City of Bentonville
Bentonville Utility Board Meeting
Tuesday, July 2nd – 11:30 am
Bentonville City Hall 305 SW "A" St.
City Council Chambers

# AGENDA

Call to Order
Pledge of Allegiance
Attendance
Approval of Minutes: June 18th, 2024

**New Business**

1. Resolution – Raftelis Agmt – Water/Wastewater Rate Analysis – Preston Newbill/Mike Bender, PE (pages 2-22)
2. Resolution – Raftelis Agmt – Water/Wastewater Capacity Fee Analysis – Preston Newbill/Mike Bender, PE (pages 23-38)
3. Ordinance – BEUD Net Metering Ordinance update – Travis Matlock, PE (pages 39)
4. Adjournment

THE CITY OF BENTONVILLE

## City of Bentonville, Arkansas Agenda Item Form

### Item Details

| | | | |
|---|---|---|---|
| **Council Meeting Date:** | 7/9/2024 | **Submitted By:** | Mike Bender |
| **Phone:** | 479-271-6873 | **For Department(s):** | Water, Wastewater |
| **Email:** | mbender@bentonvillear.com | | |

### Item Type (Check all that apply)

- ☐ Informational
- ☐ Bid Award
- ☑ Enter into an Agreement
- ☐ Change Order
- ☐ Recognizing Funds
- ☐ Budget Adjustment
- ☐ Waiver of Bid
- ☐ Emergency Clause

- ☐ Ordinance
- ☑ Resolution
- ☐ Informational

### Title, Recommendation & Justification

| | |
|---|---|
| **Title:** | Water and Wastewater Rate Analysis and Financial Plan |
| **Action Recommendation & Justification:** | A resolution requested by Staff for Council to authorize the Mayor and City Clerk to enter into a professional services agreement with Raftelis Finances Consultants, Inc. (Raftelis) in an amount not to exceed $115,620.00 to perform a water and wastewater rate analysis and financial plan for the Water Utility. The water department and wastewater department each budgeted $60,000.00 for a combined $120,000.00. No budget adjustment is needed. |
| **Additional Comments for Consideration (Optional):** | |
| **Amount for Approval:** | $ 115,620 |

### Budget Impact

**Is this Item Budgeted?** ☑ YES ☐ NO ☐ ITEM HAS NO COST ☐ OTHER:___________________________________

### Budget Adjustment *(to be completed by Finance when applicable)*

| Account Number (ORG-OBJECT) | Account Description | Expense | Revenue |
|---|---|---|---|
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |

**Fund(s) Impacted** (check all that apply) ☐ General Fund ☐ Utility Fund ☐ Street Fund ☐ Other(s):_______________________________________

*Budget Impact Notes for Consideration (Optional):*

Rate Analysis will be paid for by funds budgeted in Water 503020-43210 $60,000 and Wastewater 503030-43210 $60,000.

CITY OF BENTONVILLE

# Water and Wastewater Rate Analysis

SCOPE OF SERVICES / May 24, 2024

# Scope of Services

## Task 1: Project Initiation, Management, and Stakeholder Engagement

We will conduct project kick-off meetings with City staff, the City Council and the Utility Board. The meetings with City staff and City Council will be conducted onsite and will take place on the same day. The kick-off meeting with the Utility Board will be a separate meeting, conducted virtually. The staff kick-off meeting will focus on study logistics including work plan, the project timeline, data requirements, and deliverables. Prior to the staff kick-off meeting, we will review the data provided by City staff and begin framing preliminary analyses and formulate any questions.

The kick-off meetings with the City Council and Utility Board will provide an overview of these issues, but—similar to prior studies—will focus on issues of policy surrounding rate setting, to ensure staff and the project team have appropriate direction moving forward.

Throughout the project we will manage the process via consistent communication, regular meetings (virtual and onsite) with City staff and a robust QA/QC process.

### PLANNED MEETINGS:

- Onsite Meeting #1 – Onsite kick-off meeting with City staff, Bentonville City Council
- Virtual kick-off meeting with Bentonville Utility Board

### DELIVERABLES:

- Kick-off meeting materials
- Kick-off meeting summary memorandum and project timeline

## Task 2: Financial Plan Development

The project team will develop long-range financial plan for the water and wastewater utilities. The financial plan will identify the overall level of revenue necessary to fund operations and maintenance expense (O&M), routine repair and replacement capital expenditures, and repayment of debt service (current and future), while also achieving the City's financial management objectives. Determining the revenue requirement involves a detailed cash flow forecast, which compares projected baseline revenues to projected expenditures and identifies any adjustments to revenues necessary to fund utility operations in a financially sustainable manner. This involves the following subtasks: a projection of revenue under existing rates (Task 2.1); a projection of O&M expense (Task 2.2); a projection of routine and major capital expenditures (Task 2.3); and a projection of revenue adjustments based on detailed cash flow analysis (Task 2.4).

The projections we develop for the City will include the balance of the City's current fiscal year, plus the following 10 fiscal years. To the extent that the City has identified major capital improvements or incremental increases in O&M which lie outside of the 10-year window, we can extend the plans to include the additional years at no additional cost to the City.

**Task 2.1 — Projection of Revenue Under Existing Rates**
Raftelis will develop revenue projections under existing rates and projected customer usage by customer class. This will serve as a baseline for revenues if no adjustments to rate levels or structures are made. In Task 2.4, we will compare these baseline revenue projections to projected expenditures to determine the overall level of revenue necessary (including any revenue increases) to fund these projected expenditures and achieve the City's financial performance objectives.

Using historical customer billing data, we will evaluate trends in customer accounts and usage per account and establish a normalized usage per account, which avoids assigning undue weight to usage in wetter or drier periods. In addition to evaluating usage data considering weather patterns and conservation trends, we will also work with City staff to understand any potential changes in the local economy that might impact the demands of City customers.

We will then calculate revenues under existing rates at projected consumption levels. We will also incorporate analysis and projections of miscellaneous revenues. We will compare these revenues to the operating and capital expenses forecast in Tasks 2.2 and 2.3 to understand the sufficiency of existing revenues to fund projected expenditures.

A key issue for Task 2.1 is the City's ongoing efforts to evaluate and reduce non-revenue water, or water that is purchased from Beaver Water District, but not billed to customers due to leakage, unbilled uses and metering issues. At the time the prior water rate study was completed, City staff believed the majority of the non-revenue water was driven by malfunctioning meters replaced as part of the City's 2013/2014 meter replacement program. The City's 2020 water rate study assumed that the City would be able reduce non-revenue water in a significant way over the study period by addressing the malfunctioning meters. The City's 2023 wastewater rate study did not assume any additional billed volumes because, at the time, the issue appeared to be related to irrigation meters, which are not billed the wastewater volume charge. Raftelis will discuss the current state of the non-revenue water investigation with City staff, as it relates to the assumptions made in the prior studies and develop billed usage projection, which incorporates the best and latest available data regarding non-revenue water.

