

PROFESSIONAL CONSULTING SERVICES AGREEMENT

THIS PROFESSIONAL CONSULTING SERVICES AGREEMENT (the "Agreement") is made and entered into as of the date of the last signature (the "Effective Date") by and between the City of Raton, a governmental entity organized by law as a political subdivision of the State of New Mexico (hereinafter referred to as the "City") and Better City, a Utah LLC, a (hereinafter referred to as the "Firm").

WHEREAS, the City wishes to engage the Firm to provide the services described herein and the Firm agrees to provide the services for the compensation and otherwise in accordance with the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, accepted, and agreed to, the City and the Firm, intending to be legally bound, agree to the terms set forth below.

1. **TERM.** Commencing as of the Effective Date, and continuing until for a period of twelve (12) months, (the "Term"), unless earlier terminated pursuant to Section 6 hereof, the Firm agrees that it will provide professional consultant services to the City as specified in the Firm's proposed services.
2. **DUTIES AND SERVICES.** The Firm's duties and responsibilities ("Services") shall be to perform economic development work on behalf of the City. This will include, but not be limited to the services described in the Scope of Work Document (see Attachment A).
 - (a) The Firm represents and warrants to the City that the Firm is under no contractual or other restrictions or obligations which are inconsistent with the execution of this Agreement, or which will interfere with the performance of the Firm's duties. The Firm represents and warrants that the execution and performance of this Agreement will not violate any policies or procedures of any other person or entity for which the Firm performs Services concurrently with those performed herein.
 - (b) City will assist the Firm in providing the corresponding information and data gathering that is necessary to perform the scope of Services outlined above and will do so in a timely manner.
3. **CONSULTING FEE.**
 - (a) Subject to the provisions hereof, the City shall pay the Firm a milestone payment of ten thousand dollars (\$10,000) for the completion of the Phase 1 Assessment (as defined below). Upon commencement of Phase 2 Implementation, Consultant fees will be determined based on consulting hours spent on specific project tasks, billed on an hourly rate using the schedule below. Phase 2 Implementation shall have a not to exceed cap of

three thousand two hundred dollars (\$3,200) per month. Direct expenses, such as the cost of travel, lodging and printing costs (if applicable) will be billed separately after prior approval from the City and will be capped at six thousand dollars (\$6,000) for the duration of the Term. The total compensation for the project shall not exceed forty-eight thousand dollars (\$48,000). The Firm will provide services under our Discounted Hourly Rate schedule as follows:

Adam Hughes	\$135
Kelby Bosshardt	\$115
Staff	\$75

- (b) In order to provide services under our Discounted Hourly Rate Schedule above, Better City reserves the right to seek compensation from the Private Sector for projects that the firm catalyzes. By allocating fees to Private Sector firms benefiting from the Firm's services, the Firm is able to minimize costs to the City. This structure also aligns City and Firm interests by incentivizing project implementation.
- (c) The Firm agrees that all Services will be rendered by employees of the Firm as independent contractors and that this Agreement does not create an employer-employee relationship between the City and the Firm. The Firm shall have no right to receive any employee benefits including, but not limited to, health and accident insurance, life insurance, sick leave and/or vacation. The Firm agrees to pay all taxes including self-employment taxes due in respect of the Consulting Fees and to indemnify the City in the event the City is required to pay any such taxes on behalf of the Firm.

4. AUTHORIZED REPRESENTATIVES. Each party shall name an individual, specified in Sections 4a and 4b, as its authorized representative for purposes of representation and notices.

- (a) The City designates:
Scott Berry – City Manager
P.O. Box 910
224 Savage Avenue
Raton, NM 87740
(575)-445-9551
sberry@cityofraton.com
- (b) The Firm designates:
Adam Hughes – CEO
1100 Country Hills Drive, Suite 100
Ogden, UT 84403
(801)-332-9006
adam@bettercity.us

5. INDEMNIFICATION. The Firm agrees and covenants to hold harmless and indemnify the City from any claims, losses, injury, expenses and attorneys' fees proximately caused by any

negligent conduct or omissions that constitute a form of tortious behavior on the part of the Firm, its officers, employees, or agents in the execution of the work performed in accordance with this Agreement, or which constitutes a breach of this Agreement.

