

City of Scottsbluff, Nebraska

Monday, January 3, 2022

Regular Meeting

Item Reports2

Council to discuss and consider action on the Agreement for completing an Economic Development Strategic Plan with Plaka and Associates and authorize the Mayor to sign the Agreement.

Staff Contact: Starr Lehl, Economic Development Director

Agenda Statement

Item No.

For Meeting of: Monday, January 3, 2021

AGENDA TITLE: Council to discuss and consider action on the Agreement for completing an Economic Development Strategic Plan with Plaka and Associates and authorize Mayor to sign the agreement

SUBMITTED BY DEPARTMENT/ORGANIZATION: Economic Development

PRESENTATION BY: Starr Lehl

SUMMARY EXPLANATION: the last completed Economic Development Strategic Plan was completed in 2015. In order to retain Economic Development Certified Community status, the city is required to update the plan every 5 years. The agreement has been reviewed and approved by legal counsel.

BOARD/COMMISSION/STAFF RECOMMENDATION: Recommendation from staff is for the mayor to sign the agreement to begin the strategic planning process

Does this item require the expenditure of funds? yes no
Are funds budgeted? yes no

If no, comments:

Estimated Amount \$29,950.00
Amount Budgeted \$30,000
Department Economic Development
Account Description Amount was budgeted in anticipation of completing the strategic plan in the 2021-2022 budget year

Approval of funds available Elizabeth A. Lutzembier
City Finance Director

EXHIBITS

Resolution Ordinance Contract Minutes Plan/Map

Other (specify) Agreement

NOTIFICATION LIST: Yes No Further Instructions
Please list names and addresses required for notification.

APPROVAL FOR SUBMITTAL: _____
City Manager

Rev: 12/14/ City Clerk

ECONOMIC DEVELOPMENT CONSULTING AGREEMENT

This Agreement dated December 22, 2021, is made By and Between the City of Scottsbluff, Nebraska whose address is 2525 Circle Drive, Scottsbluff, NE 69361 ("Client"), AND Plaka and Associates, whose address is 10 St. New Jersey Street, Suite 300, Indianapolis, IN 46204, ("Plaka" or "Consultant").

Whereas the Client believes it to be in the Client's best interest for Plaka to function as the Client's Consultant for the Economic Development Strategy (Strategy) which is of benefit to the Client; and,

Whereas Plaka has the knowledge, contacts, and expertise to provide the required services, and,

Whereas the Client is in need of the service requested, the parties hereby agree as follows:

- 1. Strategy Services.** The Client hereby employs Plaka to perform the following services in accordance with the terms and conditions set forth in this Agreement: Plaka will consult with the Client concerning matters relating to the Economic Development Strategy ("Project"), and generally any matter arising out of the Project. A Scope of Services to be included in the Project is included and attached as Exhibit "A", which is incorporated by this reference.
- 2. Project.** The Project for which Plaka shall function as the Consultant will include the Economic Development Strategy.
- 3. Terms of Agreement.** This Agreement will begin on the date of this Agreement and will end upon the completion of the Project scope. Either party may cancel this Agreement pursuant to the terms of Paragraph 14 below by notice to the other party in writing, by certified mail, or personal delivery.
- 4. Schedule / Time Devoted by Plaka.** In order to fulfill the obligations under this Agreement, Plaka will spend the time required to complete the scope. The time estimated for the Project has been stated as approximately three and a half (3.5) months. The particular amount of time specifically dedicated to the Project may vary from day to day or week to week.
- 5. Place Where Services Will Be Rendered.** Plaka will perform most services in accordance with this Agreement at a location of Plaka's discretion. In addition, Plaka will perform services on the telephone and at such other places as necessary to perform these services in accordance with this Agreement. Plaka will be on-site or in the Scottsbluff region as the duties required.
- 6. Payment to Plaka.** The Plaka will be paid a not-to-exceed amount of **\$29,950 (Twenty-nine thousand, nine hundred and fifty dollars)**. Plaka will submit an invoice for 50% down at the launch of the Project, then invoice the total hours worked at the completion of milestones for services rendered. The Client will pay Plaka the amount due as indicated by the statement submitted by Plaka within thirty (30) days of receipt of said statement.
- 7. Independent Contractor.** Both the Client and Plaka agree that Plaka will be paid as an independent contractor in the performance of the duties required by this Agreement.

Accordingly, Plaka shall be responsible for payment of all taxes including Federal, State, and Local taxes arising out of Plaka's activities in accordance with this Agreement, including by way of illustration, but not limitation, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required.

