

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PERSONAL SERVICES AGREEMENT WITH RAFTELIS FINANCIAL CONSULTANTS, INC., AND DECLARING AN EMERGENCY.

WHEREAS, the City of Avon Lake desires to retain the personal services of Raftelis Financial Consultants, Inc. to prepare an operational, organizational, and management analysis of the Public Works Department.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor is hereby authorized and directed to enter into an agreement with Raftelis Financial Consultants, Inc. of Charlotte, North Carolina for an operational, organizational, and management analysis of the Public Works Department. (Exhibit A)

Section No. 2: That said agreement states among its terms that the cost of said personal, professional services shall be at a cost not to exceed \$65,000. Upon receipt of an itemized billing, in conformance with the guidelines and scope of work as set forth in said agreement to the satisfaction of the Human Resources Director, the Director of Finance is hereby directed to deliver to Raftelis Financial Consultants the warrant of this City in the amount due and payable and to cause said warrant to be paid.

Section No. 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 4: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of retaining personal services to evaluate and recommend improvements in the operations and structure of the Public Works Department to increase efficiency, thus for the health, safety, and welfare of the residents of Avon Lake. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

PASSED: 4/25/2022

/s/ Martin E. O'Donnell

President of Council

POSTED: 4/29/2022

APPROVED: 4/26/2022

ATTEST: /s/ Valerie E. Rosmarin
Clerk of Council

/s/ Gregory J. Zilka
Mayor

PROFESSIONAL SERVICES AGREEMENT BETWEEN
AND
RAFTELIS FINANCIAL CONSULTANTS, INC.

This Consulting Agreement ("Agreement") is entered into this _____ day of _____, 2022 (hereinafter referred to as the effective date of the agreement) by and between, City of Avon Lake, Ohio (the "Client") and Raftelis Financial Consultants, Inc., 227 W. Trade Street, Suite 1400, Charlotte, NC 28202 ("Raftelis").

Witnesseth

WHEREAS, Raftelis is engaged and experienced in public finance, management, and pricing, and service delivery, and

WHEREAS, The Client desires to hire Raftelis and Raftelis agrees to provide services to the Client,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions set forth herein.

Article 1. Statement of Work

Raftelis shall provide professional consulting services to prepare Public Works Operational, Organizational, and Management Analysis for Client. Raftelis will perform the services as set forth in its proposal sent to Client dated April 11, 2022 and included herein as Attachment A, the "Scope".

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 and shall be mutually agreed to by the Parties.

Article 3. Compensation

Client shall pay to Raftelis the sum not to exceed \$65,000, which includes professional fees and direct expenses incurred in performing the scope of services. The parties understand that this sum is based upon the scope of work contained herein at Raftelis' current standard hourly rate schedule included in Attachment B. Any expansion of the scope of work by the Client shall involve the discussion and agreement of additional fees and time by both parties.

Raftelis shall submit invoices to the Client on a monthly basis for services rendered to the date thereof. Upon receipt of monthly invoice, the Client will remit payment of same amount to the Raftelis within 30 days.

Article 4. Additional Services

At the Client's request, Raftelis 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 Raftelis 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

Raftelis shall be responsible for maintaining its own office facilities and will not be provided with either office facilities or support by the Client.

Article 6. Indemnification

Raftelis hereby agrees to indemnify the Client, its officers, directors, managers and employees ("Indemnified Party or Parties") and to hold the Indemnified Parties harmless against claims, costs and expenses, including reasonable attorney's fees, action, or demands against the Indemnified Parties and against damages for injury to or death of any person and for loss of or damage to all property caused by the negligent acts, errors or omissions of Raftelis in performing this Agreement, except to the extent the claims, demands, liabilities, cost and expenses are caused by the negligent acts, errors or omission of an Indemnified Party.

Article 7. Insurance

Raftelis 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 Raftelis' Certificates of Insurance and Raftelis 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-hired and non-owned only

Workers Compensation insurance – Statutory limits

Professional liability insurance - \$5,000,000 occurrence and \$5,000,000 in the aggregate

Excess or Umbrella Liability - \$5,000,000 occurrence and \$5,000,000 in the aggregate

Article 8. Confidential Information

Raftelis acknowledges and agrees that in the course of the performance of the services pursuant to this Agreement, Raftelis 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. Raftelis acknowledges and agrees, except as required by judicial or administrative order, trial, or other governmental proceeding, that it will not use, duplicate, or divulge to others any such information marked as "confidential" disclosed to Raftelis by the Client ("Confidential Information")

without first obtaining written permission from the Client. All tangible embodiments of such information shall be delivered to the Client or the destination of such information by Raftelis requested by the Client. The Client acknowledges Raftelis 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 Raftelis will provide the services under this Agreement on a professional basis as an independent contractor and that during the performance of the services under this Agreement, Raftelis' employees will not be considered employees of the Client within the meaning or the applications of any federal, state, or local laws or regulations including, but not limited to, laws or regulations covering unemployment insurance, old age benefits, worker's compensation, industrial accident, labor, or taxes of any kind. Raftelis' employees shall not be entitled to benefits that may be afforded from time to time to Client employees, including without limitation, vacation, holidays, sick leave, worker's compensation, and unemployment insurance. Further, the Client shall not be responsible for withholding or paying any taxes or social security on behalf of Raftelis' employees. Raftelis shall be fully responsible for any such withholding or paying of taxes or social security.

