RESOLUTION NO. 12-12-109

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING A FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN RAFTELIS FINANCIAL CONSULTANTS, INC., AND ISLAMORADA, VILLAGE OF ISLANDS TO PROVIDE RATE AND FINANCIAL OPERATIONS CONSULTING SERVICES FOR THE VILLAGE’S WASTEWATER UTILITY; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE FIRST AMENDMENT OF THE AGREEMENT; AUTHORIZING WAIVER OF COMPETITIVE BIDDING; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Islamorada, Village of Islands (the “Village”) has retained the services of Raftelis Financial Consultants, Inc. (“RFC”) to provide wastewater utility rate and financial operations consulting services, and

WHEREAS, the Village has a Professional Services Agreement (the “Agreement”) dated April 16, 2012 with RFC to provide its services at a not-to-exceed amount of $24,800, a copy of which is attached as Exhibit “A”; and

WHEREAS, the termination date of the Agreement is April 15, 2013, and RFC has determined fees will be incurred for additional services needed through September 30, 2013, which will exceed the not-to-exceed amount of $24,800; and

WHEREAS, RFC has submitted a First Amendment to the Agreement (the “First Amendment”) to increase the not-to-exceed amount by $15,000 and extend the termination date of the Agreement to September 30, 2013, a copy of which is attached hereto as Exhibit “B”; and
WHEREAS, the Village Council finds that increasing the not-to-exceed amount, that extending the termination date of the Agreement, that waiver of competitive bidding for these services, and that approval of the First Amendment are in the best interest of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Amendment. The First Amendment together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney is approved.

Section 3. Authorization of Village Officials. The Village Manager and/or his designee and the Village Attorney are authorized to take all necessary actions to implement the terms and conditions of the First Amendment including increasing the not-to-exceed fee by $15,000 and extending the termination date to September 30, 2013.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village’s Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the First Amendment.

Section 5. Execution of Agreement. The Village Manager is authorized to execute the terms and conditions of the First Amendment and to execute any extensions and/or amendments to the First Amendment, subject to the approval as to form and legality by the Village Attorney.
Section 6. Waiver of Purchasing Provisions. In accordance with Sections 2-328(1) and 2-328(3) of the Village Code, the Village Council waives the Purchasing Provisions of the Village Code to utilize the services of RFC without competitive selection.

Section 7. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 13th day of December, 2012.

Motion to adopt by Vice Mayor Ted Blackburn, second by Councilwoman Deb Gillis.

FINAL VOTE AT ADOPTION

Mayor Ken Philipson        YES
Vice Mayor Ted Blackburn   YES
Councilman Mike Forster    YES
Councilwoman Deb Gillis    YES
Councilman Dave Purdo      NO

KEN PHILIPSON, MAYOR

ATTEST:

VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF ISLAMORADA, VILLAGE OF ISLANDS:

VILLAGE ATTORNEY
PROFESSIONAL SERVICES AGREEMENT BETWEEN THE
ISLAMORADA, VILLAGE OF ISLANDS and RAFTELIS FINANCIAL CONSULTANTS, INC.

This Professional Services Agreement ("Agreement") is entered into this ___ day of ___ ,
2012 (hereinafter referred to as the effective date of the Agreement) by and between Islamorada,
Village of Islands, a Florida municipal corporation, (the "Client") and Raftelis Financial
Consultants, Inc., 976 Lake Baldwin Lane, Suite 204, Orlando, Florida 32814 ("RFC").

Witnesseth

WHEREAS, RFC has substantial skill and experience in water and wastewater finance,
management, and pricing, and

WHEREAS, The Client desires to hire RFC and RFC desires to provide services to the Client,

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

Article 1. Statement of Work

RFC shall provide professional consulting services to assist the Client with general services as
requested regarding the rates and financial operations of the Client’s existing and planned future
wastewater utility. Limited to the maximum compensation set forth below, anticipated tasks
include but are not limited to the following: 1) Assistance with completion of SRF Loan Capital
Finance Plan based on Client policy direction; 2) sensitivity analysis on the existing wastewater
financial forecast model relative to the Client policy direction or updated data availability; 3)
additional analysis or information relative to potential interlocal agreement with the Key Largo
Wastewater Treatment District; 4) review of financial/rate elements of wastewater provider
agreement other analysis; 5) and assistance in negotiations with the selected Design Build Operate
firm.

Article 2. Time for Completion

This Agreement will commence upon execution by both parties and remain in effect for a period of
one year. Further renewals of this Agreement are at the option of the Parties and shall be in writing.

