



Law Office of
Scott D. Bergthold, P.L.L.C.

Continental Plaza, Suite 181
11000 North Scottsdale Road
Scottsdale, Arizona 85254

September 17, 2002

Mike Booher
Asst. City Attorney
300 Sixth Street
Rapid City, SD 57701

RE: Adult Business Ordinance Project

Dear Mr. Booher:

This letter of Agreement confirms the retention of the Law Office of Scott D. Bergthold, P.L.L.C., an Arizona professional limited liability company (the "Firm"), to provide professional services to the City of Rapid City (the "City") in regard to analysis of the City's proposed ordinance (No. 3856) to control the negative secondary effects of adult uses. As the Firm employs attorneys licensed in states other than South Dakota, such attorneys intend to provide only consulting services to the City, subject to the direction, control, and supervision of the City's attorneys. The agreement is predicated upon the City's belief that the Firm is particularly qualified to provide such services and that the services are professional and noncompetitive in nature. Our agreement therefore is as follows:

SCOPE OF SERVICES

The Firm will review proposed Ordinance No. 3856 (the "Legislation"). The Firm will advise the City Attorney as to any provisions of the Legislation for which amendments or additions should be considered in order to enhance the City's ability to defend the legality of the Legislation, or in order to enhance the City's goals of reducing the secondary effects caused by sexually oriented businesses. The Firm will provide a written report, including recommendations, within 45 days from the receipt of materials (current municipal code, zoning maps, etc.) necessary to perform the services specified in this Agreement. The Firm will from time to time during the term of this Agreement, upon request by the City Attorney or his designee, provide telephone consultation on issues relating the Legislation.

It is agreed that the Firm reserves and maintains the right to continue to represent or to undertake to represent existing or new clients in any matter that does not provide a direct conflict to the work performed under this contract. It is agreed that except for the initial 45 day period

for preliminary comprehensive ordinance review, the Firm does not guarantee any priority in responding to requests for assistance, but will perform its obligations in good faith with due diligence.

It is further agreed and understood that the Firm does not serve in the capacity of general counsel on behalf of the City or any division thereof and acceptance of this engagement does not involve representation of, or consultation with, the City or any division or agent thereof in any civil or criminal lawsuit or any matter other than that set forth herein.

Finally, it is agreed that since the outcome of any challenge to legislation enacted, revised or otherwise amended by the City upon advice of the Firm is subject to the vagaries and risks inherent in the process of judicial review, the Firm makes no promises, guarantees, warranties or representations concerning the outcome of any legal challenge to the "Legislation."

COMPENSATION AND METHOD OF PAYMENT

The City agrees to pay to the Firm fees at a rate of one hundred seventy-five dollars per hour (\$175/hr.), plus actual expenses, as full and complete compensation for the Firm's consulting services specified above. The flat fee shall cover all time spent on the file, including telephone conference calls after the delivery of the report specified above, to discuss any portions of the report or Legislation. In discharging its responsibilities to the City, it may be necessary for the Firm to incur costs and expenses for various items such as postage, legal research, long distance telephone charges, and delivery services. These items will be charged at the Firm's cost to cover its overhead. These expense items are separately itemized on our statements.

The City will make periodic payments to the Firm upon submission of an invoice for payment in a manner approved by the City Attorney, specifying that the Firm has performed the work under this Agreement in conformance with the Agreement, and that the Firm is entitled to receive the amount requisitioned under the terms of the Agreement. The Firm's invoice will be forwarded directly to the City Attorney upon completion of the work specified in Scope of Services, above. Invoices will also reflect charges for reimbursement of expenses noted above.

REPORTS, INFORMATION, AND CONFIDENTIALITY

The Firm, at such times and in such form as the City may require, shall furnish the City such reports as may be requested pertaining to the work or services undertaken pursuant to this Agreement, and any other matters covered by this Agreement. The Firm shall retain all financial and administrative records for a period of three years after the expiration or termination of this Agreement, and shall permit the City or any of its representatives access to such records.

The Firm and its agents and employees will keep and retain any and all information, reports and records generated under this Agreement in confidence, regarding all such matters as subject to attorney-client privilege as allowed by law, and will neither use such information nor disclose such information to anyone without the permission of the City.

SOUTH DAKOTA LAW TO GOVERN

In the performance of services, the Firm shall comply with all applicable statutes, ordinances, and laws of the Federal Government, the State of South Dakota, and the City of Rapid City. The law of the State of South Dakota shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

TERM AND TERMINATION

The term of this Agreement shall commence on the date of execution hereof by the last executing party, and shall expire one year from the date of the aforementioned execution. Either party may terminate this Agreement at any time by giving notice in writing to the other party. If this Agreement is terminated by the City other than for default by the Firm, the Firm will be paid for services performed and expenses incurred up to the effective date of termination.

If you have any questions concerning the contents of this letter of Agreement, please feel free to call me at 480-922-9731. Otherwise, please sign the original below and return a copy to me for my file. I look forward to working with the City to update its adult business regulations.

Sincerely,

LAW OFFICE OF SCOTT D. BERGTHOLD, P.L.L.C.

Scott D. Bergthold

I have read the foregoing letter of Agreement and accept its terms on behalf of the City.

City of Rapid City

By: _____

Name: _____

Title: _____

Date: _____