

ORIGINAL

CONSULTING AGREEMENT
City of Rapid City – Civic Center Rushmore Plaza

THIS CONSULTING AGREEMENT (the "Agreement") is effective as of January ²⁹ 12, 2018 ("Effective Date") by and between the City of Rapid City, South Dakota ("CITY"), and THE TEGRA GROUP, INC. ("TEGRA") a Minnesota Corporation.

RECITALS

- A. CITY desires to engage TEGRA to perform certain consulting services;
- B. TEGRA desires to perform certain consulting services for CITY upon the terms and subject to the conditions set forth herein.

TERMS AND CONDITIONS

In consideration of the premises and the mutual covenants, hereinafter set forth, the parties agree as follows:

1. General Project Parameters
 - a. CITY hereby engages TEGRA as a consultant to provide advisory services for the proposed Rapid City Civic Center which will be a multi-purpose event center with the ability to host many different events including basketball, hockey and other ice events, concerts, wrestling, circuses and other family shows, rodeos, and trade shows (the "Civic Center"). The Civic Center may include all or a portion of the following building components: a) 11,000-13,000 venue seats, b) Luxury suites, club seats, and loge seating, c) Technology components for operations, users, and advertising inventory, d) Furniture, fixtures and equipment as approved by the CITY and other stakeholders, e) Building components including, but not limited to, loading docks, storage, administrative offices, box office, dressing rooms, food service space, ticket windows, concession stands, laundry facilities, a merchandise sales area, and audio/video equipment, f) Alternative uses such as meeting rooms, atrium, hall of fame, etc. in parts of the Civic Center to maximize building use.
 - b. TEGRA agrees to assign Dick Strassburg and Nate Pearson to this Project and will not substitute assigned personnel without CITY's written approval.
2. TEGRA will perform the Scope of Services in two phases:
 - a. Step One is to define the project parameters with prioritized program elements, project budgets, project schedules, and operating cost models. The deliverable of Step One is a well-defined project scope and a corresponding package that will be used for the council and public support activities. The anticipated timeline for Step One is 6 months. The goal of Step One is to define a base-model project that outlines the "must-have" program elements, as well as a menu of "nice-to-have" options that could be included when funding is available. TEGRA will assist in assembling the anticipated documentation which may include a site plan layout, building elevations or renderings, a project budget for the base model and options, a project schedule, and a scope of work narrative, The CITY will create operational cost models.
 - b. As part of Step One, TEGRA recommends selecting the architectural and construction teams, holding periodic project meetings, and touring similar facilities. TEGRA will script the Architecture/Engineer (AE) team and Construction Manager (CM) RFPs to minimize Step One costs, and deliver the necessary information described above. TEGRA will lead the project meetings and ensure the CITY's vision is clearly communicated and understood throughout the project team.

