

**SOFTWARE DEVELOPMENT AND SUPPORT AGREEMENT
FOR STORM WATER DRAINAGE UTILITY SYSTEM
PARCEL DATA MANAGEMENT AND BILLING APPLICATION**

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This SOFTWARE DEVELOPMENT AND SUPPORT AGREEMENT FOR STORM WATER DRAINAGE UTILITY SYSTEM PARCEL DATA MANAGEMENT AND BILLING APPLICATION (“**Agreement**”), dated December 14, 2021 (the “**Effective Date**”), is made between Raftelis Financial Consultants, Inc, a North Carolina corporation (“**Raftelis**”), and the City of Corpus Christi, a Texas home-rule corporation (“**Customer**”).

PREAMBLE

A. Raftelis and Customer entered into a Consulting Agreement effective January 28, 2020, for the provision of services related to the implementation of a new utility (the “**Consulting Agreement**”).

B. The parties now desire to enter into the present Agreement to govern the process for development, testing, and acceptance of a dashboard software application for the use by the Customer’s storm water drainage utility system for parcel data management and billing purposes (“**Software**”) and to provide terms and conditions for Raftelis to maintain and support the Software following its launch for a period expiring September 30, 2022 (“**Support**”).

ARTICLE 1 DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the following terms have the following meanings:

- (a) "Acceptance Tests" has the meaning set forth in Section 2.6.
- (b) "Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law, in equity, or otherwise.
- (c) "Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.
- (d) "Agreement" has the meaning set forth in the Preamble.
- (e) "Customer" has the meaning set forth in the Preamble.
- (f) "Customer Materials" means all materials and information, including documents, data, specifications, software, content, and technology that are provided to Raftelis by or on behalf of Customer in connection with this Agreement.

(g) "Documentation" means any and all manuals, instructions, specifications, and other documents and materials that Raftelis provides or makes available to Customer in any medium and which describe the functionality, components, features, or requirements of the Software, including the installation, configuration, integration, operation, use, support, or maintenance thereof.

(h) "Effective Date" has the meaning set forth in the Preamble.

(i) "Fees" has the meaning set forth in Section 4.1.

(j) "Force Majeure Event" has the meaning set forth in Section 11.6.

(k) "Indemnitee" has the meaning set forth in Section 9.3.

(l) "Indemnitor" has the meaning set forth in Section 9.3.

(m) "Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

(n) "Losses" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees, and the cost of enforcing any right to indemnification hereunder, and the cost of pursuing compliance by and/or enforcement against any insurance provider(s).

(o) "Nonconformity" has the meaning set forth in Section 2.6.

(p) "Person" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

(p) "Preamble" means all content in this Agreement that precedes Article I, entitled "Definitions," such content being incorporated by reference into this Agreement and which is given full force and effect, for all intents and purposes, as if such content appeared subsequent to Article I.

(q) "Project Charter" means the Project Charter and Critical Paths document attached as Exhibit A hereto.

(r) "Reimbursable Expenses" has the meaning set forth in Article 4(c).

(s) "Services" means the development, testing, maintenance, and support and other services to be provided by Raftelis pursuant to this Agreement.

(t) "Software" means the web-based performance dashboard tool to be developed for Customer as described in this Agreement (to be integrated with the information, data, and reports gathered and produced pursuant to the existing Consulting Agreement), together with all Updates thereto.

(u) "Scope of Work" means the scope and performance of tasks attached as Attachment B to this Agreement.

(v) "Specifications" means the metrics list for the Software that will be set forth in the design document described in Task 1 of the Scope of Work, including but not limited to the metrics, dashboard design guidance, and data transfer process set forth in Attachment B.

(w) "Term" has the meaning set forth in Section 7.1.

(x) "Testing Period" has the meaning set forth in Section 2.6.

(y) "Third-Party Materials" means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment, or components of or relating to the Software, that are not proprietary to Raftelis.

(z) "Updates" means upgrades, fixes, defect corrections, new releases/versions, modifications, improvements, enhancements, extensions, or other changes to the Software which may add new features and/or functionality and is necessary to the continuing functional performance of the Software.

(aa) "Work Product" means the Software, Documentation, and other documents, work product, and materials related thereto, that Raftelis is required to or otherwise does create or provide to Customer in connection with this Agreement.

