

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF		<u>November 10, 2008</u>		
<input type="checkbox"/> Supplemental	<input checked="" type="checkbox"/> Adoption	<input type="checkbox"/> Consent	<input type="checkbox"/> Unanimous Consent	Rules Committee Consultant Review

R -

O -

Financial Consultant Services Related to Development of Rate Structuring Models

Reviewed Initiated By NR&C On 9/10/08 Item No. 1a

RECOMMENDATION TO:

Forward to the full City Council without a recommendation.

VOTED YEA: Frye, Faulconer, Peters

VOTED NAY:

NOT PRESENT: Atkins

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Water Department's and Metropolitan Wastewater Department's August 28, 2008, Executive Summary Sheet

COUNCIL COMMITTEE CONSULTANT 

000003

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: August 28, 2008

ATTENTION: Natural Resources and Culture Committee
Agenda of September 10, 2008

ORIGINATING DEPT.: Water Department and Metropolitan Wastewater Departments

SUBJECT: Financial Consultant Services Related to Development of Rate Structuring Models

COUNCIL DISTRICTS: All

STAFF CONTACT: Rod Greek (619) 533-5407
Darlene Morrow-Truver (858) 292-6384

REQUESTED ACTION:

Authorize the Mayor, or his designee, to approve the selection of Raftelis Financial Consultant Inc. (RFC) for financial consultant services as related to the development of water and wastewater rate structuring models (hereinafter called the "Project") and authorize the award of a contract for an amount not to exceed \$500,000 to RFC for such professional services and related expenditures.

STAFF RECOMMENDATION:

Approve the selection of RFC for financial consultant services as related to the Project and authorize the award of a contract for an amount not to exceed \$500,000 to RFC for such professional services and related expenditures.

EXECUTIVE SUMMARY:

The Water Department provides retail water service to approximately 1.3 million customers within the City and wholesale water service to several customers such as the Cal American Water Company. The Wastewater Department provides wastewater service to approximately 2.3 million customers within the City and 15 other cities and districts. Currently each department is identified as a separate entity and each department has a separate, complex rate model in place. However, the City is exploring whether combining common services through re-organization would create opportunities for savings and enhance the services to both external and internal customers. Despite the possible re-organization of these departments, the inputs for calculating equitable rates vary too greatly to develop one model to determine rates for both Water and Wastewater customers.

The development of new rate structuring models would allow for similar system configurations to be established for both models building consistency between the departments and enhance the internal ability of each department to analyze adjustments to critical assumptions such as changes in projected revenue or expenditures, correlating litigation decisions, or anticipated supply shortages in providing pertinent information for guiding fiscal and budgetary decisions. The information provided from these newly developed models will assist in developing a series of proactive actions and potentially minimize the impacts of negative issues such as reduced water supplies while ensuring an equitable allocation of supplies and costs. The models will be sophisticated enough to perform the required complex calculations and still allow for future

updates by City staff without the need for extensive training. RFC is currently contracted with the City to review and update the Recycled Water rate model.

It is proposed that RFC, an independent financial consultant, be selected to provide these services. In conjunction with the Purchasing and Contracting Department, it was decided to provide a sole source contract with RCF due to the high priority of developing these types of adjustable models in order to address unfolding environmental and legal issues, and the potential for a significant reduction in the amount of time and cost in order to complete these models. In October 2006 RFC was commissioned by both the Water and Wastewater Departments to conduct a comprehensive cost of service and rate design studies. These studies included the review and interpretation of each Departments' separate rate models, review of each system's revenue requirements, customer classifications, then current cost allocation methods, projected capital improvement programs and their funding sources, and each system's operation and maintenance costs. During the process of completing these studies, RFC gained understanding of the City's current information and billing systems, City policies and procedures, and unique challenges facing each department.

FISCAL CONSIDERATIONS:

The total cost of the contract with RFC will be for an amount not to exceed \$500,000; an amount of not to exceed \$370,000 for professional services related to the identified scope of work and an amount of \$130,000 for additional services including related out-of-pocket expenses (i.e. travel, printing, conference calls, etc.).

PREVIOUS COUNCIL COMMITTEE ACTION:

There have been no previous actions regarding this project.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

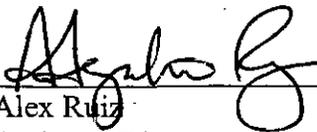
There has been no community participation or public outreach regarding this project.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

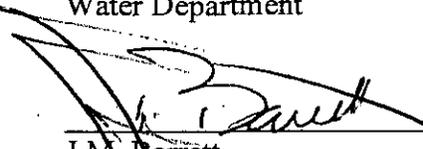
The key stakeholders are the City of San Diego, Water Department customers, and Wastewater Department customers.



Robert Fenner
Assistant Director
Metropolitan Wastewater Department

 8/29/08

Alex Ruiz
Assistant Director
Water Department

 9/2/08

J.M. Barrett
Director of Public Utilities

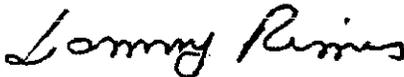
Attachment: Sole Source approval memorandum, dated April 21, 2008

000005

CITY OF SAN DIEGO
M E M O R A N D U M

DATE: April 21, 2008
TO: Jim Barrett, Director
FROM: Tammy Rimes, Purchasing Agent
SUBJECT: Sole Source Request for Sole Source Contract - Raftelis Financial
Consultants, Inc.

Your Sole Source Request for the above subject with Raftelis Financial Consultants, Inc. (RFC) was approved and is valid through 12/31/2010. In order for a Purchase Order to be issued, your department has to submit a purchase requisition. In the internal header notes of the requisition, please reference Sole Source Case Number 1839. For questions, please contact Pam Glover at x65554.



Tammy Rimes
Purchasing Agent

TR/mw

cc: Ray Palmucci, Deputy City Attorney
Tom Zeleny, Deputy City Attorney
Rod Greek, Deputy Director
Darlene Morrow-Truver, Deputy Director
Sam Gray, Program Manager
Jennie Cole, Supervising Management Analyst
Chris Ojeda, Supervising Economist

000006

Approved
J. R.
4/16/08

CITY OF SAN DIEGO
MEMORANDUM

DATE: 4/16/2008
TO: Karan Wolff *KW*
FROM: Pam Glover
SUBJECT: Sole Source Request — Raftelis Financial Consultants, Inc. (RFC) for
Sole Source Contract - Raftelis Financial Consultants, Inc.

Negotiated Total: \$500,000.00
Dept. Est. Total: \$500,000.00
Vendor: Raftelis Financial Consultants, Inc. (RFC)
Expiration Date: 12/31/2010
Recommendation: **Approved**

The Water and Wastewater Departments request approval for sole source contract with Raftelis Financial Consultants, Inc. (RFC) to develop a user friendly rate and connection fee model, for each respective department. These rate models will enhance the internal ability of each department to analyze adjustments to critical model assumptions such as changes in projected revenue or expenditures, correlating litigation decisions, or anticipated supply shortages. Any pricing structure adjustments that may be suggested through usage of these developed rate models would be required to be presented to and approved by City Council. The development of rate structuring models may be completed by several firms, however, a sole source is justified for RFC for several reasons:

- (1) RFC has extensive knowledge of the current water and wastewater rate structures and businesses as RFC developed the most recent Cost of Service Study for each department;
- (2) the desire to establish similar rate structuring methodologies for the Water and Wastewater departments, noting that the Water Department is already using a rate model designed by RFC for reclaimed water;
- (3) knowledge of the capabilities of the Water and Wastewater departments current information systems (i.e. billing systems);
- (4) the need is now due to the high priority of developing these types of adjustable models in order to address unfolding environmental and legal issues; and
- (5) the potential for a significant reduction in the amount of time and cost in order to complete these models.

