

Reviewed by
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CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") dated this 4th day of February, 2020

BETWEEN

City of Rapid City, 300 6th Street, Rapid City, South Dakota, 57701
(the "Customer")

- AND -

Dr. Helen Usera of 2937 Dundee Street, Rapid City, South Dakota, 57702
(the "Consultant").

BACKGROUND:

- A. The Customer is of the opinion and understanding that the Consultant has the necessary qualifications, experience and abilities to provide services to the Customer.
- B. The Consultant is agreeable to providing such services to the Customer on the terms and conditions set out in this Agreement.
- C. This contract is being executed by the City of Rapid City.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Customer and the Consultant (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

Services Provided

- o The Customer hereby agrees to engage the Consultant to provide the Customer with services (the "Services") consisting of task force meeting facilitation and research.

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2. The Services will also include any other tasks which the Parties may mutually agree on in writing, in accordance with Section 26 of this Agreement. The Consultant hereby agrees to provide such Services to the Customer.

Term of Agreement

3. The term of this Agreement (the "Term") will begin on the date of this Agreement and will remain in full force and effect until terminated as provided in this Agreement.
4. In the event that either Party wishes to terminate this Agreement, that Party will be required to provide 30 days written notice to the other Party.
5. Except as otherwise provided in this Agreement, all obligations of the Consultant will end upon the termination of this Agreement by either Party, and all payment obligations of the Customer will remain, pro rata, to the date of termination.

Performance

6. The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

Currency

7. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in USD (US Dollars).

Compensation

8. For the services rendered by the Consultant as required by this Agreement, the Customer will provide compensation (the "Compensation") to the Consultant at a rate of \$85 per hour.
9. The Compensation as stated in this Agreement does not include sales tax, or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to the Customer in addition to the Compensation.

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Provision of Extras

10. The Customer agrees to provide, for the use of the Consultant in providing the Services, the following extras:
- Customer will provide access to files and email for the purpose of completing the Services.
 - To the extent necessary, Customer will provide adequate work space, supplies and equipment necessary to complete the Services.

Reimbursement of Expenses

11. In connection with providing the Services hereunder, the Consultant will be reimbursed for the following:
- Travel expenses outside of Rapid City which will include, as applicable, mileage, meals, and any lodging connected to such travel.
 - Office supplies and copying that is not provided by the City.
12. The Consultant will furnish statements and vouchers to the Customer for all such expenses. Customer shall reimburse Consultant within 45 business days of receipt of statements and vouchers.

Payment Penalties

13. No late payment penalty will be charged if the Customer does not comply with the rates, amounts, or payment dates provided in this Agreement, if Customer's non-compliance is reasonable. Customer shall provide notice to Consultant that it will not meet the payment terms in this Agreement by the second week of each month in which Consultant provides services. Failure to provide such notice, or failure to provide payment within 30 days of when services are due, may be considered a material breach of the Agreement, at Consultant's sole discretion. Any waiver as to timing or amount of a payment or payments will not be considered a waiver of Compensation owed under the Agreement.

Confidentiality

14. From time to time under this Agreement, Customer may disclose or make available to the Consultant information about its business affairs, accounting records, confidential intellectual property, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information shall not include information that, at the time of disclosure:

- (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section by the Consultant;
- (ii) is or becomes available to the Consultant on a non-confidential basis from a third-party source, provided that such third party was not prohibited from disclosing such Confidential Information;
- (iii) was known by or in the possession of the Consultant before being disclosed by or on behalf of the Customer;
- (iv) was or is independently developed by the Consultant without reference to or use, in whole or in part, of any of the Customer's Confidential Information; or
- (v) is required to be disclosed under applicable federal, state or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction.

The Consultant shall:

- (A) protect and safeguard the confidentiality of the Customer's Confidential Information with at least the same degree of care as the Consultant would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
- (B) not use the Customer's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and
- (C) not disclose any such Confidential Information to any person or entity, except if necessary to its representatives who need to know the Confidential Information to assist the Consultant, or act on its behalf, to exercise its rights or perform its obligations under the Agreement. The Consultant shall be responsible for any breach of this Section caused by any of its representatives.

