

RESOLUTION NO. 25-88

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND RAFTELIS FINANCIAL CONSULTANTS, INC. TO PERFORM A WATER AND STORMWATER RATE STUDY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the last Water and Stormwater Rate Study for the Town was completed July 17, 2020, which provided annual rate schedules that extend through September 30, 2025; and

WHEREAS, the Town needs to have the Water and Stormwater Rate Study updated so as to provide annual rate schedules that extend from October 1, 2025 through September 30, 2030; and

WHEREAS, Section 2-480(f) of the Town of Fort Myers Beach Code of Ordinances provides that when it is in the best interest of the Town of Fort Myers Beach, the Town of Fort Myers Beach may purchase goods or services under a contract awarded by another government entity (aka: "piggybacking"), if the other governmental agency's procurement complies with the Town of Fort Myers Beach's competitive bid policy and that the other governmental agency allows for this conduct; and

WHEREAS, pursuant to this procedure, the Town is "piggybacking" on an existing agreement between Lee County and Raftelis Financial Consultants, Inc. ("Consultant"), whereby Consultant will provide the Town with professional consulting services to perform a Water Rate Study for a not-to-exceed amount of \$37,000.00 and a Stormwater Rate Study for a not-to-exceed amount of \$37,000.00 according to the terms of the agreement with Lee County; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, THAT:

Section 1. That the above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. That the "Agreement for Water and Stormwater Rate Study Competitively Procured by Lee County, Florida" between the Town and Consultant for the provision of consulting services as attached and incorporated herein as Exhibit "A" is approved for a Water Rate Study for a not-to-exceed amount of \$37,000.00 and a Stormwater Rate Study for a not-to-exceed amount of \$37,000.00.

Section 4. That if any section, sentence, clause, or phrase herein is held to be invalid by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

Section 5. That this Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by Council Member Woodson, and upon being put to a vote, the result was as follows:

| | |
|-------------------------------|-----|
| Dan Allers, Mayor | Aye |
| Jim Atterholt, Vice Mayor | Aye |
| John R. King, Council Member | Aye |
| Scott Safford, Council Member | Aye |
| Karen Woodson, Council Member | Aye |

ADOPTED this 17th day of March 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers
Dan Allers (Apr 2, 2025 09:57 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE TOWN OF FORT
MYERS BEACH ONLY:**

Nancy Stuparich
Nancy Stuparich (Apr 2, 2025 17:51 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 1st day of April 2025.

**AGREEMENT FOR WATER AND STORMWATER RATE STUDY COMPETITIVELY
PROCURED BY LEE COUNTY, FLORIDA**

THIS AGREEMENT is made and entered into this 17th day of March, 2025, by and between the Town of Fort Myers Beach, Florida (“Town”), a Florida municipal corporation whose principal place of business is 2731 Oak Street., Fort Myers Beach, FL 33931, and Raftelis Financial Consultants, Inc., a North Carolina corporation authorized to do business in the State of Florida, (“Contractor”), whose principal place of business is 227 West Trade Street, Suite 1400, Charlotte, NC 28202, and whose federal tax identification number is 20-1054069 (“Contract” or “Agreement”). Town and Contractor may also be referred to collectively as the “Parties.”

WHEREAS, Contractor and Lee County, Florida, have entered into a competitively procured contract known as #RFP200123DWJ AGREEMENT FOR LEE COUNTY UTILITIES AND SOLID WASTE DEPARTMENT’S FINANCIAL RATE CONSULTANT, which has been subsequently amended by the parties (“Lee County Contract”) for a period of three years beginning December 1, 2020 and ending November 30, 2023; and

WHEREAS, Contractor and Lee County, Florida, have agreed to renew the contract for an additional three year term ending November 30, 2026; and

WHEREAS, the Town is in need of a Water and Stormwater Rate Study to update the last rate study that was completed on July 17, 2020, which provided an annual rate schedule that extended through September 30, 2025; and