The primary purpose for the development of an adjustable rate model is to provide the user the capacity to routinely monitor projections and develop multiple scenarios to address newly arising concerns which will provide pertinent information for guiding fiscal and budgetary decisions. The information provided from these models will assist in developing a series of potential actions and minimize the impact of negative issues such as reduced water supplies and ensure an equitable allocation of supplies and costs. The models need to be sophisticated

CITY OF SAN DIEGO
MEMORANDUM

enough to perform the complex calculations and yet still be simple enough to allow for future updates by City staff without the need for extensive training.

In October 2006 RFC was commissioned by both the Water and Wastewater Departments to conduct a comprehensive cost of service and rate design studies. These studies included the review and interpretation of each Department's separate rate models, review of each system's revenue requirements, customer classifications, then current cost allocation methods, projected capital improvement programs and their funding sources, and each system's operating and maintenance costs. During the process of completing these studies, RFC gained understanding of the City's current information and billing systems, City policies and procedures, unique challenges facing each department, and understanding of each department's organization and staff. Upon completion of these studies and based on methodologies approved by the American Water Works Association, a national recognized industry group, RFC presented rates adapted to meet each system's specific characteristics and provided a system of charges that would enhance the proportionate recovery of costs from the various customer classes. RFC is currently contracted to perform a similar task for the Recycled Water Program.

Recent developments also add to the justification for sole sourcing RFC. Within the City, recent events point to a potential melding of the Water and Wastewater Departments. Compilation of information into rate models based on a similar methodology would build consistency between the Water and Wastewater Departments. Understandably, each model will have unique calculations and outputs, but a firm with an understanding of the integration of the two systems would be extremely efficient and cost beneficial. Additional events such as the Shames lawsuit and current California environmental issues that could potentially lead to reduced water supplies should be known by the consultant and RFC has already addressed or considered these issues in their recently completed cost of service studies.

RFC, established in 1993, has extensive experience in providing utility rate modeling and risk management, financial planning and pricing, strategic planning, economic analysis, and resource conservation services to public and private sector clients. The principals working for RFC have provided services to over 400 water and wastewater utilities. As RFC has provided this type of service to many utilities and has completed extensive reviews of San Diego's water and wastewater systems, it is anticipated that these factors will significantly reduce the cost and reduce the time to complete this project.

RFC is available to start immediately, with the estimated project duration not to exceed 24 months. Services to be provided by RFC include, but are not limited to, review of Water and Wastewater Department objectives, analysis of current models, development of adjustable rate models, and training to City staff regarding the newly developed models. The approximate fee for these services is \$500,000, of which \$300,000 is to be funded from the Water Department and \$200,000 to be funded from the Wastewater Department.

000008

CITY OF SAN DIEGO
MEMORANDUM

Recommendation: I recommend approval of this request as Raftelis Financial Consultants (RFC) has gained valuable understanding of the City's current information and billing systems, City policies and procedures, the unique challenges facing the Water and Wastewater Departments, and RFC has already reviewed and considered the issue of the Shames lawsuit and current State environmental issues in preparing the completed cost of service audits.

The unique nature of the work and the vast information RFC obtained in preparing the completed cost of service audits will reduce the cost and time anticipated to complete this scope of work and RFC is available to start work immediately makes the selection of RFC beneficial to the City.

DOCKET SUPPORTING INFORMATION CITY OF SAN DIEGO EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION	DATE: September 4, 2008
SUBJECT: Financial Consultant Services Related to Development of Rate Structuring Models	

GENERAL CONTRACT INFORMATION

Recommended Consultant: Raftelis Financial Consultant, Inc.
 Amount of This Action: \$ 500,000
 Funding Source: City
 Goal: 15% Voluntary

SUBCONTRACTOR PARTICIPATION

There is no subcontractor participation associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Raftelis Financial consultant, Inc. submitted a Workforce Report for their San Diego County office dated September 3, 2008. The workforce consists of less than 15 employees and therefore, is exempt from employment category goals.

ADDITIONAL COMMENTS

The *Work Force Analysis* is attached.



Beryl Rayford
 EOC Program Manager by:AMJ

000011

File: Admin WOFO 2000

Date WOFO Submitted: 9/4/2008

Input by: amj

Goals reflect statistical labor force availability for the following: 2000 CLFA Los Angeles County, CA

City of San Diego/Equal Opportunity Contracting
WORK FORCE ANALYSIS REPORT

FOR
Company: Raftelis Financial Consultants, Inc.

I. TOTAL WORK FORCE:

	Black			Hispanic			Asian			American Indian			Filipino			White			Other		
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F	M	F		
Mgmt & Financial	7.3%	0	0	18.7%	0	0	14.9%	1	1	0.3%	0	0	14.9%	0	0	1	0	0	0		
Professional	8.9%	0	0	16.5%	0	0	12.3%	0	0	0.3%	0	0	12.3%	0	0	0	0	0	0		
A&E, Science, Computer	6.0%	0	0	10.5%	0	0	26.1%	0	0	0.2%	0	0	26.1%	0	0	0	0	0	0		
Technical	12.2%	0	0	24.7%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0	0		
Sales	7.3%	0	0	33.7%	0	0	14.6%	0	0	0.3%	0	0	14.6%	0	0	0	0	0	0		
Administrative Support	13.1%	0	0	36.0%	0	0	12.8%	0	0	0.3%	0	0	12.8%	0	0	0	0	0	0		
Services	9.5%	0	0	54.2%	0	0	11.1%	0	0	0.2%	0	0	11.1%	0	0	0	0	0	0		
Crafts	6.1%	0	0	49.1%	0	0	10.5%	0	0	0.3%	0	0	10.5%	0	0	0	0	0	0		
Operative Workers	3.2%	0	0	73.3%	0	0	10.2%	0	0	0.1%	0	0	10.2%	0	0	0	0	0	0		
Transportation	11.2%	0	0	61.1%	0	0	4.7%	0	0	0.4%	0	0	4.7%	0	0	0	0	0	0		
Laborers	7.1%	0	0	69.8%	0	0	4.4%	0	0	0.3%	0	0	4.4%	0	0	0	0	0	0		
TOTAL		0	0		0	0		1	1		0	0		0	0		1	0		0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

	Mgmt & Financial	Professional	A&E, Science, Computer	Technical	Sales	Administrative Support	Services	Crafts	Operative Workers	Transportation	Laborers
TOTAL	3	2	1	0	0	0	0	0	0	0	0

TOTAL EMPLOYEES			Female Goals
ALL	M	F	
3	2	1	40.7%
0	0	0	53.9%
0	0	0	22.3%
0	0	0	48.9%
0	0	0	47.5%
0	0	0	69.6%
0	0	0	60.8%
0	0	0	9.2%
0	0	0	37.7%
0	0	0	16.0%
0	0	0	11.8%
3	2	1	

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

This firm has fewer than 15 employees and is, therefore, exempt from the employment category goals.

