

City of Scottsbluff, Nebraska

Monday, March 2, 2015

Regular Meeting

Item Reports2

Council to consider the agreement with Thomas P. Miller and Associates for Retainer Services and authorize the Mayor to execute the agreement.

Staff Contact: Rick Kuckkahn, 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 February 11, 2015 to December 31, 2015
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 \$10,000.00 for the retainer services described in Attachment A in any calendar month without prior written authorization from the Client. Services may include, but are not limited to the tasks described in Attachment B “Examples of Tasks.” 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, 2015.

In addition to the monthly retainer defined above, the Contractor will provide services on Select Site Preparedness. The Client shall pay Contractor \$60,000.00 for Select Site preparedness and its defined deliverables in Attachment A, excluding reimbursable expenses such as travel, printing, and costs not associated with tasks not outlined in the scope of work.

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 \$10,000.00 in any calendar month without prior written authorization from the Client.

For Select Site Preparedness services totaling \$60,000.00 excluding reimbursable expenses, invoices will be submitted to Client monthly:

March 31, 2015:	\$12,000.00 <i>excluding reimbursable expenses</i>
April 30, 2015:	\$12,000.00 <i>excluding reimbursable expenses</i>
May 29, 2015:	\$12,000.00 <i>excluding reimbursable expenses</i>
June 30, 2015:	\$12,000.00 <i>excluding reimbursable expenses</i>
July 31, 2015:	\$12,000.00 <i>excluding reimbursable expenses</i>

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. In the event that the services of Contractor are unsatisfactory or that support rendered by Client is inadequate, either party shall have seven (7) business days after delivery of written notice of such unsatisfactory or inadequate services to rectify or correct the problem. If either party fails to correct the problem, either 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. 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 in the launch of action items defined in its economic development strategic plan beginning February 11, 2015 and continuing until December 31, 2015.

TPMA will provide consulting services for the City of Scottsbluff and its community focused on business retention, expansion, and attraction.

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 will invoice at a rate of \$150 per hour, billed in 15 minute increments for actual time spent engaged in but not limited to the tasks listed under Attachment B. Expenses for travel will be billed at actual cost and is included in the monthly not-to-exceed total. The Contractor will not exceed billings of \$10,000.00 for services in any calendar month without prior written authorization from the Client. Each task and deliverable from the Contractor will be approved by the City Manager prior to commencement. Attachment B "Examples of Tasks" 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:

- Business Attraction Assistance
- Facilitation Assistance and Follow-Up
- Project Management

Select Site Preparedness

In addition to the monthly retainer defined above, the Contractor and Subcontractor (Olsson Associates) will provide support on select site pre-assessment of up to seven (7) sites identified in the Strategic Plan and up to an additional three (3) sites identified within a two- (2) mile boundary of the Cities of Scottsbluff and Gering. The total not-to-exceed amount for site preparedness and its defined deliverables below is \$60,000.00 for services beginning February 11, 2015 and concluding July 31, 2015.

In partnership with TPMA, Olsson Associates will review existing site intake information collected in Phase I of the Regional Economic Development Strategic Plan for initial site preparedness factors. The Project Team will conduct one (1) kickoff meeting to review existing sites and identify up to three (3) additional sites for collection of intake information. Distribution of enhanced Site Verification Forms and supplemental maps will be completed by the client for each of the seven (7) properties to gather additional information necessary to pre-assess the properties for certification. Olsson will issue a Verification Form including, but not limited to, extensive information regarding the following attributes on a per-Subject Property basis. Olsson will **not** look to duplicate existing information, but will look to combine existing answers with additional requested information necessary for full analysis. Information requested and reviewed will include the following:

- Size
- Availability
- Ownership
- Transportation (type and proximity)
- Zoning

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- Utilities Availability and Capacities
 - Electric Availability and Capacities (including redundancies)
 - Natural Gas
 - Water (including redundancies)
 - Wastewater Treatment Capacity
 - Air Quality Permitting Capability
 - New Market Tax Credit Eligibility
 - Flood Plain Presence (100 and 500 Year Events)
 - Wetlands Presence
 - Soils Information
 - Endangered Species/Archaeological Information
 - Topography
 - Fiber Presence
 - Airport Influence
 - Rail Service Potential
 - Foreign Trade Zone Status