**Task 2.2 — Projection of O&M Expense**
The City's budgets (for the current year and any available future years) will serve as the starting point for the projection of O&M expense. To project O&M expenses for the forecast period we will make three adjustments: budget performance adjustments, incremental expense adjustments, and inflationary adjustments.

*Budget performance adjustments* will be made based on a detailed review of budgeted O&M expense compared to actual performance. To the extent that the utility tends to outperform in certain areas (i.e., spend less than budgeted), we will discuss potential adjustments so that the projection of baseline O&M (i.e., before any incremental expenses and inflationary adjustments) is a reasonable reflection of what is likely to occur.

*Incremental expense adjustments* account for expected future changes in O&M expense that exceed inflation. There are two reasons such adjustments are typically made. First, the City anticipates adding new personnel or programs that are not currently captured in the existing budgets. In this case, an adjustment will be made to include the costs of those additional personnel or programs. The current budget may also include one-time expenses that are not expected to be incurred in the future. In this case, the one-time expense will either be excluded from future years or, if it occurs periodically, normalized in future years.

*Inflationary adjustments* account for expected future inflation in O&M expense, after accounting for budget performance and any incremental expenses. Inflationary adjustments will be based on the best and most relevant data possible. Expenses driven by customer growth and usage (e.g., power and chemicals) will be adjusted based on the projections in Task 2.1. Personnel costs will be adjusted based on planned compensation adjustments from the City. For expenses where less detailed data is available, we will rely on historical trends, discussions with City staff, and our experience working with similar utilities throughout the United States.

In addition to the global considerations identified above we will also conduct a more detailed forecast of operating expenses associated with purchasing water from Beaver Water District. Water purchase projections will be developed based on weather normalized historical purchases and will be adjusted over the forecast period for additional purchases related to customer growth and anticipated in increases in the Beaver Water District rate.

**Task 2.3 — Projection of Routine and Major Capital Expenditures**

Task 2.3 involves developing a capital improvement financing plan that identifies the City's capital projects (routine and major) and the mix of cash and debt used to finance them. The cash flow impact of the capital financing plan is incorporated into the cash flow analysis in Task 2.4 as annual cash outlays (i.e., PAYGO or revenue-funded capital) and new debt service.

To develop the capital financing plan, we will review the City's approved capital improvement plan (CIP) and work with City staff to ensure that the appropriate level of investment is balanced against the potential rate implications. To the extent that the CIP is in current year dollars, we will include adjustments for future construction cost inflation based on an analysis of trends for the appropriate cost indices (e.g., Engineering News Record). We will also incorporate any projects that the City already has in progress from prior approved CIPs that will be completed in the first few years of the forecast period. The CIP will incorporate both routine repair and replacement expenditures as well as major capital improvements. Given the recurring nature of routine expenditures (i.e., sewer line replacement), many utilities employ a PAYGO funding approach. Major capital improvements are funded with debt to spread out the financial burden on customers and to ensure that the cost of major improvements is borne by all customers, not just current customers. We will work with City staff to develop an optimal mix of cash and debt financing to achieve the City's financial management objectives. The projected capital costs, including PAYGO and any new debt service, will be incorporated into the cash flow projections in Task 2.4.

For water, Raftelis will work to incorporate the recommendations from the City's recently completed master plan update which has identified significant improvements to the City's water system to meet customer demand through 2043. The City's 2019 water study included capital improvement limited to in-house water main replacement and equipment replacement, which the City had the capacity to fund using PAYGO funding. By contrast, the master plans identify $270 million in capital improvement needs over the next 10 years. Raftelis will work with City staff to develop a strategy for financing these improvements, the cost of which will be incorporated in the cash flow forecast in Task 2.4 and ultimately the rates themselves in Tasks 3 and 4.

For wastewater, Raftelis will incorporate the latest information regarding the City's collection system needs, the status of the NACA line and plant expansion and the rehabilitation of the City's wastewater treatment plant. At the time of the completion of the 2023 wastewater rate study, the NACA line had been bid, construction was underway with repayment of an Arkansas Natural Resource Commission (ANRC) loan expected to begin in 2024. The NACA plant expansion had also been bid and ANRC loan payments were expected to begin after the completion of construction in second half of 2025. The City owned wastewater plant rehabilitation and expansion project was anticipated to be completed by 2028, with payments on an assumed ANRC loan beginning at that time. Raftelis will incorporate the timing of the principal and interest payments on these loans into the cash flow forecast for wastewater developed as part of Task 2.4.

**Task 2.4 — Utility Cash Flow Forecasts and Revenue Adjustments**

We will develop a detailed cash flow forecast for the multi-year planning horizon. This forecast will compare existing revenues (Task 2.1) to forecast expenditures (Tasks 2.2 and 2.3), identifying any deficiencies in funding under existing revenues. Throughout Task 2.4, we will discuss the City's existing financial policies and objectives (formal and informal). This will include a review of the performance of the utility relative to key financial ratios (e.g., days cash, capital structure, and debt service coverage). Throughout these discussions, we will provide recommendations to ensure the City's financial management strategies align with industry best practices.

We will structure rate adjustments to achieve the City's strategic financial management objectives and maintain alignment with best financial management practices regarding debt service coverage ratios and reserve balances. Where possible, revenue adjustments will be smoothed, mitigating the impact on customers in any given year. The ultimate outcome of Task 2.4 will be the identification of the overall level of revenue required (including any adjustments to revenue) to fund the provision of safe and reliable water and wastewater service in a financially sustainable manner. This revenue requirement will be attributed to the City's customer classes based on their use of the water and wastewater system in Task 3. For water, we will restate the revenue requirement on a utility basis (O&M, depreciation and return) in order to develop rates for the City wholesale water customers.

### PLANNED MEETINGS:

- Virtual meetings as needed.
- Onsite Meeting #2 – Meet with City staff to review draft financial plan, confirm strategy and identify any issues.

### DELIVERABLES:

- Meeting materials
- Meeting summary memorandum

## Task 3: Cost-of-Service Analysis

The project team will utilize our experience, combined with industry best practices as set forth in the American Water Works Association's (AWWA) Manual M1: Principles of Rates, Fees and Charges and Water Environment Federation's (WEF) *Manual of Practice No. 27, Financing and Charges for Wastewater Systems,* to assign the revenue requirement determined in the water and wastewater financials plan to the City's customer classes.