ORIGINAL
000013

WTR 14-09-013

150
11/10

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):
WATER / WASTEWATER DEPARTMENTS

3. DATE:
8/25/2008

4. SUBJECT:
FINANCIAL CONSULTANT SERVICES RELATED TO DEVELOPMENT OF RATE STRUCTURING MODELS

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)
Rod Greek, 619-533-5407, MS 904-A
Darlene Morrow-Truver, 858-292-6384, MS 901

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)
Sam Gray, 619-533-4157, MS 910
Jeanne Cole, 858-292-6313, MS 901

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	41500	41509	9. ADDITIONAL INFORMATION / ESTIMATED COST:	
DEPT.	760	777	Professional services	\$
ORGANIZATION	140	495	500,000.00	
OBJECT ACCOUNT	4151	4151		
JOB ORDER	030700	005024		
C.I.P. NUMBER	N/A	N/A		
AMOUNT	\$300,000	\$200,000		

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	9/4/08	8	DEPUTY CHIEF	<i>[Signature]</i>	10/6/08
2	E.A.S.	<i>[Signature]</i>	9/3/08	9	C.O.O.	<i>[Signature]</i>	10/2/08
3	EOCP	<i>[Signature]</i>	9/5/08	10	CITY ATTORNEY	<i>[Signature]</i>	10/9/08
4	DOCKET LIAISON	<i>[Signature]</i>	9/7/08	11	ORIG. DEPT	<i>[Signature]</i>	
5	C.F.O./FM	<i>[Signature]</i>	9/2/08	DOCKET COORD: _____ COUNCIL LIAISON _____			
6	C.F.O./AUDITOR	<i>[Signature]</i>	09/20/08	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION			
7				REFER TO: _____ COUNCIL DATE: 11/10/08			

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

- AUTHORIZE THE MAYOR OR HIS DESIGNEE TO EXECUTE AN AGREEMENT NOT TO EXCEED \$500,000 WITH RAFTELIS FINANCIAL CONSULTANT, INC. (RFC) FOR FINANCIAL CONSULTANT SERVICES RELATED TO DEVELOPMENT OF WATER AND WASTEWATER RATE STRUCTURING MODELS; AND
- AUTHORIZE THE EXPENDITURE OF \$300,000 FROM WATER FUND 41500 AND \$200,000 FROM SEWER FUND 41509 FOR PUPOSES OF THIS AGREEMENT.

11A. STAFF RECOMMENDATIONS:
Adopt the Resolutions

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): All

ENVIRONMENTAL IMPACT: This activity is not a "project" and is therefore not subject to CEQA per CEQA Guidelines Section 15060(c)(2).

ATTACHMENTS: Professional Consultant Services contract with Raftelis Financial Consultant, Inc.
Sole Source approval memorandum.

CITY CLERK INSTRUCTIONS: Please return one copy of the executed Council Action and a copy of the resolutions to Chris Ojeda, (619) 533-4215, MS910

OFFICE OF THE CITY COMPTROLLER
2008 SEP 29 AM 7:05

PLEASE EXPEDITE

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: August 25, 2008
ATTENTION: Council President and City Council
Docket of
ORIGINATING DEPT.: Water Department and Metropolitan Wastewater Departments
SUBJECT: Financial Consultant Services Related to Development of Rate Structuring Models
COUNCIL DISTRICTS: All
STAFF CONTACT: Rod Greek (619) 533-5407
Darlene Morrow-Truver (858) 292-6384

REQUESTED ACTION:

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The total cost of the contract with RFC will be for an amount not to exceed \$500,000; an amount of not to exceed \$370,000 for professional services related to the identified scope of work and an amount of \$130,000 for additional services including related out-of-pocket expenses (i.e. travel, printing, conference calls, etc.).

PREVIOUS COUNCIL COMMITTEE ACTION:

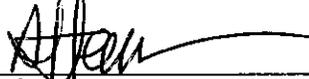
The subject item was presented to the Natural Resource and Culture Committee on September 10, 2008. The Natural Resource and Culture Committee adopted a motion to forward to the full City Council without a recommendation.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

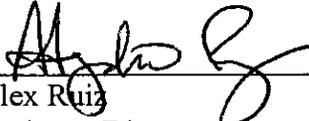
There has been no community participation or public outreach regarding this project.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

The key stakeholders are the City of San Diego, Water Department customers, and Wastewater Department customers.



Robert Reher
Assistant Director
Metropolitan Wastewater Department

 9/29/08

Alex Ruiz
Assistant Director
Water Department

 9/2/08

J.M. Barrett
Director of Public Utilities

RESOLUTION NUMBER R- _____

DATE OF FINAL PASSAGE _____

A RESOLUTION AUTHORIZING ENGINEERING
CONSULTANT AGREEMENT AWARD AND EXECUTION;
EXPENDITURE OF FUNDS FOR CONTRACT PURPOSES;
AND TAKING RELATED ACTIONS.

WHEREAS, the City of San Diego [City] selected Raftelis Financial Consultants, Inc.,
[Consultant] through sole source procurement to enter into an Agreement for Consulting
Services [Agreement], wherein Consultant agreed to provide financial consultant services related
to the development of water and wastewater rate structuring models to the City; NOW,

THEREFORE:

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

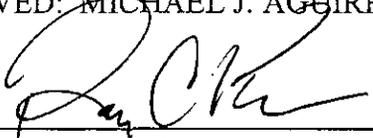
1. That the Mayor or his designee is hereby authorized and empowered to execute,
for and on behalf of the City, an Agreement with Consultant not to exceed \$500,000, which is on
file in the office of the City Clerk as Document No. RR _____ for the purpose of securing
financial consultant services related to the development of water and wastewater rate structuring
models; and

2. That the expenditure of an amount not to exceed \$500,000, consisting of an
amount not to exceed \$300,000 from Water Fund 41500, Organization 140 and an amount not to
exceed \$200,000 from Sewer Fund 41509, Organization 495, is hereby authorized, solely and
exclusively for the purpose of providing funds for the abovementioned Agreement, its
Amendments and related costs, provided that the City Auditor and Comptroller first furnishes
one or more certificates certifying that the funds are, or will be, on deposit with the City
Treasurer; and

3. That the City Auditor and Comptroller is authorized, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves; and

4. That this activity is not a project and is therefore not subject to the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(2).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Raymond C. Palmucci
Deputy City Attorney

RCP:js
10/09/2008
Or. Dept: Water/Wastewater
R-2009-448

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

000021

**AGREEMENT FOR CONSULTING SERVICES
BETWEEN
THE CITY OF SAN DIEGO
AND
RAFTELIS FINANCIAL CONSULTANT, INC.
FOR
WATER/WASTEWATER RATE MODELS**

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 - 4.6.1. Compliance with the City's Equal Opportunity Contracting
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- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - Insurance
- Exhibit E - City's Equal Opportunity Contracting Program Consultant Requirements
 - (AA) Work Force Report
 - (BB) Subcontractors List
 - (CC) Contract Activity Report
- Exhibit F - Consultant Certification for a Drug-Free Workplace

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND RAFTELIS FINANCIAL CONSULTANT, INC
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Raftelis Financial Consultant, Inc. [Consultant] for the Consultant to provide Services to the City for Water/Wastewater Rate Models.

RECITALS

The City wants to retain the services of a financial consultant that specializes in utility billing and rate analysis to develop a user friendly rate and connection fee model for the City of San Diego Water and Wastewater Departments [the Services].

The Consultant has the expertise, experience and personnel necessary to provide the Services. The City and the Consultant [Parties] want to enter into an Agreement whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Services.

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

ARTICLE I

CONSULTANT SERVICES

The above-listed recitals are true and correct and are hereby incorporated by reference.

1.1 Scope of Services. The Consultant shall perform the Services as set forth in the written Scope of Services [Exhibit A] at the direction of the City.

1.2 Contract Administrator. The Water/Wastewater Department is the contract administrator for this Agreement. The Consultant shall provide the Services under the direction of a designated representative of the Water/Wastewater Department, who can be contacted at:

Sam Gray
600 B Street, 7th Floor, MS 910
San Diego, CA 92101
Ph: (619) 533-4157
Email: SGray@sandiego.gov

The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. However, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his designee, unless the Agreement specifies otherwise.

1.3 City Modification of Scope of Services. The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of any of the Professional Services, the Consultant shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Consultant's compensation or time for performance may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement.

1.4 Written Authorization. Prior to performing any Services, the Consultant shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the Consultant shall immediately advise the City in writing of any anticipated change in the Scope of Services (Exhibit A), Compensation and Fee Schedule [Exhibit B], or Time Schedule [Exhibit C], and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the Consultant from its duty to render all Services in accordance with applicable laws and accepted industry standards.