- c. Step Two is the project implementation which will consist of coordinating the design-phase, construction phase, furniture, fixtures & equipment (FF&E) procurement and installation, commissioning, and turnover of the facility. The anticipated time line for design and construction will vary based on project scope. Similar Civic Center projects often require 8–12 months for the design-phase and 18–22 months for construction and fit up.
3. Step One Detailed Scope of TEGRA Services
 - a. Confirm Project Parameters, Budget and Schedule.
 - i. Initial Project Parameters — Identify and confirm the Project Team’s business objectives. Review project background/history and financing plans. Assist CITY with initial site (if necessary) and building sizing analysis, cost and schedule studies in preparation of team assembly. Assess and Review Overall Project Requirements.
 - ii. Project Schedule Development – Work with the Project Team to develop a comprehensive schedule reflecting key milestones, go/no go decision points. Schedule components will be regularly tracked, updated, and tested for potential conflict. Key items to be shown and monitored on a project schedule are expected to include the following: Project milestones including selection of key project partners, financing requirements, owner review and approval. Project phasing for design and construction, municipal and regulatory approval processes. When appropriate, provide cost impact comparative analysis for schedule acceleration and other modifications.
 - iii. Project Budget Development – Develop an integrated, comprehensive master budget reflecting construction, design, professional fees, financing, FF&E, geotechnical reports, peer reviews, security, audio/visual, artwork, site furnishings, testing/inspections, kitchen/commissary, and technology.
 - b. Provide Information for Public Support – Work with the architect to create presentation drawings and other materials as required for public approvals. Refine budget, cash flow and schedule projections. Attend meetings with working committees as needed to communicate project status. Assist with Financing considerations: work with the Project Team to understand financing terms and conditions across financing sources relative to project impacts and incorporate such information into master project schedule and budget. Work with the Project Team to coordinate on financing sources. Confirm initial and ongoing funding processes including reporting requirements, for both internal and external parties.
 - c. Team Assembly — Organize and lead the selection process for AE team and CM. Assist in the preparation and publishing of Request for Proposals (“RFPs”), outline the phases of the project, review proposal responses, provide comparative analysis of proposals, schedule, organize and facilitate interviews, develop score cards for interviews, prepare record document of selection for each selection process in accordance with State of South Dakota laws.
 - d. Contractual Agreements — Negotiate the business terms of design- and construction-related contract agreements and phases of the work; interface with project legal advisors to document agreed upon terms and conditions; consult with legal advisors on various issues as needed throughout the process.
 - e. General Project Administration – Set up and lead Step One meetings. Develop and routinely update project organizational materials (such as project directory, org charts,

communication charts), define team member roles/responsibilities, create reports as necessary, and maintain electronic files of project related correspondence.

- f. Cost Estimating — Work with CM and AE to provide market cost input and a defined scope of work narrative. Pricing will include subcontractor input, detailed square footage, material assumptions, mechanical and electrical system input and general conditions line items. Project team to review pricing and come to an agreement of final cost estimate.
 - g. Site Selection, Due Diligence (if requested by Owner) — Inquire on subject property, collect data on the subject site, assist in determining value, if applicable, serve as exclusive agent in negotiations for this Work Authorization, if applicable. Generate RFPs and solicit geotechnical services.
 - h. Project Communications — Develop project communication protocol; act as the “project point person” on behalf of the CITY for communication with the AE, CM team, vendors and service providers; prepare and respond to emails and phone calls.
4. Step Two Detailed Scope of TEGRA Services (subject to the CITY’s written authorization to proceed).
- a. General Project Administration — Set up and lead design-phase and construction-phase meetings. Develop and periodically update project organizational materials (such as project directory, org charts, communication charts), define team member roles/responsibilities, maintain hard copies of contracts, track potential change orders, create reports as necessary, and maintain electronic files of project related correspondence.
 - b. Design Process Management — Provide day-to-day project management throughout the design phase with activities such as setting up and organizing design meetings, reviewing design and providing experience based recommendations; direct the AE team to benchmark proposed design with comparable existing similar facilities if appropriate; review drawings and specifications for compliance to Program requirements; promote day-to-day interaction between the CM and AE during the design process so design decisions are presented with corresponding CM provided cost estimates; assist with building committee and City of Rapid City Stakeholders to facilitate timely decisions; facilitate value engineering, energy and sustainability analysis, cost benefit analysis, life cycle analysis with the AE, CM; and monitor AE for compliance with contractual responsibilities.
 - c. Contractual Agreements — Negotiate the final business terms of design and construction related contact agreements and phases of the work; interface with project legal advisors to document agreed upon terms and conditions; consult with legal advisors on various issues as needed throughout the process.
 - d. Schedule Management — Develop master project schedule in conjunction with AE, CM and CITY; create an organized and systematic design approval sequence with the AE team to expedite design approvals; coordinate schedules for obtaining approvals from regulatory entities; facilitate coordination of schedule and disruption avoidance plan; provide recommendations for targeted milestone dates; monitor Owner vendors, service providers and contractors for schedule compliance and coordination. Report any deviations to the CITY.
 - e. 3rd Party Vendor Selection — Solicit other 3rd party Owner vendors: geotechnical testing, quality assurance testing, surveyor, commissioning agent, other consultants and service providers as needed.

