retain the services of any person, company, individual or firm in connection with carrying out this *Master Agreement*. It is absolutely understood and agreed by Vendor that, for the breach or violation of this representation and warranty, the City shall have the right to terminate this *Master Agreement* without liability and at its sole discretion, and to deduct from any amounts owed, or to otherwise recover, the full amount of any percentage, gift, loan, or anything of value paid by Vendor. Vendor shall also require, by contract, that all of its subcontractors shall comply with the provisions of this representation and warranty.

10.4 Severability and Substitution

If any part of this *Master Agreement*, or any Task Order issued hereunder, is found unenforceable under applicable laws, such part shall be inoperative, null, and void insofar as it conflicts with said laws, and a similar, valid and enforceable provision of like effect and intent shall be inserted in its place as far as is practicable. If the unenforceable part of this *Master Agreement* or Task Order cannot be remedied by substitution, it shall be excised and the remainder of the *Master Agreement* or Task Order shall be in full force and effect as if adopted in its absence. To this extent, the parties declare this *Master Agreement* and all subordinate Task Orders to be severable.

10.5 Venue

- (a) This *Master Agreement* and all Task Orders issued hereunder are made and entered into in the City of Bartow, County of Polk, State of Florida. Each of the parties hereto hereby irrevocably agrees that venue for any suit, action or other legal proceeding against any of them arising with respect to this *Master Agreement* or Task Order issued hereunder shall lie exclusively in the state court system situated in Polk County, State of Florida, consisting currently at the time of execution of this *Master Agreement* of the County Court in and for Polk County, Florida and the Circuit Court for the Tenth Judicial Circuit in and for Polk County, Florida.
- (b) Each of the parties hereto hereby irrevocably agrees that venue for any suit, action or other legal proceeding against any of them arising with respect to this *Master Agreement* or Task Order issued hereunder shall not lie in any federal court, regardless of diversity of citizenship, amount in controversy or basis of question.
- (c) Each of the parties hereto hereby irrevocably agrees to waive any and all objections any of them might otherwise now or hereafter have to the laying of the venue of any such suit, action or proceeding in any of the courts referred to in Paragraph 10.5(a) or to service of any writ, summons or other legal process in accordance with applicable law.

10.6 Attorneys' Fees

In the event either party commences legal proceedings against the other, then the prevailing party shall, in addition to any other recovery, be entitled to recover its reasonable attorneys' fees and all other costs of such proceedings, both trial and appellate.

10.7 Subordination of Task Orders

The provisions of this *Master Agreement* are superior to any provision set forth in a subsequent Task Order entered into pursuant to the terms of this *Master Agreement*. In the event of any discrepancy between the language of this *Master Agreement* and any subsequent Task Order, the provisions of such Task Order are subject to and subordinate to the provisions of this *Master Agreement* and the language of this *Master Agreement* shall prevail.

10.8 Governing Law; Merger; Amendments

- (a) The validity, interpretation, construction and effect of this *Master Agreement* shall be in accordance with and governed by the laws of the State of Florida only.
- (b) This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- (c) No alteration, change, or modification of the terms of this *Master Agreement* shall be valid unless made in writing and signed by both parties hereto.

10.9 Headings

The headings or titles of the paragraphs of this *Master Agreement* are for purposes of convenience only and shall not be utilized for purposes of interpretation of any of the provisions of this *Master Agreement*.

10.10 Remedies

All remedies provided in this *Master Agreement* shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available to either party, at law or in equity. No delay or omission to exercise any City right or City power accruing upon any event of default shall impair any City right or City power nor shall it be construed to be a waiver of any event of default or acquiescence in it, and every City right and City power may be exercised from time to time as often as may be deemed expedient.