This will involve three steps: functionalization (Task 3.1), which assigns the revenue requirement to the various components of the water and wastewater system (e.g., collection and treatment, purchased water, transmission and distribution); classification, which assigns the functionalized costs to demand parameters, or the components of customer demand which drive costs (e.g., flow and strength, base and max day) (Task 3.2); and distribution, which assigns costs to customer classes in proportion to the demands they place on the water and wastewater systems (Task 3.3).

In addition to the general approach outlined above, the water cost of service study will take into account the unique service characteristics and level of service received by the City's wholesale water customers: Bella Vista, Cave Springs, Oakhills and Old Bella Vista POA. In general, these rates include a pass-through of water supply costs from Beaver Water District, as well as the cost of the City's transmission system, but do not include the cost of distribution mains and distribution storage. In addition the rate to Bella Vista excludes the capital cost of the City's Tiger tank, which is recovered via a separate capital cost share fixed charge. The pass through of the Beaver Water District rate is one for one and does not account for volumes purchased by the City, but not billed to customers. At the time of the 2020 rate study this was believed to be primarily a metering issue, though there is likely some non-revenue water which could be attributed to wholesale customers.[1] The contract with Bella Vista is for 20 years, expiring in 2025. The remaining contracts are on 6 year, automatically renewing terms. The cost of service analysis developed in Task 3 will take into account the current service characteristics of each customer in order to facilitate future negotiations with these customers regarding the rates and rate setting methodology.

[1] The City's current service agreement with Bella Vista does not allow for the inclusion of non-revenue water related costs in the rate.

**Task 3.1 — Functionalize Revenue Requirement**

Applying the principle of cost causation requires a determination of how the costs incurred relate to the design and operation of the water and wastewater system. The functionalization step allocates the revenue requirement to the various functions each utility performs in order to deliver service. The cost of each function is then related to the demand characteristics, which drive variation in those costs (Task 3.2) and ultimately to customer classes based on their proportionate share of that demand (Tasks 3.3).

Functional categories for the water utility may include:

- Purchased Water
- Purchased Water – Non-Revenue Water
- Water Supply Line and Tank
- Transmission
- Distribution
- Storage
- Meters & Services
- Customer Service

Functional categories for the wastewater utility may include:

- Laterals
- Collection mains
- Lift stations
- Treatment plant
- Industrial waste control
- Customer service

Task 3.1 involves allocating the revenue requirement to these functions. The project team will work closely with City staff to determine allocations that reasonably align the costs incurred with each function. We will functionalize O&M expenses based on an evaluation of the City's detailed water and wastewater budget and interviews with City staff. We will functionalize capital expenditures (i.e., PAYGO capital and debt service) based on the City's investment in water and wastewater assets.

**Task 3.2 — Allocate Functionalized Revenue Requirement to Cost Components**

The cost of each function from Task 3.1 is driven by different types of customer demand. Task 3.2 attributes the functionalized costs to these cost components. The result is an understanding of the proportion of the revenue requirement that can be attributed to each type of customer demand. This allows for a distribution of the revenue requirement based on customer demands in Tasks 3.3.

The City's water system was designed to distribute water during periods of average customer demand as well as peak demand. If no peak demand existed, a smaller, less costly, system could be built to serve customers. Given that additional costs (above those incurred to serve average demand) are incurred to serve peak demand, the question then becomes who should pay for those incremental costs. The base-extra capacity methodology (as outlined in AWWA's Manual M1) is the most common method for assigning such costs for water utilities. The base-extra capacity method allocates maximum day and maximum hour costs based on the incremental demand above average day. Thus, customers whose demand drives the need for the larger system are allocated a greater share of costs.

The cost drivers related to water customer demand are as follows:

- Base – Demand on an average day
- Maximum day extra capacity – Maximum day demand excluding average day

- Maximum hour extra capacity – Maximum hour demand excluding maximum day demand and average day demand

The City's wastewater system was designed around the volume and strength of wastewater contributed by customers. Volume includes sanitary flow that is the result of customers direct contribution of wastewater into the City's collection system and infiltration and inflow (I/I). Infiltration in many systems is largely driven by aging customer sewer laterals, which deteriorate over time resulting in root intrusion, cracks, joint misalignment, and general leakage, causing groundwater penetration, especially during heavy rain events. The age and condition of the sewer collection system also contributes to infiltration. Inflow can be caused by directly connected residential storm drainage systems, broken or missing cleanout caps, faulty manhole covers or frames, and other issues.

Wastewater strength relates to the concentration of pollutants that must be removed from City wastewater via the physical and biological processes at the City's wastewater treatment plants. Wastewater strength includes measures such as biochemical oxygen demand (BOD), total suspended solids (TSS), phosphorous and nitrogen.

The cost drivers related to wastewater customer demand include:
- Sanitary flow
- I/I
- Strength (BOD, TSS, Phosphorous, Nitrogen)
- Customer bills

Costs that are driven by wastewater volumes will be allocated to sanitary flow and I/I. Costs related to strength are allocated to strength parameters. Functions that are driven by multiple demand components will be allocated between those components based on the design and operation of the infrastructure used to meet the type of demand in question. For example, the design of different components of the wastewater treatment process is a function of volume and the different strength components. We will work with City staff to determine appropriate allocations between the various cost components.

**Task 3.3 — Distribute Costs to Customer Classes**
While Tasks 3.1 and 3.2 allocate the revenue requirement according to the various types of customer demand, Task 3.3 will involve assigning the revenue requirement to each customer class proportionate to their share of the type of demand, which drives variation in those costs. This involves three steps:

1. Determine customer class units of service.
2. Calculate unit cost of service
3. Distribute costs of customer classes

To determine units of service for the *water utility*, the project team will evaluate the City's detailed customer billing information, and other operational information available to the City (e.g., plant production records). Base costs, for example, are typically allocated using annual usage plus an allocation of non-revenue water. Maximum day and maximum hour costs are typically allocated using maximum day and maximum hour extra capacity demand. These will be estimated using monthly billing data and water purchase records.

To determine the units of service by customer class for the *wastewater utility*, we will create a mass balance analysis, which uses a combination of customer billing information and wastewater plant discharge monitoring reports (DMR) to determine customer class units of service.

The mass balance analysis will assign influent volumes received at the City's wastewater treatment plants to each customer class based on an analysis of the available usage data. Volume-related units include sanitary flow plus I/I. The total influent volume (sanitary plus I/I) at the City's wastewater treatment plant is known. We will estimate the breakdown of total influent volume between sanitary flow and I/I using winter period water usage, customer billing data and collection system data (e.g., lengths of collection mains of various diameters).