- f. Furniture, Fixtures and Equipment (FF&E) — Work with CITY's Building Committee and staff to develop a FF&E budget and product procurement (furniture, kitchen equipment, event furnishings, office equipment, etc.); coordinate with CITY's IT staff and/or vendors regarding the design, procurement and installation of all technology systems (CCTV, audio visual, security, cameras, etc.); assist CITY in the FF&E selection process; monitor compliance with CITY and/or State's procurement process; develop comprehensive FF&E master spreadsheet that includes description of item, quantity, budget, actual bid price, and dates for procurement process, delivery and installation; and provide periodic on-site FF&E installation coordination.
- g. Project Communications — Develop project communication protocol; act as the "project point person" on behalf of the CITY for communication with the AE, CM team, vendors and service providers; prepare and respond to emails and phone calls; monitor AE and CM for contract compliance regarding communication requirements.
- h. Stakeholder Meetings — Prepare for meetings (develop agendas, action item logs, executive summaries, etc.); attend and participate in meetings with CITY Council project leadership team and Civic members as necessary.
- i. Master Budget Administration — Monitor compliance with CITY and/or State's procurement process; develop a comprehensive project budget; update and expand the project budget as the program becomes more defined; develop and periodically update cash flow projections; determine appropriate contingencies for each phase of the project; periodically update the Master Budget to reflect approved revisions.
- j. Cost Control — Develop risk management systems to evaluate potential financial and schedule risks; track approved and pending change orders, looming risks, analysis of budget/contingency, and related insurance associated with the Project; assist the AE team in their review, evaluation and negotiation of CM change order requests; review, negotiate and approve change order requests and maintain a log of all change orders in the following categories: (a) unforeseen conditions (b) errors and omissions (c) code and regulatory or (d) owner changes; review AE Additional Services requests, negotiate as needed and make recommendations to the CITY.
- k. Project Accounting — Provide comprehensive financial accounting for the Project until project completion, provide a monthly Draw Request Report that includes master spreadsheet, comprehensive invoice summary and copies of all project invoices approved for payment that month; Monthly Draw Request spreadsheet to include the following for each vendor (a) original approved budget, (b) previous month budget, (c) budget revisions for the month, (d) current budget, (e) payment this application, (f) retainage, (g) total paid to date, (h) amount under contract, (i) funds available to finish and (j) percentage complete; provide a paper copy of project invoices; and reconcile project cost accounting with CITY's Accounts Payable staff.
- l. Final Contractor Pricing — Review CM delivery methods with the CITY. Review all Cost of the Work bid packages and facilitate the coordination of AE's Construction Documents, CM's Assumptions and Clarifications, bid alternates, and corresponding CM provided cost estimate; assist legal advisors with the development of contract terms. Oversee the CM during the design phase for compliance with the pre-construction services per their contract agreement; facilitate day-to-day cost input and periodic formal detailed cost estimates during the design process; assist CM and AE with development of bid package strategy, constructability reviews, operating cost estimates, and obtaining energy rebates; participate in subcontractor bid openings and interviews;