10.11 Public Entity Crimes

Any person or affiliate, as defined in § 287.133, Florida Statutes, shall not be allowed to contract with the City, nor be allowed to enter into a subcontract for work on this *Master Agreement*, if such person or affiliate has been convicted of a public entity crime within three (3) years of the date this *Master Agreement* was advertised for proposals, or if such person or affiliate was listed on the State of Florida's convicted vendor list within three (3) years of the date this *Master Agreement* was advertised, whichever time period is greater. A public entity crime means a violation of any state or federal law with respect to and directly related to the transaction of business with any public entity or agency, federal, state or local, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, forgery, falsification of records, receiving stolen property or material misrepresentation. Any agreement with the City obtained in violation of this Paragraph shall be subject to termination for cause. A subcontractor who obtains a subcontract in violation of this Paragraph shall be removed from all work and promptly replaced by a subcontractor acceptable to the City.

10.12 Licenses

Vendor shall, during the life of this *Master Agreement*, procure and keep in full force, effect and good standing all necessary licenses, registrations, certificates, permits, and other authorizations as are required by local, state and federal law in order for Vendor to render professional consulting services to the City. Vendor shall require all of its subcontractors to comply by contract with the provisions of this Paragraph.

10.13 Mutual Waiver of Claim

Vendor and the City hereby mutually waive any claim against each other, their elected or appointed officials, agents, and employees, for any loss of anticipated profits caused by any suit or proceedings brought by any third party directly or indirectly attacking the validity of this *Master Agreement* or any part thereof, or by any judgment or award in any suit or proceeding declaring this *Master Agreement* null, void, or voidable, or delaying the same, or any part thereof, from being carried out.

10.14 Notices

All notices, demands, requests, consents, approvals, and other communications (collectively, "Notices"), required or permitted to be given hereunder shall be in writing and sent by electronic mail and by either: (a) registered or certified mail, postage prepaid, return receipt requested; or, (b) special delivery service (e.g., Federal Express, DHL, UPS); addressed to the party to be so notified as follows:

City:

Mike Herr
City Manager
City of Bartow, Fla.
450 N. Wilson Ave.
Bartow, Florida 33830
Email: mherr@cityofbartow.net

With a copy to:

Sean R. Parker, Esq.
City Attorney, City of Bartow, Fla.
Boswell & Dunlap LLP
245 South Central Avenue
Bartow, Florida 33830
Email: srp@bosdun.com

Vendor:

At the address specified on Page 1 hereof

Notice shall be effective upon delivery to the above addresses. Either party may notify the other that a new person has been designated by it to receive notices, or that the address or for the delivery of such notices has been changed, provided that, until such time as the other party receives such notice in the manner provided for herein, any notice addressed to the previously-designated person or delivered to the previously-designated address shall be effective.

10.15 Authorization

The persons executing this *Master Agreement* on behalf of the parties hereto represent and warrant that the parties have all legal authority and authorization necessary to enter into this *Agreement*, and that such persons have been duly authorized to execute this *Master Agreement* on their behalf.

10.16 Scrutinized Companies

Section 287.135 of the Florida Statutes states that a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with the City for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725 of the Florida Statutes or is engaged in a boycott of Israel; or for One Million Dollars (\$1,000,000.00) or more if, at the time of bidding on submitting a proposal for, or entering into or renewing a contract, the company is on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes, or is engaged in business operations in Cuba or Syria. Vendor certifies that it does not and did not at any time since the submission of a response to the initial solicitation resulting in this *Master Agreement* participate in a boycott of Israel; that it is not on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and that it does not engage in business operations in Cuba or Syria. Vendor understands that a false certification may subject it to civil penalties, attorneys' fees and costs pursuant to Section 287.135 of the Florida Statutes and that the City may terminate this *Master Agreement* and any Task Order(s) issued hereunder, at the City's option if the Vendor is found to

have submitted a false certification.