1.5 Confidentiality of Services. All Services performed by the Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Consultant, at the time that it was disclosed to the Consultant by the City, (b) subsequently becomes publicly known through no act or omission of the Consultant, or (c) otherwise becomes known to the Consultant other than through disclosure by the City. Except for Subcontractors covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

ARTICLE II

DURATION OF AGREEMENT

2.1 Term of Agreement. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be

effective until completion of the Scope of Services or June 30, 2010; whichever is the earliest but not to exceed five years unless approved by City ordinance.

2.2 Time of Essence. Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services (Exhibit A) is set forth in the Time Schedule (Exhibit C).

2.3 Notification of Delay. The Consultant shall immediately notify the City in writing if the Consultant experiences or anticipates experiencing a delay in performing the Services within the time frames set forth in the Time Schedule (Exhibit C). The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay affects a material part of the City's requirements for the Services, the City may exercise its rights under Sections 2.5-2.7 of this Agreement.

2.4 Delay. If delays in the performance of the Services are caused by unforeseen events beyond the control of the Parties, such delay may entitle the Consultant to a reasonable extension of time, but such delay shall not entitle the Consultant to damages or additional compensation. Any such extension of time must be approved in writing by the City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Consultant's work; inability to obtain materials, equipment, or labor; required additional Services; or other specific reasons agreed to between the City and the Consultant; provided, however, that: (a) this provision shall not apply to, and the Consultant shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the Consultant; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Consultant to an extension of time unless the Consultant furnishes the City, in a timely manner, documentary proof satisfactory to City of the Consultant's inability to obtain materials, equipment, or labor.

2.5 City's Right to Suspend for Convenience. The City may, at its sole option and for its convenience, suspend all or any portion of the Consultant's performance of the Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the Consultant of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the Consultant a sum equivalent to the reasonable value of the Services the Consultant has satisfactorily performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Consultant. The City may then require the Consultant to resume performance of the Services in compliance with the terms and conditions of this Agreement; provided, however, that the Consultant shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 City's Right to Terminate for Convenience. The City may, at its sole option and for its convenience, terminate all or any portion of the Services agreed to

pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Services shall be effective upon receipt of the notice by the Consultant. After termination of this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Services under this Agreement. For services satisfactorily rendered in completing the work, the Consultant shall be entitled to fair and reasonable compensation for the Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all documents or records related to the Consultant's Services. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

2.7 City's Right to Terminate for Default. If the Consultant fails to satisfactorily perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. A Default includes the Consultant's failure to adhere to the Time Schedule. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

ARTICLE III

COMPENSATION

3.1 Amount of Compensation. The City shall pay the Consultant for performance of all Services rendered in accordance with this Agreement, including reasonably related expenses, in an amount not to exceed \$500,000.00. The compensation for the Scope of Services shall not exceed \$370,000.00, and the compensation for Additional Services (described in Section 3.3), if any, shall not exceed \$130,000.00.

3.2 Additional Services. The City may require that the Consultant perform additional Services beyond those described in the Scope of Services [Additional Services]. Prior to the Consultant's performance of Additional Services, the City and the Consultant must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule (Exhibit B). The City will pay the Consultant for the performance of Additional Services in accordance with Section 3.3.

3.3 Manner of Payment. The City shall pay the Consultant in accordance with the Compensation and Fee Schedule (Exhibit B). For the duration of this

Agreement, the Consultant shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Consultant shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Consultant shall include with each invoice a description of completed Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt. Invoice shall be mailed to the following address:

Chris Ojeda
600 B Street, 7th Floor, MS910
San Diego, CA 92101
Ph: (619) 533-4215
Email: COjeda@sandiego.gov

3.4 Additional Costs. Additional Costs are those costs that can be reasonably determined to be related to the Consultant's errors or omissions, and may include Consultant, City, or Subcontractor overhead, construction, materials, demolition, and related costs. The Consultant shall not be paid for the Services required due to the Consultant's errors or omissions, and the Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Consultant. Whether or not there are any monies due, or becoming due, the Consultant shall reimburse the City for Additional Costs due to the Consultant's errors or omissions.

ARTICLE IV

CONSULTANT'S OBLIGATIONS

4.1 Industry Standards. The Consultant agrees that the Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent financial consulting firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor or his designee, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Right to Audit.

4.2.1 Access. The City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subcontractor's premises to review and audit the Consultant's or Subcontractor's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all records related to the Services provided hereunder with appropriate safeguards, if such retention is deemed necessary by

the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

4.2.2 Audit. The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Consultant or Subcontractor is in compliance with all requirements under this Agreement.

4.2.2.1 Cost Audit. If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.1.1 Accounting Records. The Consultant and all Subcontractors shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Consultant and Subcontractors shall make available to the City for review and audit; all Service related accounting records and documents, and any other financial data. Upon the City's request, the Consultant and Subcontractors shall submit exact duplicates of originals of all requested records to the City.

4.2.3 City's Right Binding on Subcontractors. The Consultant shall include the City's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors.

4.2.4 Compliance Required before Mediation or Litigation. A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article VII is the Consultant's and Subcontractors full compliance with the provisions of this Section 4.2 within sixty days of the date on which the City mailed a written request to review and audit compliance.

4.3 Insurance. The Consultant shall not begin the Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates reflecting evidence of all insurance as set forth in Exhibit D; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as described in Exhibit D; and (c) confirmed that all policies contain the specific provisions required in Exhibit D. Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

Further, the Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.4 Subcontractors. The Consultant's hiring or retaining of any third parties [Subcontractors] to perform Services [Subcontractor Services] is subject to prior approval by the City. The Consultant shall list on the Subcontractor List [Exhibit E] all Subcontractors known to the Consultant at the time this Agreement is entered. If at any time after this Agreement is entered into the Consultant identifies a need for additional Subcontractor Services, the Consultant shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subcontractor Services. The Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subcontractor Services. The Consultant may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

4.4.1 Subcontractor Contract. All contracts entered into between the Consultant and any Subcontractor shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

4.4.1.1 Each Subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Agreement. Each Subcontractor shall obtain, and the Consultant shall require the Subcontractor to obtain, all policies described in Exhibit D in the amounts required by the City, which shall not be greater than the amounts required of the Consultant.

4.4.1.2 The Consultant is obligated to pay the Subcontractor, for Consultant and City-approved invoice amounts, out of amounts paid by the City to the Consultant, not later than fourteen working days from the Consultant's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Consultant and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

4.4.1.3 In the case of a deficiency in the performance of Subcontractor Services, the Consultant shall notify the City in writing of any withholding of payment to the Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subcontractor must take in order to receive the amount withheld. Once the Subcontractor corrects the deficiency, the Consultant shall pay the Subcontractor the amount withheld within fourteen working days of the Consultant's receipt of the City's next payment.

4.4.1.4 In any dispute between the Consultant and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Consultant and Subcontractor should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

4.4.1.5 The Subcontractor is bound to the City's Equal Opportunity Contracting Program covenants set forth in Article IV, Section 4.6 and Exhibit E of this Agreement.

4.4.1.6 The City is an intended beneficiary of any work performed by the Subcontractor for purposes of establishing a duty of care between the Subcontractor and the City.

4.5 Contract Activity Report. The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report [Exhibit E]. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each Subcontractor listed in the report. The Consultant agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subcontractor Services as described in Section 4.4.1.

4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program. The Consultant shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements [Exhibit E]. The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this Section shall be interpreted to hold the Consultant liable for any discriminatory practice of its Subcontractors.

4.6.2 Non-Discrimination Ordinance. The Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The Consultant shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Consultant and any Subcontractors, vendors and suppliers.

