



Department of
Community Investment

Memorandum

January 25, 2016

TO: Redevelopment Commission
FROM: Chris Dressel, Staff *CD*
SUBJECT: Professional Services for Brownfields Activities

Staff requests the Redevelopment Commission's approval to fund a professional services agreement with Kolata Enterprises LLC (Ann Kolata) for brownfields activities. The proposal for professional services is in an amount not to exceed Thirty Thousand Dollars (\$30,000).

Kolata Enterprises will consult with and report to the City Brownfields Coordinator in carrying out all work assigned including: Planning and implementation of the Remediation Work Plans for the Indiana Voluntary Remediation Program for Oliver Industrial Park and for Studebaker Area A (Ignition Park); assessing and developing strategies to address brownfields issues within the City; and assisting with development of GIS based inventory of brownfield sites within the City.

If you should have any questions or are in need of more information, please feel free to contact me at either cdressel@southbendin.gov or 235-5847.



**CONSULTING AGREEMENT
BY AND BETWEEN THE CITY OF SOUTH BEND, INDIANA
AND KOLATA ENTERPRISES LLC**

THIS CONSULTING AGREEMENT (this "Agreement") is made effective January 1, 2016 (the "Effective Date"), by and between the CITY OF SOUTH BEND, INDIANA, a municipal corporation organized and operating under the laws of the State of Indiana, acting by and through its Board of Public Works ("City") and KOLATA ENTERPRISES LLC, an Indiana limited liability company, with its registered office at 51695 Stoneham Way, Granger, Indiana 46530 ("Contractor").

RECITALS

WHEREAS, Ann E. Kolata of Contractor has extensive experience in economic development and brownfield activities within Indiana second class cities, has served in various capacities within the South Bend Department of Community Investment for more than thirty-six years, and, therefore, possesses highly specialized knowledge, skills and unique experience with the various projects and activities administered through the Department of Community Investment ("Department"); and

WHEREAS, the City desires to procure the services of Contractor to assist with brownfield and economic development projects (the "Services"), for which undertakings Contractor is uniquely qualified in both experience and knowledge, and Contractor is willing to assist the City and the Department in its efforts; and

WHEREAS, the City has determined that due to Contractor's experience and expertise, it is in the best interests of the City and the Department to obtain Contractor's services pursuant to the terms hereof.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, the City and Contractor hereby agree as follows:

TERMS

Section 1. Duties of Contractor. Contractor shall provide the Services which are more particularly described at Exhibit A attached hereto and incorporated herein. Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards.

Section 2. Consideration. Contractor will be paid for services performed as described in Exhibit A at the hourly rate of Ninety Dollars (\$90.00). Contractor's services shall be billed to the City on a monthly basis through itemized invoices. City shall pay Contractor within 30 days from

receipt of invoice. Contractor will be reimbursed for reasonable expenses for City business. Contractor's total services, including travel and other business expenses, shall not exceed the total sum of Thirty Thousand Dollars (\$30,000.00) for the calendar year 2016. Any payment that the City may deny, withhold, or delay shall not be subject to penalty or interest under IC 5-17-5.

Section 3. Term and Termination. This Agreement shall be effective commencing on the Effective Date and shall terminate on December 31, 2016 (the "Termination Date"), provided, however, that the City, in its sole discretion, may extend the term of this Agreement on a month-to-month basis for no more than twelve (12) consecutive months following the Termination Date. The parties further agree that either party may terminate this Agreement at any time after the Effective Date upon thirty (30) days' written notice to the other party.

Section 4. Assignment; Successors. Contractor shall not assign or subcontract the whole or any part of this Agreement without the prior written consent of the City.

Section 5. Changes in Scope of Services. Contractor understands and agrees that it shall not commence any additional work or change the scope of the Services provided unless authorized in writing by the City. No claim for additional compensation shall be made by Contractor in the absence of prior written approval of the parties.

Section 6. Non-Disclosure of Confidential Information. In the course of providing consulting and other services under this Agreement, Contractor may receive highly sensitive confidential information of the City and/or third parties. Contractor acknowledges a fiduciary duty to maintain and strictly preserve all confidential information which Contractor may receive during the course of this Agreement.

Section 7. Governing Law; Compliance with Laws. This Agreement shall be construed and interpreted according to the laws of the State of Indiana. Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations and ordinances, and all provisions required thereby are hereby incorporated herein by reference. Contractor shall comply with federal, state, and local laws in its hiring and employment practices and policies for any activity covered by this Agreement. Further, the City shall not be required to pay for Services that are inconsistent with or in violation of this Agreement nor for any Services performed in violation of any federal, state, or local statute, ordinance, rule or regulation.

