

CONTRACT FOR PROFESSIONAL SERVICES

AGREEMENT WITH *THE CENTER FOR PRIORITY BASED BUDGETING* For FISCAL ADVISORY and TECHNICAL SERVICES

THIS AGREEMENT is made and effective as of _____, between *Rapid City* hereafter the "*City*", a Municipal Corporation of the *State of South Dakota and the Center for Priority Based Budgeting*, hereafter "*Consultant*", an S-corporation registered in the State of Colorado. In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM. This Agreement shall commence on _____, and shall remain and continue in effect until services described herein are completed, but in no event later than _____, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES. *Consultant* shall perform the services described and set forth in **Exhibit A**, attached hereto and incorporated herein as though set forth in full. The project and final deliverables shall be completed in accordance with the estimated timeline set forth in **Exhibit A**.

3. PERFORMANCE. *Consultant* shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein. *Consultant* represents to the *City* that it has the qualifications necessary to perform the services described herein. *Consultant* shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of *Consultant* hereunder in meeting its obligations under this Agreement.

4. PAYMENT.

a. The *City* agrees to pay *Consultant* in accordance with the terms set forth in on page 24 of the **RFP or Scope** document, attached hereto and incorporated herein by this reference as though set forth in full, based upon periodic invoices submitted by the *Consultant* to the *City*. This amount shall not exceed **THIRTY-EIGHT THOUSAND DOLLARS (\$38,000)**. This amount is to include one (1) on-site implementation and/or training session. Additional on-site/training sessions will be billed separately to the City, not to exceed five thousand dollars (\$5,000) in totality.

b. *Consultant* shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the *City*. *Consultant* shall be compensated for any additional services in the amounts and in the manner as agreed to by the *City* at the time the *City's* written authorization is given to *Consultant* for the performance of said services.

c. *Consultant* shall submit periodic invoices to the *City* during the term of this Agreement for actual services performed. Payment shall be made within forty-five (45) days of receipt of each invoice as to all non-disputed fees. If the *City* disputes any of the *Consultant's* fees, the *City* shall give written notice to the *Consultant* within 15 days of receipt of an invoice of any disputed fees set forth on that invoice.

5. AVAILABILITY OF FUNDS The *City* has appropriated and encumbered sufficient funds from its operating budget for the cost of the work to be performed to satisfy the payment terms of this agreement with the *Consultant*. Funds will be made available to the *Consultant* upon the completion of agreed upon work and the receipt of a proper invoice.

6. SUSPENSIONS OR TERMINATION OF AGREEMENT.

a. The *City* may at any time suspend or terminate this Agreement, or any portion hereof, by serving upon the *Consultant*, at least thirty (30) days prior, written notice of termination. Upon receipt of said notice, the *Consultant* shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the *City* suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the *City* shall pay to *Consultant* the actual value of the work performed up to the time of termination. Upon termination of the Agreement pursuant to this Section, the *Consultant* will submit an invoice to the *City* pursuant to Section 3. *City* shall pay any related ancillary expenses that were incurred by the *Consultant* prior to the notice of termination, in fulfillment of obligations associated with this agreement.

7. INDEMNIFICATION. The *Consultant* agrees to defend, indemnify, protect and hold harmless the *City*, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the *City*, its officers, officials, employees, and volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of *Consultant's* negligent or wrongful acts or omissions in performing or failing to perform under the terms of this Agreement, excepting only liability arising out of the negligence of the *City* or that of any elected official, employee, or agent of the *City*.

8. INDEPENDENT CONTRACTOR.

a. *Consultant* is and shall at all times remain as to the *City* a wholly independent contractor. The personnel performing the services under this Agreement on behalf of *Consultant* shall at all times be under *Consultant's* exclusive direction and control. Neither the *City* nor any of its officers, employees or agents shall have control over the conduct of *Consultant* or any of *Consultant's* officers, employees or agents, except as set forth in this Agreement. *Consultant* shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the *City*. *Consultant* shall not incur or have the power to incur any debt, obligation or liability whatever against the *City*, or bind the *City* in any manner.

b. *Consultant* represents that it has or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the *City*, nor shall such personnel be entitled to any benefits of the *City* including, but not limited to, pension, health and/or workers' compensation benefits. The *City* shall not be liable for compensation or indemnification to *Consultant* for injury or sickness arising out of performing services hereunder.

c. **Consultant** warrants that all services shall be performed by skilled and competent personnel consistent with applicable technical and professional standards in the field as determined by the **Consultant**.