We will determine strength-related units in a similar fashion. The strength loadings at the City's wastewater treatment plants are known. Strength units for surcharge customers (whose loadings are monitored) would be subtracted from the wastewater plant loadings with the remaining amount to be distributed to the non-monitored customers based on assumed strength loadings.

After determining units of service by customer class, we will calculate a unit cost of service for each demand parameter by dividing the costs (by component) determined in Task 3.2 by the units of service (by component). The result is a unit cost of service for each component of demand.

Finally, we will distribute costs to each customer class be used to distribute costs to the City's customer classes by multiplying the applicable unit cost for each component of demand by each customer class' units of service. The outcome is an understanding of each customer class' responsibility for the overall revenue requirement identified in Task 2.

Raftelis will develop a comparison of class cost of service to class revenue generation under the City's existing rates. This comparison will identify variances between the level cost each class causes the City to incur and the revenue currently recovered from that class. To the extent that significant variances are identified, these can be used as a guide for recommended rate adjustments in Task 4.

### PLANNED MEETINGS:

- Virtual meetings as needed to review preliminary cost of service analysis results.

### DELIVERABLES:

- Meeting materials
- Meeting summary memorandum

## Task 4: Rate Design and Analysis of Bill Impacts

The project team will recommend adjustments to the City's water and wastewater rate structure to improve alignment with cost of service, industry best practices, and the community values identified in Task 1. Task 4 may include the development of rate alternatives, which evaluate different approaches to recovering the City's revenue requirement (fixed versus volume charges, rates by customer class, phase-in of any recommended changes)

Once rate alternatives are established, the project team will assess the impact on City customers via traditional methods, such as typical customer bills, peer benchmarking and a high level affordability analysis using the United States Census Bureau American Community Survey (ACS) Data. We will work with City staff to ensure that any recommended changes are compatible with the City's billing system.

For wholesale water rates we will calculate rates which meet the requirements of the City's existing service agreements with these customers, as well as alternative approaches which can be incorporated into future service agreements. Currently, the contracts with Cave Springs, Oakhills and Old Bella Vista POA all contain similar language, which allows the City to increase the rate as needed, but not more the once per year. These contracts also require adjustments to the rates based on any changes to the Beaver Water District rate (up or down). Aside from these provisions, the contracts with these three customers. The contract with Bella Vista has a much more detailed and much more complicated rate structure. This contract will expire in 2025, prompting the need for a new contract with provisions for establishing and adjust the rate for this customer. Raftelis will work with City staff to determine alternatives which can be included in a new contract to ensure the City continues to recover costs in an equitable manner going forward.

### PLANNED MEETINGS:

- Virtual meetings as needed to review interim deliverables and materials for onsite meeting.
- Onsite Meeting #3 – Meet with City staff to review draft report and presentation materials.
- Virtual meeting to present preliminary findings to Bentonville Utility Board
- Onsite Meeting #4 – present preliminary findings to Bentonville City Council

### DELIVERABLES:

- Presentation materials
- Meeting summary memorandum

## Task 5: Rate Study Report and Presentation of Study Results

The project team will produce a report which summarizes the results of the study. Drafts will be circulated to City staff and any comments will be incorporated into a Final Draft report, which will be provided in hard copy and electronic format to the City. Senior members of our project team will also present the draft final results of the study to the Utility Board and the City Council. After incorporating feedback from the Utility Board and City Council, the project team will present the final study results at a meeting for adoption of the rate ordinance and be available to answer any final questions.

### PLANNED MEETINGS:

- Virtual meetings as needed to review interim deliverables and materials for onsite meeting.
- Virtual meeting with Bentonville Utility Board to present draft rate study.
- Onsite Meeting #5 – Present draft final study to Bentonville City Council
- Onsite Meeting #6 – Present final report to Bentonville City Council at meeting for rate adoption.

### DELIVERABLES:

- Presentation materials
- Rate Study Report

## Task 6: Development of the Cost-of-Service Model

The project team will develop a user- friendly rate model in Excel, which the City can use as a decision support tool moving forward. This model will be non-proprietary and accessible by the City without any licensing restrictions or fees. We will also provide up to 8 hours per year of model support at no additional cost to the City.

### PLANNED MEETINGS:

- Virtual meetings for model training.
- Virtual meetings for model support (up to 8 hours/year).

### DELIVERABLES:

- Water and Wastewater Rate Models

# Fee Proposal

| Tasks | Hours | | | | | Total Fees |
|---|---|---|---|---|---|---|
| | TB | CD | SC | JC | Total | |
| **1. Project Initiation, Management, and Stakeholder Engagement** | 8 | 20 | 16 | 2 | 46 | **$13,370** |
| **2. Finanical Plan Development** | 4 | 16 | 64 | 4 | 88 | **$21,780** |
| **3. Cost-of-Service Analysis** | 2 | 24 | 80 | 6 | 112 | **$27,710** |
| **4. Rate Design and Analysis of Bill Impacts** | 4 | 12 | 32 | 4 | 52 | **$13,460** |
| **5. Rate Study Report and Presentation** | 4 | 40 | 60 | 2 | 106 | **$28,010** |
| **6. Development of Cost-of-Service Model** | 0 | 4 | 8 | 2 | 14 | **$3,610** |
| **Total Meetings / Hours** | **22** | **116** | **260** | **20** | **418** | |
| **Hourly Billing Rate** | **$360** | **$320** | **$220** | **$285** | | |
| **Total Professional Fees** | **$7,920** | **$37,120** | **$57,200** | **$5,700** | **$107,940** | |

| | |
|---|---|
| **Total Fees** | **$107,940** |
| **Travel Expenses** | **$3,500** |
| **Technology and Communication Charge** | **$4,180** |
| **Total Fees & Expenses** | **$115,620** |

*TB - Tom Beckley - Project Director*
*CD - Collin Drat - Project Manager*
*SC - Staff Consultant*
*JC - Joe Collins - QA/QC*
-
-
-
-