4.6.3 Compliance Investigations. Upon the City's request, the Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Consultant for each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the

Nondiscrimination in Contracting Ordinance. The Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.7 Drug-Free Workplace. The Consultant agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit F].

4.7.1 Consultant's Notice to Employees. The Consultant shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

4.7.2 Drug-Free Awareness Program. The Consultant shall establish a drug-free awareness program to inform employees about all of the following:

4.7.2.1 The dangers of drug abuse in the work place.

4.7.2.2 The policy of maintaining a drug-free work place.

4.7.2.3 Available drug counseling, rehabilitation, and employee assistance programs.

4.7.2.4 The penalties that may be imposed upon employees for drug abuse violations.

4.7.3 Posting the Statement. In addition to Section 4.7.1 above, the Consultant shall post the drug-free policy in a prominent place.

4.7.4 Subcontractor's Agreements. The Consultant further certifies that each contract for Subcontractor Services for this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Consultants and Subcontractors shall be individually responsible for their own drug-free work place program.

4.8 Product Endorsement. The Consultant acknowledges and agrees to comply with the provisions of City of San Diego Administrative Regulation 95.65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

4.9 Conflict of Interest. The Consultant is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections

1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

4.9.1 If, in performing the Services set forth in this Agreement, the Consultant makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

4.9.1.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Consultant shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Consultant is subject to a conflict of interest code. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

4.9.1.2 If the City requires the Consultant to file a statement of economic interests as a result of the Services performed, the Consultant shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

4.9.2 The Consultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

4.9.3 The Consultant's personnel employed for the Services shall not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The Consultant shall not recommend or specify any product, supplier, or contractor with whom the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.9.4 If the Consultant violates any conflict of interest law or any of the provisions in this Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Consultant to liability to the City for attorney's fees and all damages sustained as a result of the violation.

4.10 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited

to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.11 Compensation for Mandatory Assistance. The City will compensate the Consultant for fees incurred for providing Mandatory Assistance as Additional Services under Section 3.3. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Consultant, its agents, officers, and employees, the Consultant shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Consultant, its agents, officers, and employees for Mandatory Assistance.

4.12 Attorney Fees related to Mandatory Assistance. In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

ARTICLE V

RESERVED

ARTICLE VI

INDEMNIFICATION

6.1 Indemnification and Hold Harmless Agreement. With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents, and officers, arising out of any services performed under this Agreement, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

ARTICLE VII

MEDIATION

7.1 Mandatory Non-binding Mediation. With the exception of Sections 2.5-2.8 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations,

prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

7.2 Mandatory Mediation Costs. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

7.3 Selection of Mediator. A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

7.3.1 If AAA is selected to coordinate the mediation [Administrator], within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

7.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

7.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

7.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

7.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable

demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

7.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE VIII

INTELLECTUAL PROPERTY RIGHTS

8.1 **Work For Hire.** All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement (Deliverable Materials) is "work for hire" under the United States Copyright law and shall become the sole property of the City. The Consultant, including its employees, and independent Subcontractor(s), shall not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the City to the deliverable Materials.

8.2. **Rights in Data.** All rights (including, but not limited to publication(s), registration of copyright(s), and trademark(s)) in the Deliverable Materials, developed by the Consultant, including its employees, agents, talent and independent Subcontractors pursuant to this Agreement are the sole property of the City. The Consultant, including its employees, agents, talent, and independent Subcontractor(s), may not use any such Product mentioned in this article for purposes unrelated to Consultant's work on behalf of the City without prior written consent of the City.

8.3 **Intellectual Property Rights Assignment** Consultant, its employees, agents, talent, and independent Subcontractor(s) agree to promptly execute and deliver, upon request by City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials; and cooperate and assist in the prosecution of any action or opposition proceeding involving said rights and any adjudication of the same.

8.4 **Moral Rights** Consultant, its employees, agents, talent, and independent Subcontractor(s) hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Deliverable Materials which Consultant, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to Consultant, its employees, agents, talent, and independent Subcontractor(s)' benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which

arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the and the right to object to any modification, translation or use of said content, and any similar rights existing under judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

8.5 Subcontracting In the event that Consultant utilizes a Subcontractor(s) for any portion of the Work that is in whole or in part of the specified Deliverable(s) to the City, the agreement between Consultant and the Subcontractor [Subcontractor Agreement] shall include a statement that identifies that the Deliverable/Work product as a "work-for hire" as defined in the Act and that all intellectual property rights in the Deliverable/Work product, whether arising in copyright, trademark, service mark or other belongs to and shall vest solely with the City. Further, the Subcontractor Agreement shall require that the Subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to the City, all titles, rights and interests in and to said Work/Deliverable, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor agreement for compliance with this provision.

8.6 Publication. Consultant may not publish or reproduce any Deliverable Materials, for purposes unrelated to Consultant's work on behalf of the City without prior written consent of the City.

8.7 Intellectual Property Warranty and Indemnification. Consultant represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Consultant to produce, at Consultant's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Consultant further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Consultant receives payment under this contract, City shall be entitled, upon written notice to Consultant, to withhold some or all of such payment.

8.8 Enforcement Costs. The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Article 8, including but not limited to, attorney's fees.

ARTICLE IX

MISCELLANEOUS

9.1 Notices. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to:

Sam Gray
600 B Street, 7th Floor, MS 910
San Diego, CA 92101
Ph: (619) 533-4157
Email: SGrav@sandiego.gov

and notice to the Consultant shall be addressed to:

Sudhir Pardiwala
Raftelis Financial Consultants
201 S. Lake Av., Ste 803
Pasadena, CA 91101
Ph: (626) 583-1894
Email: spardiwala@raftelis.com

9.2 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

9.3 Non-Assignment. The Consultant shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

9.4 Independent Contractors. The Consultant and any Subcontractors employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

9.5 Consultant and Subcontractor Principals for Consultant Services. It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of the Sudhir Pardiwala. Accordingly, performance of Professional Services on the Project may not be delegated to other members of the Consultant's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional

Services and may not be removed from the Project without the City's prior written approval. Removal of any member of the Project Team without notice and approval by the City may be considered a default of the terms and conditions of this Agreement by the Consultant. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement. Further, the City reserves the right, after consultation with the Consultant, to require any of the Consultant's employees or agents to be removed from the Project.

9.6 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Consultant shall be deemed to be both covenants and conditions.

9.7 Compliance with Controlling Law. The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

9.8 Jurisdiction and Attorney Fees. The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

9.9 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

9.10 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

9.11 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

9.12 No Waiver. No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement,

nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

9.13 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

9.14 Additional Consultants or Contractors. The City reserves the right to employ, at its own expense, such additional Consultants or contractors as the City deems necessary to perform work or to provide the Services.

9.15 Employment of City Staff. This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Consultant employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or Mayor in connection with the selection of the Consultant.

9.16 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

9.17 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

9.18 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

9.19 Exhibits Incorporated. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

9.20 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Agreement, as well

continuing obligations indicated in this Agreement, shall survive completion and acceptance of the Professional Services and termination or completion of the Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to San Diego City Charter Section 265 authorizing such execution, and by the Consultant, Raffelis Financial Consultant, Inc.

I HEREBY CERTIFY that I can legally bind Raffelis Financial Consultant, Inc. and that I have read all of this Agreement this 19th day of August, 2008.

RAFFELIS FINANCIAL CONSULTANT, INC.

BY: [Signature]
CONSULTANT

DATE SIGNED 8-19-08

CITY OF SAN DIEGO
A MUNICIPAL CORPORATION

BY: _____
Tammy Rimes, Assistant Department Director

DATE SIGNED _____

a.

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2008.