The City agrees and covenants to hold harmless and indemnify the Firm from any claims, losses, injury, expenses and attorneys' fees proximately caused by any negligent conduct or omissions that constitute a form of tortious behavior on the part of the City, its officers, employees, or agents in the execution of the work performed in accordance with this Agreement, or which constitutes a breach of this Agreement.

5. SUCCESSORS. The Firm and City agree that the provisions of this Agreement shall be binding on heirs, permitted assigns and successors and agents.

6. TERMINATION. This Agreement may be terminated by either party upon 60 days notice to the designated representative. At the time of termination, the Firm will provide to City all work completed or in process as of the date of termination. Within 60 days of termination, City will make payment to the Firm for all authorized fees and expenses outstanding.

7. CONFIDENTIALITY OF DATA. The Firm shall treat all data that it receives from or through City, or is otherwise exposed to within the course of completing the scope of work, with the highest degree of confidentiality and in compliance with all applicable federal and state laws and regulations.

The Firm acknowledges that it may be provided or come into contact with confidential information of the City or other related parties (collectively, "City's Confidential Information"). In recognition of the foregoing, the Firm covenants and agrees that

- It will keep and maintain the City's Confidential Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure;
- It will use and disclose the City's Confidential Information solely for the purposes for which such information, or access to it, is provided, and the Firm will not use or disclose City's Confidential Information for its own purposes or for the benefit of anyone other than the City or related parties;
- It will not directly or indirectly disclose any of the City's Confidential Information to any third party, except with the City's prior written consent or as otherwise provided herein;
- It will not directly or indirectly use any of the City's Confidential Information to gain an unfair business advantage;
- It shall, upon the earlier of (i) completion of discussions between the parties or any engagement of the Firm by City, (ii) determination that it has no need for the City's Confidential Information, or (iii) at any time the City may so request, dispose of all records, electronic or otherwise (including all backup records and/or other copies thereof) regarding or including any of the City's Confidential Information that Firm may then possess or control. Disposal shall be achieved through prompt delivery of the records to the City or destruction in a manner that renders the records unreadable and undecipherable by any means. Upon any occurrence of (i), (ii), or (iii) above, the Firm shall, upon request of the City, promptly certify in writing, in a form acceptable

to the City and executed by an authorized officer of the Firm, that all of City's Confidential Information has been destroyed or returned.

8. ENTIRE AGREEMENT. This Agreement contains the complete agreement and understanding of the parties hereto and supersedes any previous understandings commitments, proposals or agreements whether oral or written and may only be modified or amended in writing or executed by authorized individuals of City and Firm.

9. JURISDICTION. This Agreement shall be governed by the laws of the State of New Mexico.

10. SIGNATURES.

EXECUTED as of the Effective Date.

By: Scott Berry
City Manager, City of Raton

By: Adam Hughes
CEO, Better City

Attachment A: Scope of Work

The City has identified several economic development priorities including partnership development, business expansion and job creation, targeted business recruitment, targeted industry analysis, community development, and the facilitation of resources for new product development, entrepreneurial development and technical assistance. The project will proceed in a multi-phase approach that will begin with the determination of which of these potential focus areas will result in the greatest impact for the community.

The phased approach is designed to maximize results and to build local capacity and excitement for economic development implementation. The City and the Firm mutually determining when the efforts and focus of the Firm shall proceed from one phase to the next.

Phase I – Determining Needs and Opportunities

The objective of Phase I will be to establish the framework for economic development implementation including the development of local capacity, and the determination of areas of subsequent efforts. Specific items provided in Phase I will include:

- Thorough review of all of the City's prior studies that are relevant to the scope of work including prior strategic plans, general plans, Main Street plans, zoning and land use, project feasibility studies, etc.
- Market conditions analysis
 - Study current market conditions and demographic trends to establish baseline for implementation efforts
 - Identify potential industries for expansion through shift-share, location quotient, and/or other analyses that may be deemed appropriate
- Qualitative Analysis
 - Meet with local stakeholder groups, business owners, residents through a combination of private interviews, round-table discussion meetings, and public meetings to determine goals, objectives, and human capital capacity
 - Determine priority focus areas of the Community as they relate to economic development
- Creation of Phase I Report
 - The Phase I Report will consist of an easy to read analysis of the findings of Phase I. It will also include a recommended prioritization list of which tasks and potential initiatives will be most impactful during Phase II.

It is anticipated that Phase I will require 6-8 weeks but may be longer depending on guidance and preferences of the City.