ARTICLE 2

Development of Software

2.1 Development of Software. Customer hereby engages Raftelis, and Raftelis hereby accepts such engagement, to develop the Software, including all necessary Documentation, and provide Services related thereto on the terms and conditions set forth herein and in the Scope of Work and pursuant to the timetable set forth in the Project Charter.

2.2 Software Specifications. Raftelis agrees to use commercially reasonable efforts to prepare the Software and Documentation in accordance with the Specifications.

2.3 Documentation. Prior to or concurrently with the provision of access to the Software, Raftelis shall provide Customer with Documentation in a delivery format acceptable to both parties that provides reasonably clear instructions for use of the Software in accordance with its Specifications.

2.4 Changes to Specifications. Customer may at any time following the completion of the Specifications, request in writing (each, a "**Change Request**") changes to the Specifications, including changes to functionality or design of the Software (each, a "**Change**"). Upon Customer's submission of a Change Request, the parties shall evaluate and implement all Changes in accordance with this Section 2.4.

(a) As soon as reasonably practicable, and in any case within five days following receipt of a Change Request, Raftelis shall provide Customer with a written proposal for implementing the requested Change ("**Change Proposal**"), setting forth:

- (i) a written description of the proposed Change;
- (ii) proposed amendments to the Specifications and Project Charter reflecting:
(A) the schedule for commencing and completing any additional or modified Software or Documentation; and (B) the effect of such Changes, if any, on completing any other Services or Work Product under the Statement of Work;
- (iii) any increase or decrease in Fees resulting from the proposed Changes, which increase or decrease shall reflect the increase or decrease in time and expenses Raftelis requires to carry out the Change.

(b) Within five days following Customer's receipt of a Change Proposal, Customer shall by written notice to Raftelis, approve, reject, or propose modifications to such Change Proposal. If Customer proposes modifications, Raftelis shall modify and re-deliver the Change Proposal reflecting such modifications, or notify Customer of any disagreement therewith, in which event the parties shall negotiate in good faith to resolve their disagreement. Upon Customer's approval of the Change Proposal or the parties' agreement on all proposed modifications thereto, as the case may be, the parties shall execute a written agreement to the Change Proposal ("**Change Agreement**"), which Change Agreement shall constitute an amendment to this Agreement; and

(c) If the parties fail to enter into a Change Agreement within five days following Customer's response to a Change Proposal, Customer may:

- (i) request Raftelis to continue to perform the Services under the existing Specifications without the Change;
- (ii) request Raftelis to continue to negotiate a Change Agreement; or
- (iii) terminate this Agreement.

No Change will be effective until the parties have executed a Change Agreement with respect thereto. Except as Customer may request in its Change Request or otherwise in writing, Raftelis shall continue to perform its obligations in accordance with the Scope of Work, Project Charter and Specifications pending negotiation and execution of a Change Agreement. Raftelis shall use commercially reasonable efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Agreement. Each party shall be responsible for its own costs and expenses of preparing, evaluating, negotiating and otherwise processing any Change Request, Change Proposal and Change Agreement.

2.5 System Ready Notice. Upon completion of the Software, including review and testing of a Beta version of the Software and subsequent population of the Software with actual data, Raftelis shall provide written notice thereof to Customer's liaison (the "**System Ready Notice**") and provide secure, password protected administrative access to allow Customer to access and test the Software.

2.6 Acceptance Testing. Upon receipt of the System Ready Notice, Customer shall have 30 calendar days (the "**Testing Period**") to conduct tests to evaluate whether the Software substantially conforms to the Specifications (the "**Acceptance Tests**"). Raftelis, through its

liaison, shall be available to cooperate with and assist Customer in conducting the Acceptance Tests.

(a) Promptly upon completion of the Acceptance Tests, Customer shall notify Raftelis in writing of its acceptance or rejection of the Software. Customer shall reject the Software only if there is a material failure of the Software to conform to the Specifications (a “**Nonconformity**”). Customer shall not request changes to the look and feel of the Software during Acceptance Tests. Customer shall not unreasonably withhold its acceptance and shall include in any rejection notice a reasonably detailed description of the Acceptance Tests conducted, the results thereof and each identified Nonconformity. The Software will be deemed accepted by Customer upon the expiration of the Testing Period if Customer has not delivered a notice accepting or rejecting the Software prior to such expiration.

