

City of Scottsbluff, Nebraska

Monday, November 2, 2015

Regular Meeting

Item Reports3

Council to consider a contract with Thomas P. Miller and Associates for Phase III of the Economic Development project and authorize the Mayor to execute the contract.

Staff Contact: Nathan Johnson, Assistant City Manager



Thomas P. Miller & Associates, LLC

Professional Services Agreement

This Agreement, entered into by and between The City of Scottsbluff ("Client") located at 2525 Circle Drive, Scottsbluff, NE 69361, and Thomas P. Miller and Associates, LLC ("Contractor"), located at 1630 N. Meridian St., Suite 430, Indianapolis, Indiana 46202.

WITNESSETH THAT:

WHEREAS, Client has the need and desire to obtain the services of a contractor; and

WHEREAS, Contractor desires to perform said services detailed in the attached 'Scope of Work' for Client and is able to do so in a professional manner; and

WHEREAS, Client has selected Contractor to perform these services.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. TERM. The term of this Agreement shall be January 1, 2016 to December 31, 2016.
2. SERVICES TO BE RENDERED: Scope of Work as outlined in Attachment A: Scope of Services.
3. COMPENSATION. For Retainer Services, Client shall pay Contractor \$150 per hour, billed in 15 minute increments, inclusive of expenses during the term of this Agreement for the satisfactory completion of the services to be rendered. The Contractor will not exceed monthly billings of \$15,000.00 for the retainer services described in Attachment A in any calendar month without prior written or verbal authorization from the Client. Services may include, but are not limited to the tasks described in Attachment A "Scope of Services." Expenses for any travel will be billed at actual cost and are to be included in the monthly not-to-exceed total. In addition, any hours not meeting the monthly threshold can be rolled over into the following months until the completion of this contract on December 31, 2016.
4. PAYMENT TERMS. For Retainer Services, the Contractor will invoice monthly at a rate of \$150 per hour, billed in 15 minute increments. The Contractor will not exceed billings of \$15,000.00 in any calendar month without prior written or verbal authorization from the Client.
5. CLIENT'S OBLIGATIONS. Client shall provide Contractor, at no charge, all existing information, data, and documents, available and necessary for the carrying out of services under this agreement. Client shall cooperate with Contractor in every way possible in carrying out the scope of this agreement.
6. TERMINATION. Either party may terminate this Agreement with 30 days' notice in writing, delivered to the business address of the other party. Contractor shall be compensated for services provided to the date such termination becomes effective.
7. INDEMNIFICATION. Both parties shall indemnify and hold harmless each other, their respective officers, employees, and agents from any and all loss, liability, claims, judgments, and liens, including costs and expenses, arising out of any negligent act or omission of Client or Contractor or any of their officers, agents, employees, or subcontractors in the performance of this Agreement.

8. CONFIDENTIALITY. Contractor's work product generated during the performance of this Agreement is confidential to Contractor and shall not be disclosed to any third party without Contractor's prior approval. Except for disclosure of work product that is considered public record set forth in Neb. Rev. Stat. 84-712, failure to comply with this section shall constitute a material breach of this Agreement.

9. NOTICE. Any notice, invoice, order or other correspondence required to be sent under this Agreement shall be sent to the addresses outlined in the first paragraph of this Agreement.

10. APPLICABLE LAWS. This Agreement shall be governed by the laws of State of Nebraska, as the same shall be in force and effect upon the date this Agreement is executed.

11. NON-DISCRIMINATION. Contractor and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to firing, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, religion, color, sex, age, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall constitute a material breach of this Agreement.

12. NECESSARY DOCUMENTATION. Contractor certifies that it will furnish Client, if requested, any and all documentation, certification, authorization, license, permit or registration required by the laws or rules and regulations of units of local, state, and federal government. Contractor further certifies that it is now in and will maintain its good standing with governmental agencies and will maintain its license, permit, registration, authorization, or certification in force during the term of this Agreement. Failure of Contractor to comply with this paragraph constitutes a material breach of this Agreement.