- m. Requests for Payment — Review each submitted invoice or contractor pay request against amount under contract and paid to date on Monthly Draw Request; Review service provider and vendor invoices and CM monthly pay requests with requirements in corresponding contract agreements; walk the job site with the AE and assist AE in determining if CM's proposed percentage complete for each trade category on the schedule of values is accurate; obtain AE certification of pay requests; make invoice and pay application approval recommendations to the CITY.
 - n. Project Reporting — Develop periodic reports concerning (a) status of the Project, (b) a comparison of the general budget to costs incurred through the date of the report, (c) a comparison of the general schedule to the work actually completed through the date of the report, (d) a list of all pending change orders and all outstanding issues requiring action or approval, and (e) the status of any activities required to approval of the Project.
 - o. Disruption Avoidance — Assist CM in the development of a comprehensive disruption avoidance plan in coordination with the CITY of Rapid City to minimize disruption to ongoing surrounding operations; assist in developing a plan for construction activities within a defined schedule; and monitor and require periodic updates of CM's safety plan to increase awareness of safety risks related to performing work adjacent to occupied building on a congested urban site.
 - p. Quality Assurance and Job Site Safety — Assist AE team in structuring a program for quality assurance, contract compliance, mock-ups, and field testing; recommend peer review of plans and specifications if appropriate; review notices of defective work, monitor CM's defective work log, review remedies and coordinate approval from AE for all corrective work; and review the CM proposed site specific safety plan, monitor CM safety reports of recordable accidents.
 - q. Risk Management — Consult with the CITY's risk managers and project legal advisors to obtain recommendations for the appropriate types and levels of insurance for the AE, CM and other vendors/service providers; inform AE and CM of any insurance underwriter design/installation requirements; assist in the review of construction bonds and insurances to address conformance with CITY requirements; identify and assess risks throughout the process and work with the CITY, AE and CM to develop a risk mitigation plan as needed.
 - r. Construction Administration — Provide periodic on-site representation during construction; Observe job site conditions, progress, staffing, quality, and contract compliance; assist with identifying problems/challenges and provide experienced based recommendations to Project Leadership Team on solutions to day-to-day issues; attend and represent the CITY in job site meetings and job site walk thru meetings; monitor Construction Change Directives, Construction Bulletins, RFI submittal log, shop drawing submittal log, CM submittal log, samples and mock ups; and monitor and track proposed change orders.
 - s. Project Close Out — Facilitate the punch list process with the AE and CM; monitor the CM's progress in obtaining final sign-off from jurisdictional inspectors (if applicable); oversee the commissioning process; assist the Architect with determination of dates for substantial and final completion; coordinate the transmittal of warranties, O&M documents, as-built documents, final lien waivers, attic stock, and CM field redlines of plans and specifications.
5. TEGRA will report to Mayor Steve Allender, unless otherwise directed in writing by an authorized representative of CITY.

6. To the extent any of the terms and provisions of this Agreement are inconsistent with any prior proposal or other communications, written or oral regarding the Services under this agreement, the terms of this Agreement shall control. The Agreement cannot be changed or modified orally. This Agreement may be supplemented, amended, or revised only in writing by agreement of the parties.
7. Term & Termination. This Agreement shall commence on the Effective Date of this agreement and shall remain in effect until Project Completion or termination by either party provided, however, if not earlier terminated, the Agreement will expire on July 31, 2021. If Services are needed after the expiration date, this Agreement shall be modified to reflect mutually agreed to compensation. CITY may terminate TEGRA without cause anytime during the project with responsibility for compensating TEGRA for monthly fees earned through the date of termination. TEGRA may terminate this agreement at any time without cause or if payment of sums properly due are not paid within 30 days. CITY shall not be liable for, nor shall TEGRA be required to perform, any services after the effective date of termination, unless the parties mutually agree.
8. Payment. CITY shall pay TEGRA for the Services on a fixed fee basis. Step One fee is \$49,500 payable (\$8,250 per month) beginning January 2018 through June 2018. Step Two tasks and corresponding fees will be determined after the project is further defined. Step Two fees will not exceed 2% of the total project cost. These payment terms are subject to termination provisions listed above.
9. Expense Reimbursement. TEGRA will not seek reimbursement for expenses in Step One of the project. TEGRA will seek reimbursement for Step Two routine out of pocket expenses such as lodging, food, travel and mileage reimbursement (rental car expenses, or mileage rate as published by Internal Revenue Service) printing, copying, and reproductions. Reimbursable expenses will be invoiced monthly.
10. Consultant Status. TEGRA, its employees, independent contractors, and agents, are not and shall not be construed to be employees of CITY. Neither TEGRA nor any of its employees, independent contractors, agents, or other personnel are authorized to enter into contracts or agreements on behalf of CITY or otherwise create obligations of CITY to third parties. TEGRA's Services are advisory in nature. While Services may involve the review of the work product of architectural, engineering, design, construction, legal and other professional services providers, TEGRA is not engaged to provide such professional services. Rather TEGRA is engaged to provide coordination, project leadership, review and commentary to the best of its abilities, experience and skills. Therefore, CITY agrees to indemnify and hold TEGRA harmless against any and all claim, loss, damage, liability, demand, suit and expenses, including reasonable attorney's fees assessed or awarded that may be incurred by TEGRA as a result of third party claims brought against TEGRA, excluding any claims by CITY against TEGRA for breach of any express provision of this Agreement. Remedies for any such breaches are agreed to be limited to actual contract damages, not to exceed an aggregate damage total equal to the insurance limit pursuant to this Agreement.
11. Insurance. TEGRA shall be solely responsible for taking out and maintaining, at its own expense (i) workers' compensation insurance, (ii) employer's liability insurance, (iii) comprehensive general liability insurance, including contractual liability coverage, (iv) comprehensive automobile liability insurance coverage for bodily injury and property damage liability for all owned, non-owned, hired and rented automotive equipment, and (v) excess liability umbrella insurance in an amount customary for consultants on projects of the size and complexity of this project.
12. Assignability. This Agreement shall not be transferred or assigned, in whole or in part, by TEGRA without the prior written consent of CITY and any transfer or assignment without such consent shall be void.