(b) Except as set forth in Section 2.6(c), following receipt of a rejection notice, Raftelis shall use commercially reasonable efforts to remedy all Nonconformities and re-deliver the Software. Upon re-delivery, Customer shall have an additional Testing Period to conduct Acceptance Tests to determine whether each such Nonconformity has been remedied.

(c) The parties shall repeat the testing and cure process until Customer has accepted the Software, provided, however, if Raftelis fails more than twice to remedy a material Nonconformity: (i) Customer may accept the Software as nonconforming, in which case the fees will be reduced equitably to reflect the value of the Software as received relative to the value of the Software had it materially conformed to the Specifications; and (ii) if Customer does not accept the Software as non-conforming, either party may terminate this Agreement by written notice to the other party. This Section 2.6 sets forth Raftelis’ sole obligations and Customer’s exclusive remedies for any failure of the Software to conform to the Specifications.

2.7 Customer Training. Raftelis shall work with Customer to make mutually acceptable arrangements for provision of training with respect to the operation and use of the Software. Such training services shall be provided at Raftelis’ then current hourly billing rate.

ARTICLE 3 Maintenance and Support of Software

3.1 Maintenance and Support Services. Following Customer’s acceptance of the Software, Raftelis and Customer shall jointly work together to make the Software available to End Users. Beginning on the date that the Software is made available to End Users (the “**Launch Date**”), Raftelis shall provide Services to implement, maintain, and support the Software on the Customer’s platform.

3.2 Administrative Access and Content Control. Customer shall have the right and responsibility to administer and manage the Software, including to add, modify and delete Customer Materials. Raftelis shall provide Customer with secure, password protected administrative access to the Software to allow Customer to modify data present in the Software. Customer shall limit administrative access and control of the Software only to employees of Customer and shall not provide administrative access and control to any third party without the express prior written consent of Raftelis, which shall not be withheld unreasonably.

3.3 Support. Raftelis shall provide the following support services during the Term (the “**Support Services**”):

(a) Support Requests. Customer shall notify Raftelis of defects or bugs in the Software through means that shall be designated by Raftelis. Raftelis shall provide support in accordance with the support level requirements in Attachment C attached hereto. To the extent the issue concerns the uptime availability of the hosting service for the Software, the customer will be responsible for maintaining the hardware environment supporting the Software.

3.4 System Backups. Customer shall arrange for the applicable hosting service to provide automatic daily backups of information and content entered into the Software in accordance with the policies and terms and conditions of the hosting service for such backup services.

3.5 Updates. Raftelis anticipates that it will periodically release and deliver Updates of the Software and will work with Customer in a commercially reasonable manner to deliver and implement such Updates.

ARTICLE 4

Fees, Expenses and Payment

4.1 Fees. In consideration of Raftelis' development of the Software and provision of Services and other undertakings hereunder, Customer shall pay Raftelis all fees set forth in Attachment B, entitled "Pricing Schedule" (the "**Fees**") on or before the scheduled due date(s), with such Attachment B being incorporated by reference as if set out here in its entirety.

(a) Development Fee. Customer shall pay Raftelis the stated lump sum fee to develop the Software in the amount and according to the schedule set forth in Attachment B. (the "**Development Fee**"). Tasks described in this Agreement will be completed under the not to exceed budgeted amount stated in Attachment B billed on a percent complete basis. Effort(s) beyond what is described in the tasks will be evaluated by Raftelis and Customer, priced separately, and completed under separate pre-approved task orders outside of this Agreement and/or as an amendment to this Agreement.

(b) Support Fee. Beginning as of the Launch Date, Customer shall pay Raftelis a monthly lump sum fee inclusive of the time and hours spent by Raftelis during the preceding month providing the Services set forth in Article 3 of this Agreement (the "**Support Fee**"). Raftelis shall charge Customer its customary monthly rate for the Support Fee, which, as of the date of this Agreement, is \$10,000.00.

(c) Reimbursable Expenses. Intentionally excluded.