**PROFESSIONAL SERVICES AGREEMENT BETWEEN**
**THE CITY OF BENTONVILLE**
**AND**
**RAFTELIS FINANCIAL CONSULTANTS, INC.**

This Consulting Agreement ("Agreement") is entered into this _____ day of _________, 2024 (hereinafter referred to as the effective date of the agreement) by and between, The City of Bentonville (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 a water and wastewater rate analysis for Client. Raftelis will perform the services as set forth in its proposal sent to Client dated May 24, 2024 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 $115,620, which includes professional fees and direct expenses incurred in performing the scope of services, as well as an hourly technology expense reimbursement, outlined in Attachment B. The parties understand that this sum is based upon the scope of work contained herein at Raftelis' current standard hourly rate schedule included in Attachment B. Any expansion of the scope of work by the Client shall involve the discussion of and agreement about 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. Such invoices shall be supported by appropriate documentation; at a minimum, the task performed, the individuals working on such task, the level of each such individual, and expenses incurred. Each invoice will contain all hours and expenses from Raftelis for the month. Upon receipt of monthly invoice, the Client will remit payment of same amount to 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 and defend the Client, its officers, directors, managers and employees ("Indemnified Party or Parties") and to hold the Indemnified Parties harmless against third party 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 excess

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

Cyber Insurance - $5,000,000

## 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 will perform the services under this Agreement in accordance with the standard of professionals in its industry prevailing at the time and place the services are performed. 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: | If for Raftelis: |
| --- | --- |
| ______________________ | Collin Drat |
| Name | Raftelis Financial Consultants, Inc. |
| | 215 W. Pershing Road |
| ______________________ | Suite 406 |
| Title | Kansas City, MO 64108 |
| ______________________ | |
| Address | |

## 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 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 of its use by Raftelis of any of its trade secrets, know-how, or intellectual property.

## Article 16 – Compliance with Applicable Laws

Raftelis is an equal opportunity employer and complies with all federal, state, and local fair employment practices laws. Raftelis strictly prohibits and does not tolerate discrimination against employees, applicants, or any other covered persons because of race, color, religion, national origin or ancestry, gender identity, sexual orientation, marital status, sex, pregnancy, age, disability, past, current, or prospective service in the uniformed services, or any other characteristic protected under applicable federal, state, or local law. All Raftelis employees, other workers, and representatives are prohibited from engaging in unlawful discrimination. This policy applies to all terms and conditions of employment, including, but not limited to, hiring, training, promotion, corrective action, compensation, benefits, and termination of employment.

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 Arkansas.

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.

## Article 18 – Disclosures

As a registered Municipal Advisor under the Dodd-Frank Act, Raftelis is required to inform our clients of any existing or potential conflicts of interest that may be relevant to any proposed scope of services that may include providing "advice" as that term is defined in the Dodd-Frank Act. As of the date of this engagement letter, no conflicts of interest are known to exist.

Under the Dodd-Frank Act the definition of "advice" includes providing any opinion, information or assumptions related to the size, timing and terms of possible future debt issues or borrowing. This type of information may be integrated into the capital and financial planning components of a water and wastewater rate analysis. This definition is applicable regardless of whether this information is developed and used solely for planning and decision-making purposes. For the services addressed in the scope of work identified for this engagement, any information that is developed by Raftelis that falls under this definition of municipal advice is not intended to represent a recommendation that the City of Bentonville should issue debt based on the terms and assumptions used to develop the financial plan or forecast, or that the will, in fact, be able to issue debt under the exact terms and conditions assumed and used to develop the financial plan or forecast. The information developed as part of this water and wastewater rate analysis, including any related municipal advice, is intended only to provide information useful in evaluating the potential impact on the utility and future rate adjustments of one potential course of action for the . If the City of Bentonville decides at some future date to issue debt, then at that time the will need to engage an independent, registered Financial Advisor to assist in evaluating the availability of different types of debt, and the specific terms and conditions for issuing debt, which will be affected by market conditions and the City of Bentonville's credit rating at the time of issuance. At that time, as a registered Municipal Advisor, Raftelis can also provide additional assistance related to a specific bond or debt issue, such as preparing a bond feasibility report or financial forecast for inclusion in bond documents.

Any services provided under this agreement that fall under the definition of municipal advice are only covered through the term of this agreement. Raftelis may withdraw from providing municipal advisory services upon written notification to the City of Bentonville.

The Municipal Securities Rulemaking Board ("MSRB") provides significant protections for municipal entities and obligated persons that are clients of a municipal advisor. To understand the protections provided and how to file a complaint with an appropriate regulatory authority, visit the MSRB's web site at www.msrb.org.

Raftelis does not have any legal events or disciplinary history on Raftelis' Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgements, liens, civil judicial actions, customer complaints, arbitrations, and civil litigation. Raftelis' most recent form MA and each most recent Form MA-I filed with the SEC may be assessed electronically at the following website: www.sec.gov/edgar/searchedgar/companysearch.html

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC. If any material legal or regulatory actions is brought against Raftelis, Raftelis will provide complete disclosure to the the City of Bentonville in detail.

By signing this agreement  indicating its approval and acceptance of the of the proposed scope of work and fees, the City of Bentonville is also explicitly acknowledging that Raftelis has provided the necessary disclosures addressing conflicts of interest and any limitations on the scope of Municipal Advisory services to be provided by Raftelis' part of this engagement.

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

# ATTACHMENT A

# STATEMENT OF WORK

**ATTACHMENT B**
**RAFTELIS' 2024 STANDARD HOURLY BILLING RATES**

| Position | Hourly Billing Rate* |
|---|---|
| Chair/Chair Emeritus | $500 |
| Chief Executive Officer/President | $450 |
| Executive Vice President | $400 |
| Vice President | $360 |
| Senior Manager | $320 |
| Recruiter | $295 |
| Principal/Senior Advisor | $295 |
| Manager | $285 |
| Senior Consultant | $250 |
| Executive Coach | $250 |
| Consultant | $220 |
| Creative Director | $220 |
| Associate Consultant | $185 |
| Graphic Designer | $160 |
| Analyst | $135 |
| Administration | $100 |
| Technology/Communications Charge** | $10 |

* These rates will be in effect for calendar year 2024 and will then increase annually by three percent (3%) unless specified otherwise by contract.