Michael Aguirre, City Attorney:

By: _____
Deputy City Attorney

DATE SIGNED _____

EXHIBITS

NON-DESIGN PROFESSIONAL CONSULTANT LUMP SUM AGREEMENT

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - Insurance
- Exhibit E - City's Equal Opportunity Contracting Program Consultant Requirements
- Exhibit F - Consultant Certification for a Drug-Free Workplace

EXHIBIT A

SCOPE OF SERVICES

PROJECT UNDERSTANDING AND APPROACH

Project Understanding

The City of San Diego (City) provides retail water service to customers within the City and wholesale water service to Cal American Water Company under an agreement. The City also provides wastewater service within the City and wastewater treatment services to participating agencies (PAs). The City would like to develop water and wastewater financial plans and rate models to project sales, revenues, capital financing scenarios, calculate cost of service rates for its retail customers, review impacts and provide flexibility for planning for the next 10 years.

The City's existing retail water rate structure consists of an increasing 3-tier rate structure for single family residential customers with fixed tiers at 7, 14 and 14+ hcf per month. The City would like to explore different rate structure options for retail customers and explore the creation of more classes to increase equity and fairness, and encourage conservation. Wastewater rates for single family residential customers are based on winter water usage with a cap of 20 hcf per month. Rates for other customer classes are based on a percentage of water usage and consider strength for non-residential users.

Developing a computer rate models with several modules that includes the financial plan and retail rates is an integral part of the study. The City plans to use the rate models in the future and the models should be user-friendly with ability to modify common assumptions such as usage, growth rates, etc., have the flexibility to easily revise input data, be updated annually, include the various rate scenarios the City wants, generate detail and summary reports, allow graphical representation of results for easy understanding by the Council and public, and perform scenario analyses to investigate options and impacts.

RFC has assisted clients with similar issues for many years. Our rate models are designed to provide maximum flexibility and ease of use without getting too complicated. The base RFC model provides scenario analysis and ability to review changes in rates, reserves, etc. in graphical mode on a real-time basis so that impacts can be readily understood and decisions made rapidly. Using this model as a starting point, we will add flexibility requested by the City.

RFC is in a unique position to assist the City in an efficient manner. Specifically, RFC recently assisted the City in updating its water and wastewater rates and is currently updating the recycled water rate model. By having all three models in a consistent format the City will realize savings in development and on-going use of the models. We have had discussions with City staff and have a good understanding of the requirements for this study. We are ready to start the project running and believe that our qualifications, experience and knowledge of the City's systems and rate making will all provide added value.

RFC will continue to provide the City support on the use and update of the model so that it becomes an integral part of the City's strategic tools for water, wastewater and recycled water services.

Project Approach

The project approach described below is based upon our extensive experience in completing cost of service and rate studies and developing rate models for other water and wastewater utilities across the country. This approach has been tailored to address the specific objectives and concerns of the City. It

should be noted that while we have listed these tasks consecutively, some tasks will overlap and be conducted concurrently.

Task I – Project Initiation and Management

The goal of this task is to lay the groundwork for a successful project and provide the ongoing management that ensures efficiency and quality throughout the process.

Subtask A – Project Kick-off Meeting

We believe that successful projects begin with a productive kick-off meeting. The objectives for this meeting include:

- Providing a forum to finalize the work plan and schedule with City Staff;
- Discussing the City's preliminary pricing and modeling objectives;
- Ensuring that we have an understanding of the overall goals of the study;
- Providing an opportunity for City Staff to meet and become comfortable with our Project Team; and
- Reviewing the data needs for the project.

Accomplishing these objectives will help to ensure that the project progresses as smoothly as possible.

Prior to the kick-off meeting, we will prepare a detailed data request list that will identify the information needed to complete the various analyses. Information that is typically required to perform a rate study includes, for example, recent Comprehensive Annual Financial Reports ("CAFR"); wholesale contracts; recent and current utility budgets; a description of the service area; current and historical water production, wastewater generation; and billing data and long-term capital improvement plans. Some of this information will be readily available, whereas other components may require more detailed analyses of operational data, customer billing information, and costs. RFC has some of this information available.

Subtask B – Quality Assurance/Quality Control Process

To ensure that all work performed by RFC on this project will be accurate and of the highest quality, RFC has a stringent quality assurance/quality control (QA/QC) process. The QA/QC process begins at the outset of the project when the Project Manager assigns a member of RFC's staff as the project QA/QC reviewer. This person is present at all internal project meetings and works closely with both the Project Manager and the lead consultant during the course of the project. The QA/QC reviewer's primary responsibility is to review the work effort for consistency, accuracy, and validity and ensure that the cost of service and rate model that will be developed for the project is functioning properly and is based on sound rate making principles and standard industry practice and meets the high quality standards of RFC. This will be especially critical given the complexity called for in this model. The QA/QC responsibility is accomplished through periodic reviews of the model throughout the course of its development. For cost of service and rate studies, these periodic reviews typically occur at the following stages of model development:

- Once the basic model framework is complete;
- Upon completion of the financial planning module;
- Upon completion of the cost allocation schedules;
- Upon completion of the rate calculation module; and
- Prior to the delivery of the final model results.

We have found that a well defined QA/QC process ensures that all of our work products will be of the highest quality and meet or exceed the standards that our clients have come to expect from RFC.

Subtask C – Ongoing Project Management

The proposed project entails several different, yet interrelated, work efforts that will require effective coordination between City staff and the RFC team. Our management approach stresses communication, teamwork, objectivity, and accountability for meeting project objectives and includes general administrative duties, including client correspondence, billing, project documentation, and administration of the study control plan. This task provides for consistent and competent project management to ensure that all deadlines and objectives are met in a timely and efficient manner. We believe in a no-surprises approach so that the City is aware of the status of the project at all times. Our approach includes the following:

- A strong Project Manager who will be responsible for facilitating a close working relationship between the City and RFC staff and who is accountable to the City for meeting the technical requirements of the project, schedule and budget. He will lead meetings throughout the course of the study.
- Ample resources to ensure timely completion.
- *Client involvement and control by:*
 - ✓ Regular and open communication between the project team members and City staff including monthly updates showing the tasks accomplished and identification of potential problems and solutions.
 - ✓ Assurance of budget and schedule control through the Project Manager's use of RFC's project accounting and management system.
 - ✓ Coordination of project activities among RFC staff and City staff to meet project objectives and deadlines. Review of all study-related work and overall quality assurance.
 - ✓ Training of City staff and presenting study results.

Task II – Detailed Data Review

The goal of this task is to gain an understanding of the City situation that will serve as the basis for our subsequent rate modeling and analyses.

As part of this task, we will conduct interviews with City management and Staff to obtain a thorough understanding of the financial, operational, regulatory, and political environments. Existing rate models, rate policies and ordinances will be reviewed for consistency with current and possible future fees. Key issues, areas of concern, and pricing objectives will be reviewed and discussed. Historical information will be reviewed related to costs, customers, usage, demand patterns, capital spending, and revenues generated, to provide a better understanding of recent changes in operating characteristics and to develop appropriate trends and growth factors that drive financial forecasts. Projected capital needs, operation and maintenance costs ("O&M"), debt service, and required reserves will be determined. Comprehensive operation and customer billing information will be collected to classify customers and project user demand over the planning period.

Data collection and review will be a high priority for our Project Team. In particular, we will spend time reviewing capabilities of the utility billing and customer information system. Information available from the billing system will determine the feasibility of evaluating many of the alternative water rate structures the

City desires. A billing system must be able to process account characteristic information such as persons per household, building square footage, or rolling average consumption to calculate rates under some of these structures. Further, and perhaps most critically, the data must be readily available and updateable within the billing system.

During the data collection and review, we will begin to identify assumptions used to allocate and project the costs that will later be integrated into our model. As these assumptions are identified, City Staff will have an opportunity to review our findings to ensure that each assumption makes sense with regard to the City's water and wastewater systems.