10.17 E-Verify

Vendor is obligated to comply with the provisions of Section 448.095(5)(a), Florida Statutes and to register with and use the E-Verify system to verify the work authorization status of all new employees of the Vendor and any subcontractor hired by the Vendor. If the Vendor enters into a contract with a subcontractor, the subcontractor must provide the Vendor with an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this *Master Agreement* and any Task Order(s) issued hereunder. If a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court of competent jurisdiction no later than 20 calendar days after the date of termination. If this *Master Agreement* is terminated for a violation of the statute by the Vendor, the Vendor may not be awarded a public contract for a period of 1 year after the date of termination.

10.18 No Consideration of Social, Political, or Ideological Interests

Vendor acknowledges receipt of notice from the City of the provisions of Section 287.05701 of the Florida Statutes which prohibits local governments from giving preference to a prospective contractor based on the prospective contractor's social, political or ideological interests or requesting documentation from, or considering, a prospective contractor's social, political, or ideological interests when determining if the prospective contractor is a responsible vendor. Vendor affirms and agrees that the City did not request any documentation about, or give any consideration to, the Contractor's social, political, or ideological interests in the award process for this *Master Agreement*.

10.19 Contracting with Foreign Entities


Vendor certifies that it is not owned by the government of the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic (collectively "Foreign Countries of Concern"), nor is it owned by any agency of or any other entity of significant control of any such government. Further, Vendor certifies that no government of a Foreign Country of Concern has a "controlling interest" in Vendor as the term is defined in Section 287.138(1)(a) of the Florida Statutes, nor is the Vendor organized under the laws of a Foreign Country of Concern, nor does the Vendor have its principal place of business located in a Foreign Country of Concern. If the Vendor is permitted access to the personal identifying information of any individual as part of its work under this *Master Agreement* or any Task Order issued hereunder, Vendor agrees to notify the City in advance of any contemplated transaction that would cause Vendor to be disqualified from such access under Section 287.138 of the Florida Statutes. Vendor agrees to furnish the City with an affidavit signed by an officer or representative of the Vendor under penalty of perjury at any time and upon request that the statements in this paragraph are true and correct.

IN WITNESS WHEREOF, the parties have set their hands hereto on the date indicated:

Vendor

Raftelis Financial Consultants, Inc.

Executed this 29th day of April, 2024

By: 
Name:
Title:

City of Bartow, Florida:

Executed this 30th day of April, 2024


By: 
Name: Mike Herr
Title: City Manager

EXHIBIT 'A'
MASTER AGREEMENT SCOPE OF WORK

This is a continuing contract pursuant to F.S. § 287.055 for the performance of consulting services. Pursuant to the terms of the RFQ, a copy of the Vendor's qualifications statement considered by the City is attached hereto and incorporated herein in this Exhibit 'A' as part of the description of retained services under this continuing contract. Services under this continuing contract shall principally be in the following disciplines:

Utility and Local Government Consulting Services

Note: Amendments to this Scope of Work Exhibit may only be made in accordance with Section 287.055, Florida Statutes, and the terms and conditions of RFQ No. CM2023-24-01.

*** END OF SCOPE OF WORK EXHIBIT ***

EXHIBIT 'B'
KEY PROFESSIONALS

For purposes of this agreement, key professionals are identified on the Vendor's qualifications statement considered by the City for *RFQ No. CM2023-24-01*, a copy of which is incorporated herein by reference. Those professionals include:

Henry Thomas, Project Director
Joe Williams, Project Manager/Utility Rates and Finance
Mike Burton, Project Manager/General Government
Shawn Ocasio, Staff Consultant – Stormwater
Mark Tuma, Staff Consultant – Water/Wastewater
Trevor McCarthy, CGFM, Staff Consultant – Solid Waste
Dianne Holloway, Staff Consultant
Tristen Townsend, Staff Consultant

*** END OF KEY PROFESSIONALS EXHIBIT ***

EXHIBIT 'C'
VENDOR'S HOURLY RATE SCHEDULE

For purposes of this agreement, the Vendor's Standard Hourly Billing Rates schedule is attached and incorporated herein by reference.

*** END OF VENDOR'S HOURLY RATE EXHIBIT ***