Article 10. Reliance on Data

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

Article 11. Standard of Performance

Raftelis' opinions, estimates, projections, and forecasts of current and future costs, revenues, other levels of any sort, and events and estimates of cost-justified system development fees shall be made on the basis of available information and Raftelis' expertise and qualifications as a professional. Raftelis will perform the Scope of services in conformance with the professional standards in its field of expertise prevailing at the time and place the Scope of services are performed. Raftelis does not warrant or guarantee that its opinions, estimates, projections or forecasts of current and future levels and events will not vary from the Clients' estimates or forecasts or from actual outcomes. Raftelis identifies costs, allocates costs to customer classes and provides rate models. It does not establish rates, which is the legislative responsibility of the Client.

Article 12. No Consequential Damages

To the fullest extent permitted by law, neither party shall be liable to the other for any special, indirect, consequential, punitive or exemplary damages resulting from the performance or non- performance of this Agreement notwithstanding the fault, tort (including negligence), strict liability or other basis of legal liability of the party so released or whose liability is so limited and shall extend to the officers, directors, employees, licensors, agents, subcontractors, vendors and related entities of such party

Article 13. Termination of Work

This Agreement may be terminated as follows:

1. **By Client** (a) for its convenience on 30 days' notice to Raftelis, or (b) for cause, if Raftelis materially breaches this Agreement through no fault of Client and Raftelis neither cures such material breach nor makes reasonable progress toward cure within 15 days after Client has given written notice of the alleged breach to Raftelis.
2. **By Raftelis** (a) for cause, if Client materially breaches this Agreement through no fault of Raftelis and Client neither cures such material breach nor makes reasonable progress toward cure within 15 days after Raftelis has given written notice of the alleged breach to Client, or (b) upon five days' notice if Work under this Agreement has been suspended by either Client or Raftelis in the aggregate for more than 30 days.
3. **Payment upon Termination**. In the event of termination, Raftelis shall be compensated for all work properly performed prior to the effective date of termination.

Article 14. Notices

All notices required or permitted under this Agreement shall be in writing and shall be deemed deliverable when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

If for the Client:

Name

Title

Address

If for Raftelis:

Raftelis Financial Consultants, Inc.
227 W. Trade Street
Suite 1400
Charlotte, NC 28202

Article 15. Ownership of Work Product

All documents, data, compilations reports and studies prepared by Raftelis in performing the Scope of services shall be the sole property of the Client; provided that any use other than as contemplated in this Agreement or any alteration or modification of the Work Product shall be at the sole risk of Client and Client shall indemnify, defend and hold Raftelis harmless from any claim, demand, liability, cost or expenses incurred by Raftelis from such use or modification. Nothing contained herein shall be deemed an assignment, transfer or divestiture its use by Raftelis of any of its trade secrets, know-how or intellectual property

Article 16. Compliance with Applicable Laws

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

Any act of discrimination committed by Raftelis in the course of its performance under this Agreement, 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 Raftelis and the Client; and neither Party shall have the right, power, or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing.
- D. Assignment and Delegation: Neither Party shall assign 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 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 Ohio.

- 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.
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IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

By: _____
Signature

Title

Date

Raftelis Financial Consultants, Inc.

By: _____
Signature

Title

Date

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

Attachment A – Statement of Work/Proposal

ON FILE WITH CLERK OF COUNCIL

Attachment B – RAFTELIS’ 2022 Standard Hourly Billing Rates

<u>Position</u>	<u>Hourly Billing Rate **</u>
Chair	\$475
Chief Executive Officer/President	\$400
Executive Vice President	\$350
Vice President	\$325
Senior Manager	\$285
Principal Consultant	\$275
Manager	\$250
Senior Consultant	\$220
Consultant	\$190
Creative Director	\$190
Associate	\$160
Graphic Designer	\$135
Analyst	\$115
Administration	\$85
Technology/Communications Charge*	\$10
PRMG – Executive Vice President	\$280
PRMG – Vice President	\$265
PRMG – Senior Manager	\$225
PRMG - Manager	\$215
PRMG – Senior Consultant	\$175
PRMG - Consultant	\$140
PRMG - Associate	\$120
PRMG - Administration	\$85
Technology/Communication 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 an amount up to 50%.