In addition, TPMA and Olsson will convene one (1) meeting with four (4) Olsson professionals to tour sites and receive clarification of the Verification Form, maps, and attachment documents. Next, TPMA and Olsson will review and analyze the collected forms, maps, and other qualitative information gathered from the site visits to provide recommendations on sites suitable for future site certification as an “Olsson Associates Select Site.” Any information pertaining to the site characteristics listed above will be provided via the Verification Form process. If any studies (desktop or otherwise) are required to provide a response to Verification Form questions, Olsson can provide this service for completion on a time and expense basis. In addition, if client chooses to forego completing analysis for information requested in the Verification Form process, lacking pieces of analysis will be considered a site deficiency (per site) and will be listed as such in the final pre-assessment report for consideration of future-phased mitigation prior to site certification. With this information, TPMA and Olsson will develop an “Olsson Associates Select Site” pre-assessment report of assets and deficiencies for each of the Subject Properties in consideration of future viability and site certification including:

- Detailing of property assets
- Detailing and suggestions of corrective actions of deficient site infrastructure and necessary development attributes
- Suggested studies or actions that are needed for determination of “Olsson Associates Select Site” qualification and costing to provide those optional services
- Determination of which of the ten (10) Subject Properties are capable of achieving the Olsson Select Site designation in future-phased analysis

Finally, TPMA and Olsson will have one (1) meeting to deliver the findings and provide guidance on phasing viable sites into further analysis to achieve “Olsson Associates Select Site” certification designation.

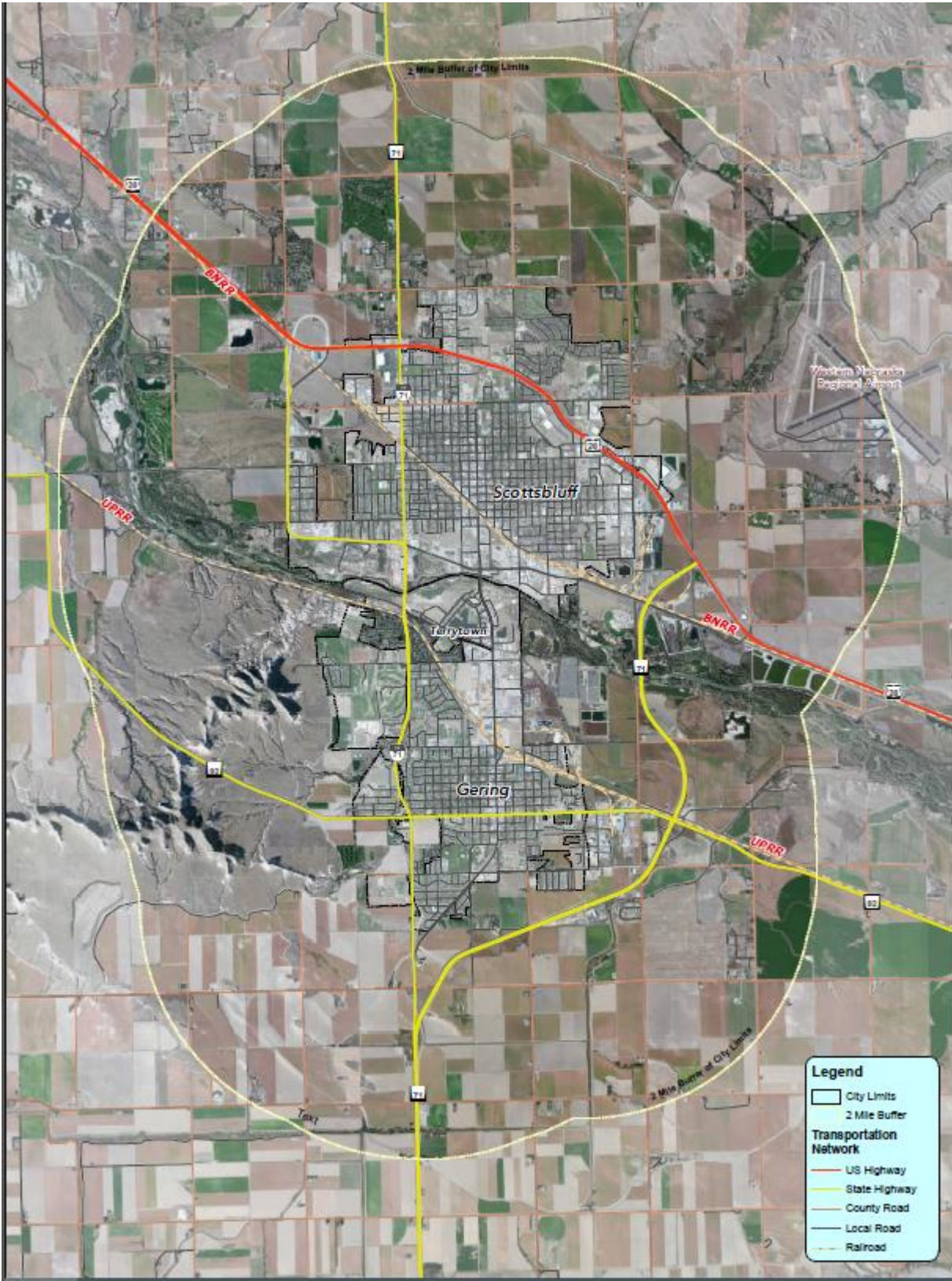
Deliverables: One (1) kickoff meeting for site visits with four (4) Olsson professionals; one (1) meeting with four (4) Olsson professionals for review of verification form information and attachments as well as site visits; and one (1) meeting with four (4) Olsson professionals to deliver findings. Four (4) bound hard copies of the “Olsson Associates Select Site” Pre-Assessment findings, and two (2) CDs containing the documents in electronic format.