Task III – Preliminary Analyses

The goal of this task is to complete supporting analyses that feed into development of the rate models.

Prior to beginning work on the development of the water rate model, RFC will perform two separate preliminary analyses. The results of these analyses will feed into the model development detailed in the next task.

Subtask A – Consumption Analysis and Demand Projection

Accurately projecting future consumption is one challenging task that a utility faces each year because there are several unforeseeable factors that can affect consumption. In particular, climate extremes, population change, or usage of large customers can have a dramatic effect on consumption. These projections directly affect user rates which in turn determine how much cash a utility will collect. If a utility overestimates consumption, it will under-recover costs and be faced with a revenue deficit and a diminished fund balance. Yet, if a utility underestimates consumption, it over recovers costs and may be met with public scrutiny due to unduly high rates.

To help the City gain a better understanding of consumption trends, RFC will examine local usage patterns as they relate to customer demand and population growth. Based on demographic data, we will calculate a growth rate for service area population. Moreover, using bill frequency analysis, we will study available historical consumption of the City's different customer types in order to better understand the consumption patterns for each type of customer. Based on this historical analysis, and planning data, the Project Team will develop projections of consumption.

These consumption projections will be used in the cost of service and rate modeling process; however, the only guarantee that can be made about projections of the behavior of complex variables such as water consumption, is that the reality will be different from the projections. Therefore, in order to develop an understanding of the impact that fluctuations in the variables that drive consumption will have on the utility's financial position, RFC can incorporate risk-analysis capabilities into the cost of service and rate model that is developed for this project. RFC proposes this risk analysis process as an optional subtask.

Subtask B – Customer Bill Frequency and Peaking Analysis

To help the City gain a better understanding of these consumption trends, RFC will examine usage patterns as they relate to customer demands, population growth, and usage peaks. Based on demographic data, we will calculate a growth rate for service area population. Moreover, using a bill frequency analysis, we will study available historical water consumption of the City's different customer types in order to better understand the consumption patterns for each type of customer.

Analysis of seasonal and off-season usage allows the design of better seasonal rates if desired. Based on this historical analysis, and planning data, the Project Team will develop projections of water consumption. By reviewing billing records and usage information provided by the City, RFC will perform a peaking analysis that shows how usage for different customer types varies seasonally. Water system components are designed to meet peak demands therefore customers with high peaking factors who place higher demands on the water system thus deserve to bear a proportionally higher percentage of the overall cost. Peaking is often expressed as a ratio of system peak day or peak hour flow to average baseline flow.

Task IV – Model Development

The goal of this task is to develop water and wastewater models that will allow the City to develop strategic financial plans for the future to provide revenue and rate stability, and adequate revenues to continue to provide quality service. This model must be robust enough to calculate rates under different rate structures, yet simple enough to be updated annually by City Staff.

The computer model is used to develop revenue requirements and perform financial planning; perform cost functionalization, classification and allocation; and calculate rates. The model must be sophisticated enough to perform the complex calculations involved in a comprehensive cost of service and rate analysis and yet remain flexible enough to allow for future updates and structure modifications by City Staff. As a result of our experience performing hundreds of cost of service and rate studies, RFC creates customized cost of service and rate models that are tailored to meet each client's specific needs.

Subtask A – Development of Model Specifications

RFC understands the importance of developing a user-friendly, flexible rate model that the City can use in the future for financial planning and developing rates. Some of the features of the model include:

- Adherence to standard cost of service-based rate setting practices;
- Compatibility with the design of existing wholesale agreements;
- Ability to model multiple rate structures simultaneously;
- Incorporation of financial planning over a 10-year planning horizon with ability to change certain standard assumptions by year;
- Ability to calculate rates for multiple year and update rates annually with ease;
- Ability to flag errors and problematic results;
- Revenue stability and sufficiency to perpetuate the utility;
- Promotion of conservation for all customer classes;
- Ability to perform sensitivity analyses and see the changes in real time on in-built screen graphics; and
- Ease of input, report printing, update, understanding, ease of administration, and legal defensibility.

In order to best design the rate model, RFC proposes to begin its modeling process by developing model specifications. The model specification process will identify precise functionality, techniques, and structures and will serve as the blueprint for model design. We envision that the RFC Project Team will present draft model specifications to the City for comment taking into consideration the City's current rate models. Once comments are incorporated and the model specifications are approved, all parties will have agreed on the format and functionality of the model. During the model specification subtask, the City and the Project Team will agree upon such things as the retail rate structures to be modeled, the degree of model automation, and the structure of user interfaces.

Subtask B – Development of Financial Planning Module

The financial planning module is used to develop and project revenue requirements over the planning period and incorporates both direct and indirect operational costs, capital costs (including pay-as-you-go capital and debt service), as well as rate revenues and revenues from miscellaneous sources. Projection of revenue requirements, offsets, and consumption allows a utility to calculate overall revenue adjustments or rate increases. Projecting revenue adjustments over a long planning horizon can illustrate future rate impacts and potential threats to the financial situation. The utility may then make adjustments to some expenses, fund balance or capital project timing, among others, to smooth impacts and maintain financial stability. Financial planning also allows utilities to test how future events such as capital construction or changes in regulatory requirements may impact future rates and overall financial strength of the utility. RFC will utilize past expense history, capital improvement planning, and projections of consumption to construct a 10 year financial planning module for the rate model.

Revenue requirements will be projected over the planning period based on historical results, the current budget, the City's capital improvement plan, and the utilities' debt service and other obligations. The Project Team will project items in the City's budget such as O&M, labor, power, materials, payments in lieu of taxes, etc. with flexibility to adjust the escalation factors annually or override escalation with manual entries. In addition, RFC will project non rate revenues such as late fees, interest, miscellaneous fees, etc. that may be used to either build fund balances or offset rate increases. Furthermore, interfund transfers between the City funds will be considered where appropriate according to the City Staff. Ultimately, the Project Team will project exactly how much cash needs to be collected through rates in order to meet expenses in each year of the forecast period.

The financial planning module will include the ability to forecast capital financing needs from rate-funded, reserve-funded, and new debt-funded sources. The model will project the timing of future bond sales and project annualized debt service. Schedules for calculating debt service coverage will also be included.

The financial planning module will also provide cash management flexibility by tracking the net changes to fund balance on an annual basis. At a minimum, fund balances are tracked for major funds such as Operating, Construction, and Debt Service. RFC has also recommended addition of rate stabilization and system renewal funds depending on rate setting objectives of a utility. We have advised many client utilities on how to establish appropriate reserve levels for their major funds.

Finally, the financial planning model offers the flexibility to perform a full update of the cost of service on an annual basis or simply calculate annual rate increases based on changes in cash needs and coverage requirements.

To provide ease of scenario analysis and ability to interpret the results and impacts of changes to revenue requirements, debt funding, impacts of key variables and impacts of drought or water sales reductions, RFC will design a custom dashboard similar to that shown in the figure. The dashboard concept has proved very successful in assisting staff at several other utilities in quickly making decisions and presenting the impacts that would result from changes to key variables and assumptions.

Subtask C – Cost of Service Allocation

Although RFC takes care to tailor a cost of service (COS) Analysis to meet the needs of the individual utility, we always make sure to follow the basic premise of COS allocations set forth by the AWWA and WEF.

Cost Functionalization: Each cost item used to develop the water and wastewater revenue requirements will be allocated to one or more service functions depending upon its nature. We will review any functional categories that the City may currently use, including those in the Wastewater Agreements with the PAs, and recommend changes and/or additions that we believe are necessary.