9. GOVERNING LAW. **Consultant** agrees that in the performance of this Agreement it will reasonably comply with all applicable State, Federal and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the **State of South Dakota**. In case of a dispute regarding the interpretation of any part of this Agreement, the parties shall use their best faith efforts to arrive at a mutually acceptable resolution. Unless it has received a termination notice from the **City**, the **Consultant** shall proceed diligently with its performance of the work under this Agreement pending the final resolution of any dispute arising from or relating to this Agreement and the **City** shall continue to pay the **Consultant for** such performance.

10. DISCLOSURES AND OWNERSHIP OF DOCUMENTS

a. All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the **City** or at its expense, will be kept confidential by the **Consultant** and will not be disclosed to any other party without the **City's** prior written consent.

b. The materials used by the **Consultant** for work performed under this Agreement are specific and unique methods of fiscal management and budget prioritization. As such, these materials are protected by copyright. The **City** agrees and understands that these materials and all methods, models and applications resulting from the use of said materials are the sole, complete and absolute property of the **Consultant**. As such, any use, future use or application or any publication (either oral or written) of these materials by the **City** will be at the discretion of the **Consultant** and in any event will not occur without the express and prior written permission of the **Consultant**. All legal rights and protections afforded by copyright and the **Consultant's** ownership of all the underlying intellectual property associated with these fiscal management and budget prioritization materials are retained and reserved exclusively by the **Consultant**, reserving all legal rights and remedies incident to its ownership of these materials. It is understood that the **City** may utilize these methods, models and applications for their own specific use but are not free to share these methods, models and applications with other individuals or entities.

11. INSURANCE REQUIREMENTS **Consultant** agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following minimum coverage's:

- | | |
|--|-----------------------------|
| a. <i>Workers Compensation and Employer's Liability (as required by State of Colorado)</i> | |
| Workers Compensation &
Employer's Liability | \$1,000,000 each accident |
| b. <i>Commercial Liability Umbrella</i> | |
| Business Liability | \$2,000,000 each occurrence |
| c. <i>Commercial General Liability</i> | |
| Business Liability | \$3,000,000 each occurrence |
| Aggregate Limits | \$6,000,000 aggregate |
| d. <i>Automobile Liability</i> | |
| Non-Owned Auto | \$1,000,000 each accident |

e. *Professional Liability*
Errors and Omissions

\$1,000,000 aggregate limit

The *Consultant* shall forward Certificates of Insurance to the *City* as requested in writing. The *Consultant* will give the *City* written notice of not less than thirty (30) days prior to cancellation or change in coverage.

12. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice:

To *City*:
City of Rapid City
Office of the Mayor
300 6th Street
Rapid City, SD 57701
Attn: Kelsey Sakos – Executive Coordinator

To *Consultant*:
Philip McEwen
Chief Financial Officer
Center for Priority Based Budgeting
PO Box 1482
Englewood, CO 80150

13. ASSIGNMENT. The obligations and duties under this Agreement shall not be assignable, delegable or transferable unless such assignment is reduced to writing and signed by both parties. Any purported assignment, delegation or transfer by any other means will constitute a material breach of the Agreement and will be grounds to terminate the agreement as outlined in Section 6.

14. LICENSES. At all times during the term of this Agreement, *Consultant* shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement or any local licenses required by the *City* in order to conduct business with the *City*. *Consultant* shall be allowed to seek reimbursement from the *City* for any State or local licenses, fees or other similar charges required in addition to the agreed upon contract amount as set forth in Section 4.

15. SEVERABILITY. If any term of provision of this Agreement shall to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

16. CONFLICT OF INTEREST. *Consultant* represents that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

17. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

18. MODIFICATION. No term, obligation or provision of this Agreement can be modified unless that modification is in written form, signed and agreed to by both parties.

19. AUTHORITY TO EXECUTE THIS AGREEMENT. The person or persons executing this Agreement on behalf of *Consultant* warrants and represents that he or she has the authority to execute this Agreement on behalf of the *Consultant* and has the authority to bind *Consultant* to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CONSULTANT

Rapid City, South Dakota

By: Philip McEwen
Chief Financial Officer

By:

Title:

Attest:

By: _____

Title: _____