(d) Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer shall be solely responsible for payment of all sales, use, excise, value-added, or other similar taxes, duties and charges of any kind payable as a result of this Agreement, provided that such taxes are clearly set forth on each invoice for Fees. Notwithstanding the preceding, Raftelis acknowledges that the Customer is exempt from sales and use taxes, and Customer agrees to provide Raftelis with a tax exemption certificate if requested.

(e) Late Payments. Customer shall pay a finance charge on any overdue payment in accordance with the provisions of the Texas Prompt Payment Act, or the maximum rate permitted by law, whichever is less, plus all reasonable costs and expenses of collection

(including reasonable attorneys' fees and expenses), if any, which are incurred by Raftelis and may be awarded pursuant to a court judgment or order

4.2 Invoices. Raftelis shall invoice Customer for a pro rata portion of the Development Fee on a monthly basis. Customer shall pay all invoiced Fees within 30 days after Customer's receipt of a proper invoice in accordance with the Texas Prompt Payment Act and this Agreement.

ARTICLE 5

Intellectual Property Rights

5.1 Customer Software. Customer acknowledges and agrees that Raftelis shall remain the owner of all Intellectual Property Rights in and to (a) the Software and Documentation and (b) all works, inventions, and other subject matter incorporating, based on, or derived from any Raftelis' work on the Software and Documentation, including all Updates.

5.2 Customer Materials. As between Customer and Raftelis, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights relating thereto.

5.3 Trademarks. Raftelis shall incorporate trademarks and logos selected by Customer into the display of the Software in accordance with the reasonable request of Customer. Customer acknowledges and agrees that, at Raftelis' request, the Software shall include a notice, placed and formatted in a manner reasonably acceptable to both parties, indicating that the Software was developed with the assistance of or powered by Raftelis.

ARTICLE 6

Licenses

6.1 Customer License. Subject to and conditioned upon Customer's payment of the Development Fees and compliance with the terms and limitations of the license granted herein, Raftelis hereby grants to Customer a fully paid-up and royalty-free, perpetual, non-exclusive, non-transferable (except as set forth in Section 11.1), non-sublicensable license: (a) to operate and use the Software and Documentation in object code in the United States in perpetuity, solely for Customer's business operations and in accordance with the Documentation; and (b) to use the Documentation in connection therewith.

6.2 Raftelis License. Subject to the terms and conditions of this Agreement, Customer hereby grants Raftelis and third-party agents retained by Raftelis to perform the Services hereunder a limited, royalty-free, fully-paid up, non-exclusive, non-transferable and non-sublicensable license with respect to the Customer Materials:

(a) as necessary and appropriate to enable Raftelis and other Raftelis-contracted agents to perform the duties and obligations of Raftelis under this Agreement; and

(b) Raftelis may collect and gather aggregated, anonymized information entered into the Software and combine it with additional information available to Raftelis, for purposes of industry research, analysis, and marketing. Notwithstanding the foregoing, Raftelis' use of other licensed products, information, and data collected or produced by Raftelis pursuant to the parties' Consulting Agreement, remains in full force and effect during the term of this Agreement and, unless otherwise released, continues in perpetuity.

ARTICLE 7 Term and Termination

7.1 Term. The term of this Agreement (“Term”) shall commence on the Effective Date, remain in effect following the Launch Date, and continuing through September 30, 2022, unless sooner terminated as provided herein. Prior to the end of the Term, the parties may execute an amendment to this Agreement, or a separate contract, for the continuation of maintenance and support by Raftelis of the Software for consecutive 12-month periods, subject to sufficient appropriations by Customer.

7.2 Termination by Customer. Customer may terminate this Agreement:

(a) as set forth in Sections 2.4 (Change Orders) and 2.6 (Acceptance Procedure) of this Agreement;

(b) if Raftelis breaches any of its material obligations under this Agreement, and such failure continues for 30 days after Customer gives written notice to Raftelis;

(c) if Raftelis becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; makes or seeks to make a general assignment for the benefit of its creditors; or applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.3 Termination by Raftelis. Raftelis may terminate this Agreement if:

(a) Customer fails to make any payment due under this Agreement and such failure continues for 30 days after Raftelis gives written notice to Customer in accordance with the Texas Prompt Payment Act;

(b) Customer otherwise breaches any of its obligations under this Agreement and such failure continues for 30 days after Raftelis gives written notice to Customer; or