** 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%.

## City of Bentonville, Arkansas Agenda Item Form

### Item Details

| | | | |
|---|---|---|---|
| **Council Meeting Date:** | 7/9/2024 | **Submitted By:** | Mike Bender |
| **Phone:** | 479-271-6873 | **For Department(s):** | Water, Wastewater |
| **Email:** | mbender@bentonvillear.com | | |

### Item Type (Check all that apply)

- ☐ Informational
- ☐ Bid Award
- ☑ Enter into an Agreement
- ☐ Change Order
- ☐ Recognizing Funds
- ☐ Budget Adjustment
- ☐ Waiver of Bid
- ☐ Emergency Clause

- ☐ Ordinance
- ☑ Resolution
- ☐ Informational

### Title, Recommendation & Justification

| | |
|---|---|
| **Title:** | Water and Wastewater Capacity Fee Analysis |
| **Action Recommendation & Justification:** | A resolution requested by Staff for Council to authorize the Mayor and City Clerk to enter into a professional services agreement with Raftelis Finances Consultants, Inc. (Raftelis) in an amount not to exceed $59,600.00 to perform a water and wastewater capacity fee analysis for the Water Utility. No budget adjustment is needed. |
| **Additional Comments for Consideration (Optional):** | |
| **Amount for Approval:** | $ 59,600 |

### Budget Impact

**Is this Item Budgeted?** ☑ YES ☐ NO ☐ ITEM HAS NO COST ☐ OTHER:________________

### Budget Adjustment *(to be completed by Finance when applicable)*

| Account Number (ORG-OBJECT) | Account Description | $ Expense | $ Revenue |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

**Fund(s) Impacted** (check all that apply) ☐ General Fund ☐ Utility Fund ☐ Street Fund ☐ Other(s):________________

*Budget Impact Notes for Consideration (Optional):*

Study will be paid for with funds budgeted in 101040-43210.

CITY OF BENTONVILLE

# Water and Wastewater Capacity Fee Analysis

**SCOPE OF SERVICES / May 24, 2024**

# Scope of Services

## Task 1: Project Initiation, Management, and Stakeholder Engagement

We will conduct project kick-off meetings with City staff, the City Council and the Utility Board. The meetings with City staff and City Council will be conducted onsite and will take place on the same day. The kick-off meeting with the Utility Board will be a separate meeting, conducted virtually. The staff kick-off meeting will focus on study logistics including work plan, the project timeline, data requirements, and deliverables. Prior to the staff kick-off meeting, we will review the data provided by City staff and begin framing preliminary analyses and formulate any questions.

The kick-off meetings with the City Council and Utility Board will provide an overview of these issues, but—similar to prior studies—will focus on issues of policy surrounding the establishment of capacity fees, to ensure staff and the project team have appropriate direction moving forward.

Throughout the project we will manage the process via consistent communication, regular meetings (virtual and onsite) with City staff and a robust QA/QC process

### PLANNED MEETINGS:

- Onsite Meeting #1 – Kick-off meeting with City staff, Bentonville City Council
- Virtual kick-off meeting with Bentonville Utility Board

### DELIVERABLES:

- Kick-off meeting materials
- Kick-off meeting summary memorandum

## Task 2: Identify Cost of Growth Recovery Approaches

There are a variety of options for recovering the cost of infrastructure constructed to serve new customers, but all are premised on the concept that existing customers, by definition, have the infrastructure required to serve them. Since these customers will not *directly*[1] benefit from infrastructure constructed to serve new customers, it is common to determine one-time fees charged to new development to offset these costs under the "growth pays for growth" concept. In practice, it is uncommon for these one time fees to fully cover the cost of the growth related projects, but they are an approach to mitigating the financial impact of growth related infrastructure on existing customers. There will always be a timing difference between when growth related infrastructure must be financed and constructed (in large discrete chunks) and when the growth and related fees are realized. To the extent that funding is needed now for projects that will serve new customers added over a longer time horizon, rate revenue from existing customers is often the backstop, though there are communities that use outside sources of funding (non-utility) to cover these differences as well.

The most common approach to recovering growth related costs is system development charges (SDCs). The term SDC, which is identified in American Water Works Association's (AWWA) Manual M1: Principles of Rates, Fees and Charges is also referred to as:

- System Development Fees (SDF)
- Development Impact Fees (DIFs)

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[1] Existing customer do benefit indirectly from the addition of new customers. The most important financial benefit is improved economies of scale which are realized as new customers are added to the system.

- Impact Fees
- Equity Fees
- Capacity Fees
- Availability Charges

For ease of reference, this scope of work will refer to these fees as capacity fees. Regardless of terminology used, these one-time fees all refer to payments made by developers to offset the cost investment in growth related infrastructure. This differs from tap fees or connection fees, which recover the cost of physically connecting the customer to the local distribution or collection main. Capacity fees recover the cost of backbone infrastructure constructed to serve new customers and do not include the cost of local distribution and collection infrastructure or the cost of installing a new customer's service line and meter. Generally, these are not area specific, but based on the cost of the growth related infrastructure, available capacity, and the level of service received by the new customer.

The two most common approaches to water and wastewater capacity fees are the equity buy-in approach and the marginal incremental cost approach. The *equity buy-in approach* is used for systems that have existing system capacity (usually treatment capacity) that is available to serve new customers. This approach determines the equity investment in the backbone system by determining the value of backbone assets, less the portion funded by any debt whose payments are funded by customer rates. The value of the backbone assets is generally adjusted to reflect the replacement cost of the assets, which reflects the value of the system today, as opposed to when it was constructed. The equity is divided by the capacity of the system (usually treatment capacity) to determine the cost for each unit of capacity. This can then be scaled to match the flow requirements of the new customer.

The second capacity fee approach is the *incremental cost* approach, involves a similar calculation but uses future project costs as the cost basis. Under the incremental cost approach, the cost of future capacity is divided by the incremental units of capacity added to determine the unit cost. Whereas the equity buy-in approach uses the value of the investment already made in assets with available capacity as its cost basis, the incremental approach uses the cost of future investment as its cost basis. The incremental approach is more commonly used in systems that do not have sufficient capacity to serve new customers and will need to construct new assets to serve the additional demand.

A *hybrid approach*, which uses a weighted average of the two foregoing approaches is also employed for systems which have some available capacity, but not enough to serve all the growth over the planning period.

In addition to capacity fees some communities use fees which recover the cost of *specific* infrastructure. The cost to extend a water or wastewater main to serve a new area might be recovered by a fee charged to new development connecting to that specific component of infrastructure. These fees are typically determined based on the cost of that specific project and the number of customer connections that can be served and often charged on a front footage basis. Special assessments are another approach to the same concept but utilize taxes in place of fees.

Raftelis will work with City staff to further our understanding of the projected growth anticipated in the City, and the historical context surrounding the City's current cost of growth recovery strategy. Raftelis will then provide recommendations surrounding the specific fee and fee calculation approach for both water and wastewater.

## Task 3: Calculate Fees

**Task 3.1 — Determine Cost Basis for Fee**

For capacity fees, the first step involves determining the cost basis for the fees. Generally, capacity fees recover the cost of capital improvements that expand capacity or recoup of the cost of prior capital improvements that have capacity available to serve new development. The cost basis for capacity fees, in other words, includes the cost of constructing new capacity and the cost of previous investment in existing available capacity. These costs must be related to the existing service requirements of customers and cannot improve the level of service. This aligns with the equity buy-in (existing available capacity) and incremental (new capacity) approaches outlined above. Raftelis will calculate the cost basis under all three approaches (equity buy-in, incremental and hybrid).