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15. The Consultant agrees that they will not disclose, divulge, reveal, report or use, for any purpose other than the provision of Services under this Agreement, any Confidential Information which the Consultant has obtained, except as authorized by the Customer. This obligation will end on the termination of this Agreement.

Ownership of Materials and Intellectual Property

16. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of the Consultant in the course of performing the Services, (collectively, the "Deliverables") [except for any Confidential Information of Customer or customer materials] shall be owned by Customer.
17. The Consultant may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Customer. The Consultant will be responsible for any and all damages resulting from its own unauthorized use of the Intellectual Property.

Return of Property

18. Upon the expiry or termination of this Agreement, the Consultant will return to the Customer any property, documentation, records, or Confidential Information which is the property of the Customer.

Capacity/Independent Contractor

19. The Consultant may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Customer. The Consultant will be responsible for any and all damages resulting from its own unauthorized use of the Intellectual Property.

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20. In providing the Services under this Agreement it is expressly agreed that the Consultant is acting as an independent contractor and not as an employee. The Consultant and the Customer acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service.

Notice

21. All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties of this Agreement as follows:
- a. Mayor Steve Allender
Mayor of Rapid City
300 6th Street
Rapid City, South Dakota 57701
Steve.allender@rcgov.org

 - b. Dr. Helen Usera
2937 Dundee Street
Rapid City, South Dakota, 57702
Email: aspiringbusiness@gmail.com

or to such other address as any Party may from time to time notify the other.

Indemnification

22. Each Party to this Agreement will indemnify and hold harmless the other Party, as permitted by law, from and against any and all third party claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever to the extent that any of the foregoing is directly or proximately caused by the negligent or willful acts or omissions of the indemnifying Party or its agents or representatives and which result from or arise out of the indemnifying Party's participation in this Agreement. This indemnification will survive the termination of this Agreement.

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Insurance

23. The Consultant will be required to maintain general liability insurance including coverage for bodily injury and property damage at a level that would be considered reasonable in the industry of the Consultant based on the risk associated with characteristics of this Agreement, as determined by the Consultant in its discretion, and only to the extent permitted by law. All insurance policies will remain materially unchanged for the duration of this Agreement.

Limitation of Liability

24. It is understood and agreed that the Consultant will not be liable to the Customer, or any agent or associate of the Customer, for any mistake or error in judgment or for any act or omission done in good faith and believed to be within the scope of authority conferred or implied by this Agreement. In the event that this Section may be interpreted to conflict with Section 24, this Section shall control.

Modification of Agreement

25. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

Time of the Essence

26. Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

Assignment

27. The Consultant will not voluntarily or by operation of law assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Customer.

Entire Agreement

28. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

Inurement

29. This Agreement will inure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

Titles/Headings

30. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

Gender

31. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law, Venue, Jurisdiction

32. It is the intention of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of South Dakota, without regard to the jurisdiction in which any action or special proceeding may be instituted. Any action or proceeding will take place in Pennington County South Dakota, and the Parties agree that the 7th Judicial Circuit will have subject matter and *in personam* jurisdiction over the Agreement and the Parties.

Severability

33. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

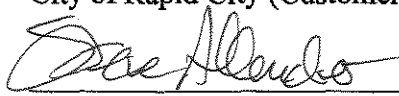
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Waiver

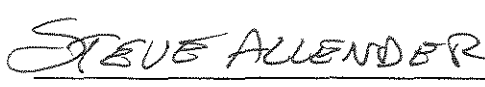
34. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

IN WITNESS WHEREOF the Parties have duly affixed their signatures on this 4th day of February, 2020.

City of Rapid City (Customer)

 / 2-4-2020

Signature / Date

 / Mayor

Printed Name / Title



Dr. Helen Usera (Consultant)

EIN: 45-2721663

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