(c) Customer becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; makes or seeks to make a general assignment for the benefit of its creditors; or applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.4 Effect of Termination or Expiration. Upon termination or expiration of this Agreement:

(a) If either party terminates this Agreement prior to the Launch Date, including a termination pursuant to Section 2.4 or 2.6 of this Agreement, then, upon Customer's payment of all Fees due pursuant to the milestones reached prior to the effective date of such termination, Customer is hereby granted a non-exclusive, non-transferable, and non-assignable right and license

to use such Software on the terms and conditions set forth in Section 6.1, provided that such Software is provided "as is" without warranty of any kind and Raftelis has no continuing obligations or liability to Customer or any other Person with respect thereto.

(b) If either party terminates this Agreement after the Launch Date, then Raftelis shall cooperate with Customer, and any hosting services provider designated by Customer, if any, to facilitate the transfer of control of and access to the Software in the manner designated by Customer or such hosting services provider. In such event, Raftelis shall continue to (i) provide the Services hereunder for such additional period as Customer reasonably requests, but not longer than 90 days (the "Migration Period"), and (ii) provide commercially reasonable assistance in completing such migration. Raftelis shall provide all Services during the Migration Period in accordance with the terms and conditions, and for the Fees, applicable to the provision of Services immediately prior to the Agreement's expiration or termination. On or before the end of the Migration Period, Raftelis shall deliver to Customer, or any hosting services provider for Customer, a complete copy of the Software in object code form and all Customer Materials current as of such date.

7.5 Surviving Terms. The rights, obligations and conditions set forth in this Section 7.5, Sections 5.1, 5.2, 6.2(b), 8.3, 10.1, 10.2, 11.2, 11.3, 11.4, 11.5, and 11.8 and any other rights, obligations or conditions that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, will survive any such termination or expiration hereof.

ARTICLE 8

Warranties

8.1 Software Warranties. Raftelis warrants:

(a) that the Software will function in accordance with its Specifications, the Documentation, and this Agreement for a period of 270 days following the Launch Date stated in this Agreement;

(b) that Raftelis will perform all Services in a professional and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and shall devote adequate resources to meet its obligations under this Agreement;

8.2 In the event Customer terminates this Agreement for a breach of the limited warranty set forth herein, Customer shall be entitled to a refund of a pro-rata share of all Development Fees and Software fees pre-paid to Raftelis prior to the date of termination.

8.3 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8.1, ALL SOFTWARE, SERVICES, AND WORK PRODUCT ARE PROVIDED "AS IS" AND RAFTELIS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND RAFTELIS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, RAFTELIS MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE OR WORK PRODUCT, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S

OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS. RAFTELIS EXPRESSLY DISCLAIMS ANY WARRANTY THAT ANY TRADEMARK OR LOGO SELECTED BY CUSTOMER, WITH OR WITHOUT THE ASSISTANCE OF RAFTELIS, IS AVAILABLE FOR USE BY CUSTOMER AND CUSTOMER ADOPTS OR USES ANY TRADEMARK OR LOGO AT ITS OWN RISK.

ARTICLE 9

Indemnification

9.1 Raftelis Indemnification. Raftelis shall indemnify, defend, and hold harmless Customer from and against any and all Losses incurred by Customer resulting from any Action by a third party (other than an Affiliate of Customer) to the extent such action alleges that Customer's use of the Software (excluding Customer Materials and Third-Party Materials) in compliance with this Agreement infringes a U.S. Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any:

- (a) combination of the Software with any hardware, system, or other software or materials not provided or authorized in writing by Raftelis;
- (b) modification of the Software other than: (i) by Raftelis; or (ii) with Raftelis' written approval in accordance with Raftelis' written specification;
- (c) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer; or
- (d) act, omission, or other matter described in Section **Error! Reference source not found.**^{9.2(a)}, Section **Error! Reference source not found.**^{9.2(b)}, or Section **Error! Reference source not found.**^{9.2(c)}, whether or not the same results in any Action against or Loss by any Raftelis Indemnitee.