Exclusions:

The following items are not contemplated or included within the Scope or Fee. Contractor and Subcontractor may perform certain services among the list below as an additional service and for an additional fee.

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- a. Subject properties other than the Subject Properties other than those shown in Exhibit B
 - b. Diligence Assessments other than desktop analysis
 - c. Master Planning
 - d. Target Viability Assessment
 - e. Schematic design documents
 - f. Design development documents
 - g. Construction documents
 - h. Permits or Agency fees
 - i. Site surveys (boundary, topographic or ALTA)
 - j. Special studies such as Traffic, Noise, Utility, or Environmental studies
 - k. City-wide water or sewer studies
 - l. Off-Site Infrastructure Improvements
 - m. Hazardous materials identification, storage, or abatement
 - n. Landscape design documents
 - o. Mechanical, Electrical, or Plumbing engineering documents
 - p. Subterraneous Utility Exploration
 - q. Lot line adjustments
 - r. Changes of zoning
 - s. Environmental clearances
 - t. Entitlements
 - u. Legal Descriptions
 - v. Special Planning Processes
 - w. Bid processes or negotiations with General Contractors
 - x. Railroad design plans or construction documents
 - y. On-site meetings, site visits and travel costs in addition to those listed above
 - z. Public meetings and travel costs in addition to those listed above
 - aa. Title commitments or title abstract updates
 - bb. Site certification
 - cc. Any and all other services not specifically described as part of the Scope of Services listed above

Exhibit B



ATTACHMENT B: EXAMPLES OF TASKS

IMPLEMENTATION OVERSIGHT COMMITTEE

Employing best practice examples of community coalitions being used to cultivate and promote regional consensus on capital investments, TPMA will provide assistance to strengthen the regional approach to development and establish a stronger position for the region with legislative and administrative leaders in the capitol. In anticipation of a March 30, 2015 meeting, TPMA will meet with the City of Scottsbluff, City of Gering, the TCD Board of Directors, PADD, and others in February 2015 to discuss the formation of the Implementation Oversight Committee. TPMA will prepare and assist with facilitating the initial meeting of the committee and provide additional support as defined by the Implementation Oversight Committee. Preparation for meetings, travel, and follow-up are inclusive in this task.

Deliverable: Facilitation, organizational framework, and recommended guidelines

BUSINESS ATTRACTION ASSISTANCE:

As the City of Scottsbluff seeks assistance with positioning underutilized regional assets for sale or lease to appropriate major tenants consistent with the goals of the completed Strategic Plan, TPMA proposes the following services:

- Developing a profile of the target businesses (aligned with the identified Target Industries) including location and size
- Research and qualify 20-25 companies per month
- Developing reuse concepts for 3 to 5 buildings and facilities that are strategic assets of the region
- Introductions of City of Scottsbluff and TCD officials to qualified and appropriate tenants for the buildings and facilities
- Provide analysis to the Client for up to 5 counteroffers to tenants
- Initiate communications for qualified tenants with the Nebraska Department of Economic Development and other agencies
- Report to client regarding the leads generated for tenants considering the Scottsbluff region for relocation or progress in identifying and working with tenants for future relocation

Deliverable: 12 Monthly lead generation reports including counteroffer analyses and reuse concepts