13. Hold Harmless. TEGRA agrees to indemnify and hold the City harmless from claims or liability including attorneys' fees arising out of the consulting services furnished under the Agreement providing such claims or liability are the result of a negligent or intentional act, error, or omission of TEGRA and/or its employees/agents arising out of the consulting services described in the Agreement.
14. Jurisdiction. This Agreement shall be governed by and interpreted and construed in accordance with the laws of the state of South Dakota without regard to its choice of law provisions. The parties expressly consent and agree to the exclusive jurisdiction and venue of any state or federal court located within Pennington County, South Dakota, for all purposes in connection with any suit between the parties arising out of or relating to this Agreement.
15. Freely Entering into Agreement. The parties acknowledge that they are entering into this Agreement freely and voluntarily, that they have had an opportunity to be represented and advised by counsel in the negotiations resulting in this Agreement, that they have ascertained and weighed all the facts and circumstances likely to influence their judgment, that they have given due consideration to the provisions contained herein, and that they thoroughly understand and consent to all provisions herein.
16. This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.
17. This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. The terms and conditions of this Agreement may be modified only in a written amendment that is duly executed by the parties hereto. Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party. Subject to this restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.
18. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term, or any other term, of this Agreement.
19. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of South Dakota. Any action to interpret or enforce this Agreement shall be venued in the Seventh Judicial Circuit in Pennington County, South Dakota.
20. This Agreement constitutes the entire agreement of the parties regarding this matter. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into this document or have been intentionally omitted.
21. Notices. Any notice or consent required or permitted hereunder shall be in writing, and shall be signed by the party giving the same, and may be given either by delivering the same to such party personally or by mailing the notice by United States certified or registered mail, postage prepaid, via overnight courier or facsimile transmission to the addresses shown below as part of this Section 16, and will be deemed received: (i) as of the day following deposit with an overnight courier, charges prepaid; (ii) as of the day of receipt if deposited in first class certified or registered U.S. mail, charges prepaid, return receipt requested; (iii) the next business day of recipient following delivery by confirmed facsimile; or (iv) as of the day of receipt of hand delivery, accepted in writing by the recipient to:

City of Rapid City
Attn: Mayor Steve Allender (with copy to Kelsey Sakos)
300 Sixth Street
Rapid City, SD 57701

The TEGRA Group, Inc.
Attn: Nate Pearson
801 Nicollet Mall, Suite 1850
Minneapolis, MN 55402


The names and addresses for notifications given pursuant to this Agreement may be changed by means of a written notice given to the other party at least five (5) days prior to the effective date of such change.

IN WITNESS WHEREOF, the parties hereto have caused this Consulting Agreement to be executed as of the date first above written.

CITY of RAPID CITY

THE TEGRA GROUP

By: 
Printed Name: Steve Allender
Title: Mayor

By: 
Printed Name:
Title: Partner