Under the equity buy-in approach, Raftelis will examine the City's fixed asset records to determine the original cost of investment in water and wastewater assets. This will then be escalated to replacement cost using relevant construction cost indices (Engineering News Record, Handy-Whiteman) and adjusted for accumulated depreciation. The value will only include backbone infrastructure with additional capacity for new development. This value will be divided by system capacity (likely treatment capacity) to determine a unit cost of the City's existing investment in capacity.

Under the incremental approach, Raftelis will work with staff to identify growth related projects in the City's capital improvement program as well as the capacity projected to be added over the planning period. The projected cost, divided by the projected capacity, will serve as the unit cost for the incremental approach. The hybrid approach will be based on the weighted average of the buy-in and incremental approaches.

If appropriate, any area or infrastructure specific charges will be determined based on the projected cost of the infrastructure divided by the appropriate units of service (e.g., total front footage) to determine a unit cost for that specific area.

**Task 3.2 — Determine Level of Service**

Once the cost basis is determined, a level of service for new customers must be determined, such that the calculated fee is proportional to the additional capacity demands of each unit of new development. Level of service is the amount of demand each new customer connection places on the City's water and sewer system and is typically expressed on a similar basis as the cost basis determined in Task 3.1. In addition, the level of service is typically expressed as the demand for a single family residential customer, or an equivalent residential unit (ERU) basis. The level of service can scaled up for multi-family residential and non-residential based on their flow requirements. Level of service information can be derived from customer billing records or planning studies conducted by the City (master plans). Raftelis will work with City staff to identify the appropriate level of service for the types of development anticipated in the City. Since the fees can only include the cost of available or additional capacity, not the cost of an improved level of service, the level of service for new customers will be the same as existing customers with the same demand characteristics.

**Task 3.3 – Calculate Fees**

The calculation for each fee involved multiplying the unit cost determined in Task 3.1, by the single family residential equivalent level of service to determine the fee for 1 ERU. From there fees can be scaled up for larger customers based on meter capacity ratios or by customer type using the number ERUs represented by that type. As noted above in Task 3.2, the number of ERUs for customers other than single family can be calculated using the level of service for the larger customer relative to that of the single family customer (i.e., twice the flow would be 2 ERUs). Raftelis will calculate fees under the various approaches above. The fees presented would represent the maximum supportable fee using the calculations outlined above. The City could reasonably enact *lower* fees, at its discretion.

## Task 4: Benchmarking

Raftelis will benchmark the proposed fees against similar fees charged by other similarly situated communities in Arkansas. If desired, Raftelis can incorporate other non-utility impact fees to present a combined picture of the total impact on new development as compared to its peers. While we would not recommend using benchmarking to determine a fee higher than the maximum supportable fee, benchmarking can be informative in determining the timing and level of the fee ultimately enacted, at or below the maximum supportable fee.

### PLANNED MEETINGS:

- Virtual meetings as needed to review interim deliverables and materials for onsite meeting.
- Onsite Meeting #2 – Meet with City staff to review draft report and presentation materials.
- Virtual meeting to present preliminary findings to Bentonville Utility Board
- Onsite Meeting #3 – present preliminary findings to Bentonville City Council

### DELIVERABLES:

- Presentation materials
- Meeting summary memorandum

## Task 5: Study Report and Presentation of Study Results

The project team will produce a report which summarizes the results of the study. Drafts will be circulated to City staff and any comments will be incorporated into a Final Draft report, which will be provided in hard copy and electronic format to the City. Senior members of our project team will also present the draft final results of the study to the Utility Board and the City Council. After incorporating feedback from the Utility Board and City Council, the project team will present the final study results at a meeting for adoption of the fee ordinance and be available to answer any final questions.

### PLANNED MEETINGS:

- Virtual meetings as needed to review interim deliverables and materials for onsite meeting.
- Virtual meeting with Bentonville Utility Board to present draft fee study.
- Onsite Meeting #4 – Present draft final study to Bentonville City Council
- Onsite Meeting #5 – Present final report to Bentonville City Council at meeting for fee adoption.

### DELIVERABLES:

- Presentation materials
- Capacity Fee Study Report

## Task 6: Fee Model

The project team will develop a user- friendly capacity fee model in Excel, which includes all of the documentation used to develop the fees. This model will be non-proprietary and accessible by the City without any licensing restrictions or fees. We will also provide up to 8 hours per year of model support at no additional cost to the City.

### PLANNED MEETINGS:

- Virtual meetings for model training.
- Virtual meetings for model support (up to 8 hours/year).

### DELIVERABLES:

- Water and Wastewater Capacity Fee Models

# Fee Proposal

| Tasks | Hours TB | CD | SC | JC | TC | Total | Total Fees |
|---|---|---|---|---|---|---|---|
| **1. Project Initiation, Management, and Stakeholder Engagement** | 4 | 8 | 8 | 2 | | 22 | **$6,330** |
| **2. Identify Cost of Growth Recovery Approaches** | 4 | 8 | 12 | 2 | 8 | 34 | **$10,090** |
| **3. Calculate Fees** | 2 | 12 | 24 | 4 | 8 | 50 | **$13,860** |
| **4. Benchmarking** | 2 | 8 | 12 | 4 | | 26 | **$7,060** |
| **5. Study Report and Presentation** | 4 | 16 | 28 | 2 | 2 | 52 | **$14,010** |
| **6. Capacity Fee Model** | 0 | 2 | 4 | 2 | 2 | 10 | **$2,810** |
| **Total Meetings / Hours** | **16** | **54** | **88** | **16** | **20** | **194** | |
| **Hourly Billing Rate** | **$360** | **$320** | **$220** | **$285** | **$360** | | |
| **Total Professional Fees** | **$5,760** | **$17,280** | **$19,360** | **$4,560** | **$7,200** | **$54,160** | |
| | | | | | | **Total Fees** | **$54,160** |
| | | | | | | **Travel Expenses** | **$3,500** |
| | | | | | | **Technology and Communication Charge** | **$1,940** |
| | | | | | | **Total Fees & Expenses** | **$59,600** |

*TB - Tom Beckley - Project Director*
*CD - Collin Drat - Project Manager*
*SC - Staff Consultant*
*JC - Joe Collins - QA/QC*
*TC - Todd Cristiano - Capacity Fee SME*
-
-
-

