

City of Scottsbluff, Nebraska

Monday, April 18, 2016

Regular Meeting

Item Reports4

Council to consider the Service Agreement with Rick Kuckkahn and authorize the Mayor to execute the contract.

Staff Contact: City Council

SERVICE AGREEMENT

This Service Agreement ("Agreement") is made as of April __, 2016 by and between Rick Kuckkahn ("Kuckkahn") and Scottsbluff, Nebraska, a Nebraska municipal corporation ("City").

RECITALS:

A. Kuckkahn has been City Manager for the City since January 26, 1998 and is retiring and will submit his resignation from that position.

B. Kuckkahn has extensive experience and knowledge regarding the operation and activities of the City and his knowledge can benefit the City.

C. The City desires to have the benefit of Kuckkahn's experience and knowledge, not as the City Manager but as an independent contractor and Kuckkahn desires to continue assisting the City in various projects which his experience and knowledge will be beneficial.

NOW, THEREFORE, in consideration of the foregoing premises, it is agreed as follows:

1. **Services.** Kuckkahn will furnish to City, during the term of this Agreement, such services as may be requested by the City to include, support services in planning and development and economic development, as well as the Deliverables set forth on Exhibit "A", which is attached to this Agreement and incorporated by this reference. Kuckkahn will, therefore, make himself available on a reasonable basis to render such services. Kuckkahn agrees to, at least monthly, deliver reports to the City Manager on the services and Deliverables he has provided under this Agreement. In addition, Kuckkahn will use his best efforts to preserve and enhance any goodwill of the City with the general public.

2. **Term.** The term of this Agreement shall from the date set forth at the beginning of this Agreement until December 31, 2016.

3. **Consideration.** As consideration for the services referenced above, the City will pay Kuckkahn an hourly rate of Fifty Dollars per hour (\$50.00/hr) on the regularly scheduled pay periods of the City. Provided, both parties agree Kuckkahn will not be compensated for more than thirty (30) hours for any one week. Kuckkahn must submit a biweekly time sheet setting forth the hours he worked, itemized by project category and detailing the nature of the work performed. The biweekly time sheet must be submitted to the City Manager for review and approval before it will be submitted to the City Council for payment as a claim of the City.

In addition, the City agrees to pay for all pre-approved travel expenses, if any are required, that are incurred by Kuckkahn in regard to this Agreement.

4. **Assistance of the City.** Following pre-approval of the City Manager, the City will provide to Kuckkahn a work space at City Hall, computer and printer, administrative support, access to data, documents, staff and related resources, as well as cooperate with Kuckkahn to assist him in providing the services requested by the City.

5. **Independent Contractor.** In performance of his duties under this Agreement, Kuckkahn shall be deemed to be an independent contractor and shall solely and exclusively control the manner and means used to perform any services. The City shall not control Kuckkahn's hours or efforts, but are only interested in results obtained by Kuckkahn. The City shall not withhold or in any way be responsible for the payment of any Federal, State or local income or occupational taxes, FICA taxes, unemployment compensation or workers' compensation contributions, vacation pay, sick leave, retirement benefits, or any other payments for or on behalf of Kuckkahn. All such payments, withholdings and benefits are the responsibility of Kuckkahn and Kuckkahn shall indemnify and hold the City harmless from any and all loss or liability arising with respect to such payments, withholdings and benefits. Kuckkahn, in the performance of his services shall not be considered an employee of the City for any purpose whatsoever.

6. **Services for Others.**

a. Inasmuch as Kuckkahn has acquired or will have access to information of the City which may be of a confidential nature, Kuckkahn acknowledges, understands, and agrees that the City has legitimate interests in being protected from certain activities by Kuckkahn, including, but not limited to, the disclosure of confidential information belonging to the City or engaging in any competitive activity with the City.

b. Except in connection with his furnishing of services hereunder, Kuckkahn will not, during the term of this Agreement, either directly or indirectly engage in the solicitation, sale or provision of services, which are being solicited or provided by the City, to any person or entity which was a customer of the City at the time of the commencement of this Agreement or at any time during the preceding five (5) years or during the term of this Agreement.

c. During the term of this Agreement and thereafter, Kuckkahn will not disclose to any person or entity any proprietary information pertaining to the customers or business and procedures of the City.

d. In addition to injunctive or other equitable relief for the enforcement of the provisions of this paragraph 6, if Kuckkahn violates any of said provisions, this Agreement shall terminate as of the date of the violation and all consideration payable after the date of termination shall be forfeited.

e. The provisions of this paragraph 6 shall survive the termination of this Agreement.

7. **Termination of Agreement.** In the event of the occurrence of any of the following events, this Agreement shall terminate:

a. The death of Kuckkahn;

b. On Kuckkahn's mental or physical disability;

c. On December 31, 2016; or

d. Either party giving thirty (30) days written notice to the other of their intent to terminate.

8. **Indemnity.** Kuckkahn shall indemnify the City against and save them harmless from any and all claims, suits or liability for injuries to property, injuries to persons, including death, and from any other claims, suits or liability, to the extent caused in whole or in part by any negligent act or omission of Kuckkahn. Kuckkahn shall not be obligated under this Agreement to indemnify the City for claims arising from the sole negligence or willful misconduct of the City or its employees or agents. Kuckkahn agrees to obtain and keep in force professional liability insurance and commercial liability insurance coverage with minimum limits of \$1,000,000.00 per occurrence during the term of this Agreement.

9. **Miscellaneous.**

a. This Agreement contains the entire agreement between the parties concerning Kuckkahn's rendering of services to the City, and neither party is relying upon any statement or representation not contained herein.

b. This Agreement may be amended or modified only by a document executed by both parties.

c. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

d. This Agreement shall be personal to Kuckkahn and may not be assigned or transferred.

e. This Agreement shall be binding upon and inure to the benefit of the successors of both parties and the assigns of the City.

f. In the event any portion of this Agreement is deemed to be unenforceable, the remaining portions of this Agreement shall remain in full force and effect.

g. If notice to either party under this Agreement must be sent as follows:

City of Scottsbluff
C/O City Manager
2525 Circle Drive
Scottsbluff, NE 69361

Rick Kuckkahn

Scottsbluff, NE 69361

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Scottsbluff, Nebraska, a Municipal corporation

Rick Kuckkahn

BY _____
Randy Meininger, Mayor

Attest:

City Clerk

DELIVERABLES EXHIBIT A

Continue Comprehensive Plan Initiatives:

Review of zoning code adding some mixed use and form-based zoning to align with vision in the Comp Plan.

Draft E. Overland Sub Plan to include redevelopment, land use/zoning, transportation configuration, street scape and implementation process and phasing. Draft blight study.

Redevelopment plan/corridor study - South Broadway (everything south of railroad tracks).

Alternative transportation sub-plan- evaluate potential for a network of pedestrian and bicycle improvements. Include potential trailhead on Scottsbluff/Gering Highway.

Include industrial “certified sites” into Comp Plan.

Plan an annexation program with priorities and strategy.

Implement aspects of the Economic Development Plan:

(coordination with other agencies required)

WNED support as directed by City Manager.

Strategy and activate Chamber and PADD efforts to help partner communities promote LB840 and Economic Development Certification.

Tourism Collaboration and city involvement to coordinate City’s activity with the region.

Establish stronger links to state economic development agencies including the Omaha Connection, DED and others.

Begin implementation of TPMA recommended action items in their most recent contract to include marketing the city.

Any other services, tasks or duties requested or assigned by the City Manager.