Article 3. Compensation

Client shall pay to RFC the sum not to exceed twenty-four thousand eight hundred Dollars
($24,800), which includes professional fees and direct reimbursable expenses incurred in
performing the scope of services, as outlined in Attachment A. The parties understand that this sum
is based upon the scope of work contained herein at RFC’s current standard hourly rate schedule
included in Attachment A. Any expansion of the scope of work by the Client shall involve the
discussion of additional fees by both parties.
RFC shall submit invoices to the Client on a monthly basis for services rendered to the date thereof. Such invoices shall be supported by appropriate documentation; at a minimum, the task performed, hours expended, the individuals working on such task, the level of each such individual, and expenses incurred. Each invoice will contain all hours and expenses from the RFC for the month. Upon receipt of monthly invoice, the Client will remit payment of same amount to the RFC within 45 days.

**Article 4. Additional Services**

At the Client’s request, RFC may submit proposals for additional professional services. Each proposal submitted shall detail: (1) scope of work for the additional services, (2) period of services to be performed, and (3) method and amount of compensation. The Client shall provide written acceptance and authorization to RFC prior to the commencement of work on any proposed additional services. Each proposal for additional services accepted and approved by the Client in the form of an Amendment to this Agreement shall become part of this Agreement and shall be governed by the terms and conditions contained herein.

**Article 5. Place of Performance**

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

**Article 6. Indemnification**

RFC hereby agrees to indemnify the Client and to hold the Client harmless against any and all claims, action, or demands against the Client arising from the services provided pursuant to this Agreement, and against any and all damages for injury to or death of any person and for loss of or damage to any and all property arising out of the negligent acts, errors or omissions of RFC under this Agreement. RFC shall not be held responsible for any claims caused by the negligence of the Client.

**Article 7. Insurance**

RFC shall maintain the types and levels of insurance during the life of this Agreement as specified below. The Client will be added as additional insured with endorsement on the RFC’s Certificates of Insurance and the RFC will provide the Client with these Certificates of Insurance.

- Commercial general liability insurance - $1,000,000 for each occurrence and $2,000,000 in the aggregate
- Comprehensive automobile liability insurance - $1,000,000 combined single limit each occurrence
- Workers Compensation insurance – Statutory limits
- Professional liability insurance - $1,000,000 in the aggregate
- Excess or Umbrella Liability - $3,000,000 in the aggregate

**Article 8. Confidential Information**

RFC acknowledges and agrees that in the course of the performance of the services pursuant to this Agreement, RFC may be given access to, or come into possession of, confidential information of the Client which information contains privileged material or other confidential information. RFC
acknowledges and agrees, except if required by judicial or administrative order, trial, or other governmental proceeding pertaining to this matter, that it will not use, duplicate, or divulge to others any such information belonging to or disclosed to RFC by the Client without first obtaining written permission from the Client. “Confidential information” as used herein, includes information, materials, products, and deliverables developed during, and discoveries and contributions made by RFC in the performance of this Agreement. All tangible embodiments of such information shall be delivered to the Client by RFC upon termination hereof, or upon request by the Client, whichever occurs first. The Client acknowledges RFC has the right to maintain its own set of work papers which may contain confidential information.

Article 9. Independent Contractor Status

It is understood and agreed that RFC will provide the services under this Agreement on a professional basis as an independent contractor and that during the performance of the services under this Agreement, RFC’s employees will not be considered employees of the Client within the meaning or the applications of any federal, state, or local laws or regulations including, but not limited to, laws or regulations covering unemployment insurance, old age benefits, worker’s compensation, industrial accident, labor, or taxes of any kind. RFC’s employees shall not be entitled to benefits that may be afforded from time to time to Client employees, including without limitation, vacation, holidays, sick leave, worker’s compensation, and unemployment insurance. Further, the Client shall not be responsible for withholding or paying any taxes or social security on behalf of RFC’s employees. RFC shall be fully responsible for any such withholding or paying of taxes or social security.

Article 10. Reliance on Data

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

Article 11. Opinions and Estimates

RFC's opinions, estimates, projections, and forecasts of current and future costs, revenues, other levels of any sort, and events shall be made on the basis of available information and RFC’s expertise and qualifications as a professional. RFC does not warrant or guarantee that its opinions, estimates, projections or forecasts of current and future levels and events will not vary from the Client's estimates or forecasts or from actual outcomes. RFC identifies costs, allocates costs to customer classes and provides rate models. It does not establish rates, which is the legislative responsibility of the Client.

Article 12. No Consequential Damages

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

**Article 13. Termination of Work**

This Agreement may be terminated as follows:

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

2. **By RFC** (a) for cause, if Client materially breaches this Agreement through no fault of RFC and Client neither cures such material breach nor makes reasonable progress toward cure within 15 days after RFC has given written notice of the alleged breach to Client.

3. **Payment upon Termination.** In the event of termination, RFC shall perform such additional work as is reasonably necessary for the orderly closing of the Work. RFC shall be compensated for all work performed prior to the effective date of termination, plus work required for the orderly closing of the Work.