13. WAIVER. Client's delay or inaction in pursuing its remedies as set forth in this Agreement, or available by law, shall not operate as a waiver of any of Client's rights or remedies contained herein or available by law.

14. PERSONAL LIABILITY. Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, director, agency, or employee of Client or any public body, which may be a party to this Agreement.

15. SEVERABILITY. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement, which can operate independently of such stricken provision, shall continue in full force and effect.

16. CONFLICT OF INTEREST. Contractor certifies and warrants to Client that neither it nor any of its agents, representatives, or employees who will participate in performance of any services required by this Agreement have or will have any conflict of interest, directly or indirectly with Client.

17. AMENDMENTS. This Agreement may be amended, modified, renewed, or supplemented only by a written instrument signed by each of the parties hereto, and any such amendment may pertain to one or more of the provisions of this Agreement without affecting the other provisions of this Agreement.

18. INTEGRATION. This Agreement represents the entire understanding between Client and the Contractor and supersedes all prior negotiations, representations, and/or contracts, either written or oral.

19. TAXES. Contractor agrees that it is an independent contractor as that term is commonly used and is not an employee of Client. As such, the Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to the Contractor. The Contractor acknowledges that it is not insured by Client in any manner for any loss of any

kind whatsoever. The Contractor is covered by public and general liability insurance in the amount of \$1,000,000. The Contractor has no authority, express or implied, to bind or obligate Client in any way.

IN WITNESS WHEREOF, Client and Contractor, by their respective officers hereunto duly authorized, have executed this Agreement on the dates shown below.

Thomas P. Miller & Associates, LLC

City of Scottsbluff, Nebraska

By: Tom Miller
Thomas P. Miller
President & CEO

By: _____
Randy Meininger
Mayor

Date: _____

Date: _____

ATTACHMENT A: SCOPE OF SERVICES

Retainer for Comprehensive Consulting Services

Thomas P. Miller and Associates (TPMA) will provide services to support to the City of Scottsbluff and partner communities in the development of action items defined in its economic development strategic plan focused on regional economic, talent, and education development beginning January 1, 2016 and continuing until December 31, 2016.

Deliverables for the City of Scottsbluff include systematic reporting of all initiatives that provide status updates on all facilitation events, action plans, committee frameworks, and identified deliverables.

Thomas P. Miller and Associates will bill at a rate of \$150 per hour, billed in 15 minute increments, for actual time spent engaged in consulting services, including, but not limited to, the tasks listed below. Expenses for travel will be billed at actual cost and are not included in the monthly not-to-exceed total. The Contractor will not exceed billings of \$15,000.00 for services in any calendar month without prior written or verbal authorization from the Client. Each task and deliverable from the Contractor will be approved by the City Manager prior to commencement. Below provides details on tasks which could be completed under this retainer. Action items below may be considered for inclusion in the work plan, but are not limited to the following:

- **Facilitation assistance and follow-up:** TPMA will assist different types of regional groups with cultivating and promoting consensus on a variety of topics including, but not limited to the following: economic development, entrepreneurship, strategic planning, talent development, corridor redevelopment, etc.
- **Capacity building for Western Nebraska Economic Development (WNED):** TPMA will continue to provide guidance and technical assistance to all partner communities in the Greater Scotts Bluff Region, including members of Western Nebraska Economic Development (WNED). Such assistance can focus on strategic planning, grant funding opportunities, downtown revitalization, tourism, marketing, and public relations, among other topics.
- **Additional site assessment facilitation:** The City of Scottsbluff has requested one (1) additional site assessment with TPMA (Contractor) and Olsson Associates (Subcontractor). The final results will be shared with the City of Scottsbluff and partners such as the City of Gering.
- **Scottsbluff - Gering Highway RFP facilitation:** TPMA will continue working with all partners to help guide the RFP and implementation process for the Scottsbluff - Gering Highway redevelopment.
- **Miscellaneous consulting services:** TPMA will continue to provide miscellaneous consulting services at the direction of the City of Scottsbluff, such as feasibility studies, grant proposals, marketing, etc.