**PROFESSIONAL SERVICES AGREEMENT BETWEEN**
**THE CITY OF BENTONVILLE**
**AND**
**RAFTELIS FINANCIAL CONSULTANTS, INC.**

This Consulting Agreement ("Agreement") is entered into this _____ day of _________, 2024 (hereinafter referred to as the effective date of the agreement) by and between, the City of Bentonville (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 a capacity fee study for Client. Raftelis will perform the services as set forth in its proposal sent to Client dated May 24, 2024 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 $59,600, which includes professional fees and direct expenses incurred in performing the Scope of services, as well as an hourly technology expense reimbursement, outlined in Attachment B. The parties understand that this sum is based upon the Scope of work contained herein at Raftelis' current standard hourly rate schedule included in Attachment B. Any expansion of the Scope of work by the Client shall involve discussion of and agreement about 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. Such invoices shall be supported by appropriate documentation; at a minimum, the task performed, the individuals working on such task, the level of each such individual, and expenses incurred. Each invoice will contain all hours and expenses from Raftelis for the month. Upon receipt of monthly invoice, the Client will remit payment of same amount to 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 and defend the Client, its officers, directors, managers, and employees ("Indemnified Party" or "Indemnified Parties") and to hold the Indemnified Parties harmless against third party 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 excess

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

Cyber Security – $5,000,000

## **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 will perform the services under this Agreement in accordance with the standard of professionals in its industry prevailing at the time and place the services are performed. 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 Client's estimates or forecasts or from actual outcomes. Raftelis identifies costs, allocates costs to customer classes and provides rate models. It does not establish rates, which is the legislative responsibility of the Client.

## Article 12 – No Consequential Damages

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

## Article 13 – Termination of Work

This Agreement may be terminated as follows:

1. **By Client.** (a) for its convenience on 30 days' notice to Raftelis; or (b) for cause, if Raftelis materially breaches this Agreement through no fault of Client and Raftelis neither cures such material breach nor makes reasonable progress toward cure within 15 days after Client has given written notice of the alleged breach to Raftelis.

2. **By Raftelis.** (a) for cause, if Client materially breaches this Agreement through no fault of Raftelis and Client neither cures such material breach nor makes reasonable progress toward cure within 15 days after Raftelis has given written notice of the alleged breach to Client; or (b) upon five days' notice if Work under this Agreement has been suspended by either Client or Raftelis in the aggregate for more than 30 days.

3. **Payment upon Termination.** In the event of termination, Raftelis shall be compensated for all work properly performed prior to the effective date of termination.

**(Remainder of page intentionally left blank)**

## 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: | If for Raftelis: |
| --- | --- |
| ______________________ | Collin Drat |
| Name | Raftelis Financial Consultants, Inc. |
| | 215 W. Pershing Road |
| ______________________ | Suite 406 |
| Title | Kansas City, MO  64108 |
| ______________________ | |
| Address | |

## 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 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 of its use by Raftelis of any of its trade secrets, know-how, or intellectual property.

## Article 16 – Compliance with Applicable Laws

Raftelis is an equal opportunity employer and complies with all federal, state, and local fair employment practices laws. Raftelis strictly prohibits and does not tolerate discrimination against employees, applicants, or any other covered persons because of race, color, religion, national origin or ancestry, gender identity, sexual orientation, marital status, sex, pregnancy, age, disability, past, current, or prospective service in the uniformed services, or any other characteristic protected under applicable federal, state, or local law. All Raftelis employees, other workers, and representatives are prohibited from engaging in unlawful discrimination. This policy applies to all terms and conditions of employment, including, but not limited to, hiring, training, promotion, corrective action, compensation, benefits, and termination of employment.

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 Arkansas.

G. Paragraph Headings: The paragraph headings set forth in this Agreement are for the convenience of the Parties, and in no way define, limit, or describe the Scope or intent of this Agreement and are to be given no legal effect.

H. Third Party Rights: Nothing in this Agreement shall be construed to create or confer any rights or interest to any third party or third-party beneficiary. It is the intent of the parties that no other outside, non-party claimant shall have any legal right to enforce the terms of this Agreement.

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

By: ______________________________
Signature

______________________________
Title

______________________________
Date

Raftelis Financial Consultants, Inc.

By: ______________________________
Signature

______________________________
Title

______________________________
Date

# ATTACHMENT A

# STATEMENT OF WORK

**ATTACHMENT B**
**RAFTELIS' 2024 STANDARD HOURLY BILLING RATES**

| Position | Hourly Billing Rate* |
|---|---|
| Chair/Chair Emeritus | $500 |
| Chief Executive Officer/President | $450 |
| Executive Vice President | $400 |
| Vice President | $360 |
| Senior Manager | $320 |
| Recruiter | $295 |
| Principal/Senior Advisor | $295 |
| Manager | $285 |
| Senior Consultant | $250 |
| Executive Coach | $250 |
| Consultant | $220 |
| Creative Director | $220 |
| Associate Consultant | $185 |
| Graphic Designer | $160 |
| Analyst | $135 |
| Administration | $100 |
| Technology/Communications Charge** | $10 |

* These rates will be in effect for calendar year 2024 and will then increase annually by three percent (3%) unless specified otherwise by contract.

** 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%.

## City of Bentonville, Arkansas Agenda Item Form

### Item Details

| | | | |
|---|---|---|---|
| **Council Meeting Date:** | 7/9/2024 | **Submitted By:** | Travis Matlock |
| **Phone:** | 479-271-5941 | **For Department(s):** | Electric |
| **Email:** | tmatlock@bentonvillear.com | | |

### Item Type (Check all that apply)

- ☐ Informational
- ☐ Bid Award
- ☐ Enter into an Agreement
- ☐ Change Order
- ☐ Recognizing Funds
- ☐ Budget Adjustment
- ☐ Waiver of Bid
- ☑ Emergency Clause

- ☑ Ordinance
- ☐ Resolution
- ☐ Informational

### Title, Recommendation & Justification

| | |
|---|---|
| **Title:** | Updating Bentonville Net Metering Requirements |
| **Action Recommendation & Justification:** | The Bentonville Net Metering Requirements are being updated and replace Ordinance 2019-116. |
| **Additional Comments for Consideration (Optional):** | |
| **Amount for Approval:** | $ |

### Budget Impact

**Is this Item Budgeted?** ☐ YES ☐ NO ☑ ITEM HAS NO COST ☐ OTHER:____________________

### Budget Adjustment *(to be completed by Finance when applicable)*

| Account Number (ORG-OBJECT) | Account Description | Expense | Revenue |
|---|---|---|---|
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |

**Fund(s) Impacted** (check all that apply) ☐ General Fund ☐ Utility Fund ☐ Street Fund ☐ Other(s):____________________

*Budget Impact Notes for Consideration (Optional):*