**Article 14. Notices**

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

If for the Client:

Mr. Ed Koconis  
Village Manager  
Islamorada, Village of Islands  
86800 Overseas Highway  
Islamorada, FL 33036

If for RFC:

Marco H. Rocca  
Director of Florida Operations  
Raftelis Financial Consultants, Inc.  
976 Lake Baldwin Lane, Suite 204  
Orlando, Fl 32814

**Article 15. Compliance with Applicable Laws**

RFC agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, national origin, veteran status, political affiliation or disabilities.
Any act of discrimination committed by RFC, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this Agreement.

**Article 16. Records/Audits**

RFC shall maintain and require sub consultants to maintain complete and correct records, books, documents, papers and accounts directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles. RFC shall make such records available for an audit as may be requested by the Village Manager. Such records shall include independent auditor working papers, books, documents and other evidence, including but not limited to vouchers, bills, invoices, requests for payment and other supporting documentation, which, according to generally accepted accounting principles, procedures and practices, sufficiently and property reflect all program costs expended in the performance of this Agreement.

The Client or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for three (3) years from the date of final payment or termination of this Agreement.

The Client shall have the right to immediately terminate this Agreement for the refusal by RFC to comply with Chapter 119, Florida Statutes, as applicable.

**Article 17. General Provisions**

A. **Entire Agreement:** This Agreement represents the entire and sole agreement between the Parties with respect to the subject matter hereof.

B. **Waiver:** The failure of either Party to require performance by the other of any provision hereof shall in no way affect the right to require performance at any time thereafter, nor shall the waiver of a breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy available at law or in equity.

C. **Relationship:** Nothing herein contained shall be construed to imply a joint venture, partnership, or principal-agent relationship between RFC and the Client; and neither Party shall have the right, power, or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed to in writing.

D. **Assignment and Delegation:** Neither Party shall assign or delegate this Agreement or any rights, duties, or obligations hereunder without the express written consent of the other. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, legal representatives, and assignees of the Parties hereto.
E. **Severability:** If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

F. **Governing Law:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida.

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

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

[The rest of this page intentionally left blank]
IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

ISLAMORADA, VILLAGE OF ISLANDS

By: __________________________
Signature

Village Manager
Title 4/12/12
Date
Witness

Approved as to form and legality for the use and reliance of the Islamorada, Village of Islands, Florida, only:

By: __________________________
Signature

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
Village Attorney
Title 4/10/12
Date
Witness

RAFTELIS FINANCIAL CONSULTANTS, INC.

By: __________________________
Signature

Director of Florida Operations
Title 4/16/2012
Date
Witness
## Attachment A – RFC’s 2012 Standard Billing Rates

<table>
<thead>
<tr>
<th>Position</th>
<th>Hourly Billing Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vice President</td>
<td>$250</td>
</tr>
<tr>
<td>Senior Manager</td>
<td>$225</td>
</tr>
<tr>
<td>Director of Fl Operations</td>
<td>$200</td>
</tr>
<tr>
<td>Manager/Senior Consultant</td>
<td>$175</td>
</tr>
<tr>
<td>Consultant</td>
<td>$155</td>
</tr>
<tr>
<td>Associate</td>
<td>$130</td>
</tr>
<tr>
<td>Analyst</td>
<td>$95</td>
</tr>
<tr>
<td>Administration</td>
<td>$60</td>
</tr>
</tbody>
</table>

Travel and reimbursable expenses shall be paid according to actual cost, and shall include copies of receipts as supporting documentation thereof. Mileage shall be reimbursed at the rate of $0.55 per mile.
December 5, 2012

Mr. Ed Koconis
Village Manager
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036

Subject: First Amendment to Professional Services Agreement

Dear Mr. Koconis:

This First Amendment is for the Additional Services requested by the Village pursuant to Article 4 of the Professional Services Agreement (the “Agreement”) between Islamorada, Village of Islands (the “Village”) and Raffelis Financial Consultants, Inc. (RFC), dated April 16, 2012.

Scope of Work for the Additional Services: RFC will continue to provide professional consulting services to assist the Village with general services as requested regarding the rates and financial operations of the Village’s wastewater utility issues. In addition to the general services, the scope of work will be expanded to include assistance regarding Village utility financial policy, utility developer fee policy, and other utility issues.

Period of Services to be Performed: Additional Services herein shall commence upon approval of the Client and remain in effect until the expiration date of the Agreement, which is hereby extended to September 30, 2013.

Method and Amount of Compensation: This First Amendment increases the Compensation not to exceed amount by Fifteen Thousand Dollars ($15,000.00), which includes professional fees and direct expenses pursuant to Attachment A in the Agreement.

The return of one signed copy of this request for Additional Services shall serve as Approval for the Additional Services.

Raffelis Financial Consultants, Inc.

By: [Signature]
Director of Florida Operations
Title
Date 12-17-2012

Islamorada, Village of Islands

By: [Signature]
Title
Date 12-20-12