WHEREAS, the Town desires to have Contractor provide the needed service; and

WHEREAS, under the Town Code, the purchase of goods and services under a contract awarded by another governmental entity is authorized, provided the finance department director makes a written determination that time and expense factors make it financially advantageous for the Town to do so; and

WHEREAS, Contractor is willing to provide the service, subject to the terms and conditions of the Contract, with the specific modifications set forth herein; and

WHEREAS, the Town’s finance department director has determined that piggybacking on the Lee County Contract is financially advantageous to the Town; and

WHEREAS, Section 119.0701, Florida Statute, requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Florida Statute, sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Florida Statute, imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.133 and 287.135, Florida Statutes, provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum; and

WHEREAS, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern.” Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

1. Incorporation of Lee County Contract. This Contract incorporates by reference, the Lee County Contract, which is attached as Exhibit “A,” except as otherwise provided herein.

2. Scope of Services. During the term of this Contract, Contractor will provide all labor, supervision, equipment, materials, and expertise required to perform water and stormwater rate studies for the purpose of generating proposed annual rate tables that will provide sufficient revenue to fund the expenses, debt service and capital improvements needed for these utilities for the period October 1, 2025 through September 30, 2030.

3. Pricing. The Town will pay Contractor a sum not to exceed \$74,000.00 in total for the water and stormwater rate studies (not-to-exceed \$37,000.00 for the Water Rate Study, and not-to-exceed \$37,000.00 for the Stormwater Rate Study). This sum will be Contractor’s sole compensation for the goods and services provided by Contractor under this Agreement.

4. Contract Term. The term of this Agreement begins on the date set forth above and ends on November 30, 2026 in accordance with the end date of the contract with Lee County.

5. Designated Representative. The Town's Finance Director, or designee, shall be the Town's Designated Representative in matters arising under this Agreement:

Joe Onzick
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931
jonzick@fmbgov.com

6. Modifications to Lee County Contract. Notwithstanding the incorporation of the Lee County Contract into this Agreement as referenced, the Parties hereby agree that all references in the Lee County Contract to terms such as "County" or "City" will be deemed to refer to the Town. In addition, all references in the Lee County Contract to specific officers/ departments/ divisions, or to specific locations (such as for delivery of goods/services, receipt of Contractor invoicing, etc.), if not specifically addressed in this Agreement, will be deemed to refer to the equivalent Town officers/departments/divisions, and Town locations, as hereafter designated by the Town's Designated Representative.

7. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

- (e) Pursuant to Section 119.0701(2)(a), Florida Statute, **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL 33931
(239)765-0202
FMBPUBLICRECORDS@FMBGOV.COM**

8. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

9. Compliance/Consistency with Section 768.28, Florida Statutes. Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Florida Statutes and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

10. Non-Appropriation. Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year-end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

11. E-Verify Compliance. By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes, "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not

employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

12. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000.00) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

13. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such

interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to Section 268.101(7), Florida Statutes: “In addition to any fine assessed under [Section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

14. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties’ actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive any right to file an action, suit or proceeding in Federal Court or remove any action, suit or proceeding to Federal Court.

15. Attorneys’ Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys’ fees and costs.

16. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

17. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes, in the event of a data breach.

18. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on Contractor’s social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor’s social, political or ideological interests.

19. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

20. No Coercion for Labor or Services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

“Coercion” means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

21. Force Majeure. The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

22. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

- A. None.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., Contractor declares that Contractor has read the foregoing Section 20 above and that the facts stated in it are true.

CONTRACTOR:



Print Name: Thierry Boveri, Vice President

Title: _____

Company: _____

ATTEST:

TOWN OF FORT MYERS BEACH



Amy Baker, Town Clerk


Andrew Hyatt (Mar 18, 2025 17:07 EDT)

Andrew Hyatt, Town Manager

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**



Nancy Stuparich (Mar 18, 2025 17:24 EDT)

Vose Law Firm, Town Attorney