Cost Allocation: We will review any cost allocation components currently employed by the City. Following the review, we will identify and recommend any necessary changes to the current allocation cost-causative parameters. RFC will review and recommend appropriate allocation parameters. Our recommendations will be based on industry practices and our experience in performing such allocation to ensure the appropriate assignment of costs by the Base-Extra Capacity Method recommended in the AWWA M1 Manual for water and on SWRCB regulatory guidelines for wastewater. Cost assignment components will, at a minimum, include:

For water:

- Annual Volume
- Peak Demand (maximum day and hour)
- Number of Customers
- Meters
- Meter Equivalents
- Fire Service

For wastewater:

- Wastewater flow
- Chemical oxygen demand (COD)
- Suspended solids (SS)
- Customer Service

Cost Distribution: Differentiated rate structures require the allocation of costs to customer groups based on each group's demand and usage characteristics. The result of the cost allocation process will be division of costs (and offsets) among retail customer types such as single family residential, multi-family, irrigation, commercial, and industrial.

Subtask D – Development of Rate Modules

After evaluating the existing cost allocation basis and assessing the impact of any proposed adjustments to the cost allocations, the water and wastewater rates will be calculated according to

the proposed rate design. We recognize that rate-making is an art, so we will work within the broad industry guidelines to meet the strategic financial objectives of the City. We will calculate rates under the most appropriate rate structure based on our understanding of the City's primary pricing objectives and water conservation goals, and consistent with industry accepted guidelines and practices. The rate calculation module will incorporate the appropriate level of flexibility to adjust or modify the rate calculations to address and mitigate any negative customer impacts. Furthermore, the rate calculation module will be developed to incorporate and evaluate alternative rate structures.

Rates will be calculated for each year in the forecast period and adjusted, where possible, to provide for a smooth forecast of rate adjustments. For example, changes in the timing of capital expenditures and the use of reserve funds to mitigate short-term rate impacts are two ways that rate smoothing could be addressed. The objective is to minimize the magnitude of customer impacts while still achieving long-term revenue objectives. RFC will present the preliminary rate calculations at a workshop with City staff.

RFC understands that the City wants to see rates calculated through several different types of rate structures. These structures include uniform volume rates, seasonal rates, increasing block rates and a range of individualized block rates with cutoffs based on average account usage, seasonal usage, or customer characteristics (budgets). RFC will model rates under rate structures desired by the City. Goal based rates based on seasonal usage can be provided as options. Generally speaking, this data will need to be collected before a rate can be set, however, options to include these rates can be provided in the model.

Rate calculation for each modeled rate structure will include a Revenue Proof schedule including revenue from customers, and a customer impact schedule that demonstrates the effect of proposed rate changes on representative retail customer bills.

With increasing rates, there appears to be an increasing emphasis on affordability. At the City's option we can include a module to calculate lifeline rates for the economically disadvantaged sections of the community. While there is some question whether lifelines rates meet the requirements of Proposition 218, we will work with the City's counsel to review the applicability and implementation.

Wastewater rates will comply with regulatory requirements and include the flow and strength components.

Drought Rates: The City would like to be prepared to implement drought rates, if the need arises. Drought rates are based on the cut backs in water usage mandated by the wholesale agencies such as Metropolitan Water District (MWD) and the San Diego County Water Authority (SDCWA). Both MWD and CWA have developed drought plans with several stages of mandatory cutbacks. RFC will include a module to compute drought rates for different stages of drought based on the current plans. There are two methods of developing such rates and at the City's option RFC will design drought rates based on the reduced usage by reducing the water usage allowance in the tiers and/or developing penalties for usage in excess of budgeted amount based on the rates in effect.

Customer Impacts: The rate recommendations will address as many of the City's objectives as possible. In particular, we will focus on water conservation goals and the equitable recovery of costs from different customer classes. Again, the potential financial impacts on typical customers that may result due to any adjustments in the rate structure will be considered. The Models will

include a series of schedules or tables that show projected cost impacts on different types of customers and different levels of usage or generation. These schedules provide an invaluable tool for evaluating whether the rate recommendations are impacting targeted customer groups and/or levels of usage to ensure that conservation and other pricing objectives are being addressed effectively.

Capacity Fees: In addition to rates, the City will need to reevaluate capacity fees. RFC will review the current methodology for continued applicability in the near future. The current methodology is based on a hybrid of the system buy-in/ incremental cost method.

Subtask E – Finalize Rate Models and User Manuals

A draft financial planning module and draft rate calculation module will be provided to the City for comment. RFC will prepare user manuals for City staff on use of the models. The manuals will include direction on the update of the models and discussion of the features and functionality. Model documentation can be constructed so that it is accessible through links in the models schedules. Ten copies will be provided.

Task V – Presentation of Results

The goal of this task is to present results of the study to the City.

RFC will attend meetings with the City and train City staff for four days in the use of the water and wastewater rate models and manuals to ensure full understanding of the assumptions and results of the rate model.

Task VI – As Needed Services

The goal of this task is to provide the City with financial and economic study related consulting services on an as needed basis.

RFC will meet with the City to discuss other needs the City may have regarding financial and economic services related to water, wastewater, and recycled water services including review of rates, methodologies, best practices, strategic financial services, etc.

EXHIBIT B

COMPENSATION AND FEE SCHEDULE

Amount of Compensation: The City shall pay the Consultant for performance of all Services rendered in accordance with this Agreement, including reasonably related expenses, in an amount not to exceed \$500,000.00. The compensation for the Scope of Services shall not exceed \$370,000.00, and the compensation for Additional Services, if any, shall not exceed \$130,000.00.

Additional Services: The City may require that the Consultant perform additional Services beyond those described in the Scope of Services [Additional Services]. Prior to the Consultant's performance of Additional Services, the City and the Consultant must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule.

EXHIBIT C

TIME SCHEDULE

This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or June 30, 2010; whichever is the earliest but not to exceed five years unless approved by City ordinance.

EXHIBIT D**INSURANCE**

1. **Types of Insurance.** At all times during the term of this Agreement, the Consultant shall maintain insurance coverage as follows:
 - 1.1 **Commercial General Liability.** Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1,000,000 per occurrence and subject to an annual aggregate of \$2,000,000. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - 1.2 **Commercial Automobile Liability.** For all of the Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
 - 1.3 **Workers' Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
2. **Deductibles.** All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the City at the time the evidence of insurance is provided.
3. **Acceptability of Insurers.**
 - 3.1 *Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are*

authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

3.2 The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

4. **Required Endorsements**

The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

4.1 **Commercial General Liability Insurance Endorsements**

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Consultant's insurance and shall not contribute to it.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Consultant's insurance shall apply

separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

4.2 Automobile Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Consultant.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payments of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

4.3 Worker's Compensation and Employer's Liability Insurance Endorsements

CANCELLATION. Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

5. **Reservation of Rights.** The City reserves the right, from time to time, to review the Consultant's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Consultant for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

6. **Additional Insurance.** The Consultant may obtain additional insurance not required by this Agreement.

7. **Excess Insurance.** All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

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EXHIBIT E

**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)
CONTRACTOR REQUIREMENTS**

The Consultant's hiring or retaining of any Subcontractors to perform services is subject to prior written approval by the City. Should the Consultant retain Subcontractors with the City's written approval, the Consultant shall comply with all Equal Opportunity Contracting (EOC) requirements. For applicable rules and forms see:
<http://www.sandiego.gov/eoc/index.shtml>.

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EXHIBIT F

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

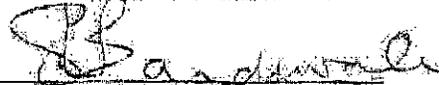
PROJECT TITLE: WINTER 2008 WINTER RATE MODELS

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

RAFFELIS FINANCIAL CONSULTANTS, INC.
Name under which business is conducted

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the Subcontractors agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed



Printed Name

SUDHIR PARODIWALA

Title

VICE PRESIDENT

Date

8-19-08