Section 8. Relationship/Independent Contractor. Contractor is an independent contractor of the City and is not, and shall not be deemed to be, an employee of the City or the Department. Both Contractor and the City, in the performance of this Agreement, shall act in an independent capacity and not as agents, employees, partners, joint venturers or associates of one another. The employee(s) or agent(s) of one party shall not be deemed or construed to be the employee(s) or agent(s) of the other party for any purpose whatsoever. Neither party will assume liability for any injury (including death) to any person(s), or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. Contractor

shall be solely responsible for providing all necessary unemployment and workers' compensation insurance for Contractor's employees.

Contractor is solely responsible for its compliance with federal, state, and local laws and regulations relating to taxes, Social Security, and Medicare that may be required to be made in connection with the compensation provided under this Agreement. The City, however, may file informational returns with the United States Internal Revenue Service or similar state agency regarding payment made to Contractor in accordance with this Agreement under conditions imposed by federal, state or local laws applicable to such payment. The City shall provide IRS Form 1099, if applicable.

Section 9. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understandings of any and every nature between them. This Agreement may be modified or amended only by a written instrument signed by both parties.

Section 10. Funding Cancellation and Payments. In accordance with IC 6-1.1-18, payments by the City are subject to annual appropriation by its fiscal body.

Section 11. Non-Collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, that she is the properly authorized representative, agent, member or officer of Contractor, that she has not, nor has any other member, employee, representative, agent or officer of Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the fact of this Agreement.

Section 12. E-Verify. Contractor affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien. Contractor shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. Contractor shall not knowingly employ or contract with an unauthorized alien. Contractor shall not retain an employee or contract with a person that Contractor subsequently learns is an unauthorized alien.

Contractor is not required to participate in the E-Verify program should the E-Verify program cease to exist. Additionally, Contractor is not required to participate if Contractor is self-employed and does not employ any employees.

Contractor shall require its subcontractors, who perform work under this contract, to certify to 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. Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The City may terminate this Agreement if Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

Section 13. Minority and Women's Enterprise Diversity Development. Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of South Bend through its agencies, boards, or commissions shall not discriminate against any employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, or disability that does not affect that person's ability to perform the work.

In awarding contracts for the purchase of work, labor, services, supplies, equipment, materials, or any combination of the foregoing including, but not limited to, public works contracts awarded under public bidding laws or other contracts in which public bids are not required by law, the City, its agencies, boards, or commissions may consider Contractor's good faith efforts to obtain participation by those Contractors certified by the State of Indiana as a Minority Business Enterprise ("MBE") or as a Women's Business Enterprise ("WBE") as a factor in determining the lowest, responsible, responsive bidder.

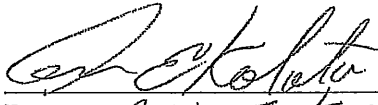
In no event shall persons or entities seeking the award of a City contract be required to award a subcontract to an MBE/WBE; however, it may not unlawfully discriminate against said WBE/MBE. A finding of a discriminatory practice by the City's MBE/WBE Utilization Board shall prohibit that person or entity from being awarded a City contract for a period of one (1) year from the date of such determination, and such determination may also be grounds for terminating the contract for which the discriminatory practice or noncompliance pertains.

Notwithstanding the foregoing, the award and performance of all City contracts shall comply with applicable federal, state, and local laws.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have caused this Agreement to be executed as of the day and year first written above. The parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures hereby agree to its terms.

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KOLATA ENTERPRISES LLC


By: ANN E. KOLATA
Its: Representative

**CITY OF SOUTH BEND, INDIANA
BOARD OF PUBLIC WORKS**

Gary Gilot, President

Therese Dorau, Member

Elizabeth Maradik, Member

James Mueller, Member

David Relos, Member

ATTEST:

Linda Martin, Clerk

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EXHIBIT A

Contractor will consult with and report to the Department's Brownfields Coordinator in carrying out all work assigned to Contractor by the Brownfields Coordinator, including, without limitation, the following:

1. Planning and implementation of the Remediation Work Plans for the Indiana Voluntary Remediation Program for Oliver Industrial Park and for Studebaker Area A (Ignition Park).
2. Assessing and developing strategies to address brownfields issues within the City.
3. Assisting the Brownfields Coordinator with development of GIS based inventory of brownfield sites within the City.