- 8. Confidential Information.** Plaka agrees that any information received by Plaka during any furtherance of Plaka's obligations in accordance with this Agreement, which concerns the personal, financial or other affairs of the Client will be treated by Plaka in full confidence and will not be revealed to any other persons, firms or organizations without prior authorization from the Client.
- 9. Employment of Others.** The Client may from time-to-time request that Plaka arrange for the services of others. All costs to Plaka for those services will be paid by the Client but in no event shall Plaka employ others without the prior written authorization of the Client. Hourly rates for these additional services will be determined at the time the service is required and agreed to by both parties. In the event Plaka needs to hire additional employees to accommodate the workload, the personnel assigned to the Client will be agreed to by both parties in writing.
- 10. Liability.** Plaka shall not be liable for any consequences resulting from the Client's consultation with other people or companies regarding matters relating to the design, management and construction of the Client's Project. Nor, shall Plaka be liable for the work or any consequence from the work of any third party who works on the Project. As the Consultant, Plaka, acting on behalf of the Client, will be indemnified and held harmless by the Owner/Client for any consequences when acting on their behalf. Plaka' liability in this Agreement is strictly limited to the services of Plaka if it were to act against the written direction of the Client. The Client agrees to indemnify and hold Plaka harmless from any and all lawsuits brought at law or equity. In exchange for indemnification, Plaka agrees to cooperate with the Client on any threatened or pending litigation or any such claim against the Client or Plaka.
- 11. Insurance.** Plaka will carry a general liability policy in the amount of One Million Dollars (\$1,000,000.00) which shall name the Client as an additional named insured. Additionally, Plaka shall maintain a Two Million Dollar (\$2,000,000.00) umbrella policy. Upon request, Plaka will supply the Client with a copy of the policies within thirty (30) days of the date of this Agreement.
- 12. Expenses.** The Client shall reimburse Plaka for expenses incurred by Plaka in the performance of the services required by the Agreement. Any special equipment required for the Project shall be expensed and become the property of the Client upon completion of the Project. Plaka will not purchase or lease any such equipment without the Clients written authorization. Plaka shall be entitled to reimbursement for all other expenses incurred provided that Plaka first obtains the Client's written permission for said expenses.
- 13. E-Verify Employment Eligibility Verification.** The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall, prior to performing any work, require his/her/its subcontractors, who perform work under this Agreement, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The Client may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the Client. If Contractor employs or contracts with an unauthorized alien but the Client determines that terminating the contract would be detrimental to the public interest or public property, the Client may allow the contract to remain in effect until the Client procures a new Contractor. If Contractor violates the terms of this provision, the Client shall require Contractor to remedy the violation no later than thirty (30) days after Client notifies Contractor of such violation. If Contractor fails to remedy the violation within the thirty (30) day period, Client shall terminate the contract for breach of contract. If Client terminates the contract, Contractor shall, in addition to any other contractual remedies, be liable to Client for actual damages incurred due to said breach of contract. There is a reputable presumption that Contractor did not knowingly employ an unauthorized alien if Contractor verified the work eligibility status of the employee through the E-Verify program and documented said verification to Client immediately upon notice of alleged violation.

14. Termination. This Agreement shall terminate upon the occurrence of any of the following events:

14.1 Plaka may terminate the Agreement at any time upon thirty (30) days-notice to the Client and the Client shall pay Plaka the compensation up to the date of termination.

14.2 The Client may terminate this Agreement for any reason after giving thirty (30) days-notice to Plaka advising them of the reasons for the proposed termination. The Client shall pay Plaka compensation up to the date of termination.

14.3 The Client may terminate this Agreement in the event the principal or project executive of Plaka becomes incapacitated or incompetent by reason of insanity, sickness or injury so as to be unable to perform substantially all of the duties hereunder for any continuous period of six (6) months.

15. Remedies. The Client and Plaka agree that any breach or evasion of any terms of this Agreement by either party hereto will result in immediate and irreparable injury to the other party and will authorize recourse to an injunction and/or specific performance as well as all other legal or equitable remedies to which such injured party may be entitled hereto.

16. Attorney Fees. The breaching party of this Agreement shall pay the non-breaching party's attorney fees and any other reasonable fees incurred in the process when the non-breaching party seeks remedy for breach of this Agreement either in litigation or non-litigation.

17. Modification. No modification or amendment of this Agreement or any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be

charged herewith. Unless otherwise stated, the modification or amendment, will not affect any past obligations under this Agreement. No evidence of any modification or amendment shall be offered or received in evidence in any proceeding between the parties hereto arising out of or affecting this Agreement or the rights or obligation of the parties hereto unless such modifications or amendment is in writing and duly executed as required herein. The parties agree that emails bearing the name of the authorized representative of either the Client or Plaka will constitute a signed modification.

18. **Waiver.** The failure to enforce any provision or obligation under this Agreement by the Client or Plaka shall not constitute a waiver thereof or serve as a bar to the subsequent enforcement of such provision or obligation of any other provision or obligation under this Agreement.

19. **Severability.** If any provision in this Agreement shall for any reason be determined to be invalid or unenforceable, the balance of such provision and the remaining provision of this Agreement shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable provision has not been a part hereof.

--Signatures Below--

Plaka Group, Inc. by:



Courtney Zaugg, Founder & President

City of Scottsbluff, Nebraska, Client by:

Jeanne McKerrigan, Mayor