Phase II – Strategic Project Implementation

Based on the findings, priorities, and recommendations that result from Phase I, the Firm will proceed with strategic implementation of those selected priorities. The scope of work may vary depending on the priorities identified, but may include the following elements outlined in the Firm's response and included below:

Develop Partnerships

The Firm is experienced in developing partnerships with government and private sector enterprises having facilitated various economic development projects involving garnering broad based community support, securing public and private financing sources, providing incentives, holding public meetings, and reporting to committees. We have worked with non-profits, industry groups, private businesses, banks, investors, real estate developers, Downtown Associations, Redevelopment Agencies, Community Development Entities, Chambers of Commerce, City Councils, City Staff, Steering Committee's, Association of Government's, Counties, School Districts, Hospitals, Special Service Districts, State Governments, Economic Development Administration, USDA Rural Development, etc. As part of the scope of work the Firm will work with entities such as GrowRaton!, Lodgers Tax Advisory Board, City Manager and Staff, City Commission, Raton Chamber of Commerce, Raton Main Street, Luna Community College, NMEDD, USDA, EDA, economic development prospects, and any others as deemed appropriate.

Business Development, Business Expansion, and Job Creation

The Firm will interview local businesses, banks, and entrepreneurs to identify expansion opportunities with existing businesses as well as opportunities to begin or recruit in new businesses that may be supported by existing market demand.

Strategization Regarding Targeted Business and Economic Development Initiatives,

The *FY2015 – FY2020 Economic Development Strategic Plan* identifies a number of goals and initiatives including business friendly, tourism, active adult community, industrial parks, historic district, entrepreneurs, housing, public-private partnership, and branding. We will review these goals and initiatives with stakeholders and collaboratively and strategically prioritize scope of work elements that leverage existing assets.

Participation/Leadership in Target Industry Analysis

The Firm has conducted industry analysis to identify potential industries for expansion. The *FY2015 – FY2020 Economic Development Strategic Plan* identifies a number of targeted industries including aircraft maintenance, back office operations, call centers, consulting, cultural, heritage, and historical tours, distribution and logistics, e-commerce, film locations, firearms manufacturing and sales, food processing, outdoor recreational goods, and renewable energy. These industries leverage existing assets and opportunities in and around Raton and strategies must be formed to prioritize these opportunities and identify those that can generate jobs now using existing infrastructure and those that would require additional infrastructure investment to become project ready. Better City will work collaboratively with the City to prioritize which of these categories best aligns with the local workforce opportunities, and will also rank these potential investment areas according to their high growth potential, local vs. non-

local ownership, and quality of jobs and pursued based on the amount of community benefits expected to be provided.

New Business and Industry Recruitment

The Firm has experience in new business and industry recruitment and has deep experience in responding to RFI's, attending trade and industry conventions, developing marketing material, recruitment outreach, aligning incentives, and organizing and hosting community site visits with economic development prospects. Our most recent success was the development of a business attraction strategy and the recruitment of an OHV rental and outfitting company to the small rural community of Meeker, CO, which will create jobs, expand tourism, and increase the community's tax base. Industrial park improvements, downtown revitalization, business outreach, and recruitment initiatives will be prioritized in collaboration with community stakeholders.

Community Development

As economic development practitioners with downtown revitalization experience, the Firm has experience with developing downtown plans, site specific redevelopment initiatives, marketing and outreach to businesses, and fostering community development that is focused on job creation and economic expansion. We have lead downtown revitalization efforts in various communities and have been recognized nationally for our community development efforts. Specific preservation, adaptive reuse, and redevelopment projects will be identified by interfacing with stakeholders, determining economic feasibility, and prioritizing based on catalytic opportunities.

Facilitate Resources for New Product Development, Entrepreneurial Development, and Technical Assistance

The Firm has assisted many communities with designing programming and securing grant funds for the operation of business incubators as well as revolving loan funds through available Federal programs. We have worked with SBDC's, universities, school districts, non-profits, and local governments to facilitate these programs. Our Firm has assisted with business incubator/accelerator programs including the ICEHouse in Gunnison, CO and the ENGAGE center in Delta, CO. The Firm will conduct surveys to identify the needs of businesses and entrepreneurs in the community, identify programming gaps, and assist in securing funding sources and strategic partners to develop appropriate entrepreneurial infrastructure.