9.2 Customer Indemnification. Intentionally excluded.

9.3 Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes Customer is or may be entitled to be indemnified pursuant to Section 9.19.1. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 9.39.3 will not relieve the Indemnitor of its obligations under this Section 9 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

9.4 Mitigation. If the Software, other than Customer Materials, is or in Raftelis' opinion is likely to be claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer's use of the Software, other than Customer Materials, is enjoined or threatened to be enjoined, Raftelis may, at its option and sole cost and expense:

(a) obtain the right for Customer to continue to use the Software materially as contemplated by this Agreement;

(b) modify or replace the Software, in whole or in part, to seek to make the Software (as so modified or replaced) non-infringing while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Software under this Agreement; or

(c) by written notice to Customer, terminate the license granted to Customer under this Agreement and require Customer to immediately cease any use of the Software or any specified part or feature thereof, provided that if such termination occurs prior to five (5) years after the Launch Date, subject to Customer's compliance with the license limitations set forth in Section 6.1 of this Agreement, Customer will be entitled to a refund of 20% of the full Development Fee for each year short of five (5) years from the Launch Date that the termination occurs (e.g., a refund of 80% of the Development Fee if terminated between the first and second years after the Launch Date, 60% if terminated between then second and third years after the Launch Date, etc.).

THIS SECTION Error! Reference source not found.⁴⁴ SETS FORTH CUSTOMER'S SOLE REMEDIES AND RAFTELIS'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SOFTWARE) INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

ARTICLE 10

Limitations of Liability

10.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL RAFTELIS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT, OR LOSS OF DATA OR DIMINUTION IN VALUE, OR (b) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF RAFTELIS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND

OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT AS OF THE DATE THE LIABILITY AROSE. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING THE FOREGOING, RAFTELIS ACKNOWLEDGES AND AGREES THAT THE CYBER LIABILITY COVERAGE REQUIRED TO BE OBTAINED AND MAINTAINED BY RAFTELIS PURSUANT TO THIS AGREEMENT IS AN EXCEPTION TO AND EXCLUSION FROM THE AGGREGATE CAP ON LIABILITY IN THIS SECTION 10.2.

ARTICLE 11

Additional Provisions

11.1 Assignment. Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party; provided that either party may assign this Agreement to any acquirer of all or substantially all of the assets of that party by merger, a sale of assets or otherwise. In the event that either party attempts to take action that violates this Section, the other party may, without limiting any other legally available remedies, either (a) terminate this Agreement; or (b) enforce all terms and conditions of this Agreement as against the other party and the assignee or acquirer.

11.2 Waiver. No waiver by either party of any breach of any provision of this Agreement or any other written agreement between the parties, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such breach or as a waiver of any breach of any other provision of this Agreement or any other agreement between the parties. The failure of either party at any time or times to require performance of any provision of this Agreement or any other agreement between the parties shall in no manner affect such party's right to enforce the same at a later date.

11.3 Entire Agreement. This Agreement and all Attachments, including, in context, any references to the parties' separate Consulting Agreement, contain the entire agreement of the parties and supersede any prior written or oral agreements or representations between the parties. In the event of a conflict between this Agreement and the Consulting Agreement, this Agreement shall control.

11.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas without regard to any conflicts of law rules.

11.5 Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

11.6 Force Majeure.

(a) No Breach or Default. In no event will either be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "Force Majeure Event"), including acts of God, flood, fire, earthquake, or explosion, pandemic, war, terrorism,

invasion, riot, or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages, or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including imposing an embargo, export, or import restriction, quota or other restriction or prohibition, or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of 120 days or more.

(b) Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give notice to the other party and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

11.7 Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement have binding legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 3.21):

If to Raftelis:

E-mail:

Attention: Henrietta Locklear, Vice President

If to Customer:

City of Corpus Christi

Attn: Director, Public Works Department

2525 Hygeia St.

Corpus Christi, TX 78415

11.8 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

Attachment A

Scope of Work

1. **General Requirements/Background Information**

Raffelis shall be responsible for the development, testing, maintenance, and support for the implementation of a software application to be utilized for parcel data management and billing of drainage fees for the City's Storm Water Drainage Utility System under this Scope of Work, as further detailed in the Agreement and this Attachment A.

2. **Storm Water Parcel Data Management System Development**

Raffelis shall ensure the Software accomplishes and provides the following:

- A. A middleware environment in which stormwater parcel data can be updated and undergo regular maintenance in response to changes to accounts recorded in INFOR and passed to the system, parcel size and state code, credits, and appeals—the system will consume any changes to source data (such as parcel updates, recombination, changes to land use and the like) contained in a geographic information system ("GIS") and, additionally, the system will provide GIS maps for each stormwater parcel account.
- B. Allows for customer relationship management and storm water parcel data maintenance functions—the application will be tailored to integrate with current customer service, GIS, and INFOR IPS inputs—the application will provide storm water parcel data management access to multiple staff groups for various functions.
- C. Work flow reporting for staff such as changed parcels or changes needing follow up attention (not INFOR financial reporting), in appropriate formats including Excel, PDF, etc., and, post "go-live," includes the ability for staff to create their own custom reports.
- D. A regular defined export of updated storm water accounts and fee/quantity amounts to the billing system in the specified file format, including credits for the utility assistance program (UAP). (TBD)

3. **Go-Live and Subsequent: Software Application Requires Core Functionality**

Raftelis shall ensure that the parcel data management system and integrated billing application shall be capable of the following core functionalities:

- A. **At go-live:** search (by parcel, account, owner name, and address); inset map; county assessor link(s); summary panel with key parcel data; ability to upload UAP documents and designate approved accounts; workflow management with for both teams and events; export changed accounts and fees (including, the TBD process for UAP-approved accounts); import changed accounts (file interface); quality control for user changes, and basic reports
- B. **Subsequent to go-live, enhanced functionality will be deployed:** nightly geoprocessing updates, automated bulk parcel updates, manual removal or addition of parcels, quality control for automated imports, dashboard, mechanism for feedback to development team, letter templates for letters to customers (if desired), street fee management features (if desired), and enhanced reports.

4. **Testing**

Raftelis shall test the storm water account management system and work with City resources to test account management features, UAP, deployment of storm water billing file(s), integration with applicable systems, and reporting.

5. **Documentation and Training**

Raftelis shall produce functional and user-oriented documentation for the storm water parcel data management system.

6. **Ongoing Maintenance and Support Services**

Raftelis shall provide ongoing Software maintenance and support of the storm water parcel management and billing information system through September 30, 2022, and may, subject to mutual consent of the parties and sufficient budget appropriations in the future, continue to do so by amendment to this Agreement or pursuant to a separate scope and fee.



Attachment B – Pricing Schedule

Public Works Department – Storm Water
2525 Hygeia Street
Corpus Christ, TX

Subject: Corpus Christi Stormwater Fee Service Agreement to Include Parcel Data Management System

Description	Unit Price	Units		Cost
Development and deployment of software with critical functionality by January 1, 2022	77,000	1	Each	\$ 77,000
Development and deployment of additional functionality by March 1, 2022	33,000	1	Each	\$ 33,000
Software maintenance and support for 9 months (January 1, 2022 through September 30, 2022)	10,000	9	Months	\$ 90,000
			Total	\$200,000

ATTACHMENT C
RAFTELIS SUPPORT SERVICES

Raftelis shall acknowledge receipt of support requests from Customer within 1 business day from receipt of the request. Thereafter, Raftelis shall use commercially reasonable efforts to resolve requests within the resolution times set forth in the chart below. For purposes of this Agreement, Raftelis has “resolved” the request when it has corrected the issue or error that prompted that request.

Severity Level	Definition	Required Service Level Resolution Time
1	Critical Issue: An issue or error that disables or materially impairs one or more major functions of the Software or Customer’s use of any major function of the Software.	As soon as practicable depending on the complexity of the issue but will endeavor to resolve the issue no later than 1 business day after Raftelis’ receipt of the request.
2	Substantial Issue: A problem, other than a Severity Level 1 problem, that impairs the operation of the Software.	As soon as practicable depending on the complexity of the issue but Raftelis will endeavor to resolve the issue no later than three business days after Raftelis’ receipt of the request.
3	Minor Problem: An isolated or minor problem in the Software that meets each of the following requirements: (a) does not significantly affect the Software’s functionality; (b) can or does impair or disable only certain non-essential Software functions; and (c) does not materially affect Customer’s use of the Software.	As soon as practicable depending on the complexity of the issue but Raftelis will endeavor to resolve the issue no later than five business days after Raftelis’ receipt of the request.