

City of Scottsbluff, Nebraska

Monday, June 15, 2020

Regular Meeting

Item Reports11

Council to discuss and consider action on the amended landfill Agreement with the City of Gering.

Staff Contact: Rick Kuckkahn, Interim City Manager

**TERMINATION AGREEMENT OF THE AGREEMENT
FOR SERVICE AND CONTINUATION TO FUND RESERVE ACCOUNT
FOR THE CONSTRUCTION OF NEW LANDFILL**

This Termination Agreement of the Agreement For Service and Continuation to Fund Reserve Account for the Construction of New Landfill ("Termination Agreement") is made on _____, 2020 by and between the City of Scottsbluff, Nebraska, a municipal corporation ("Scottsbluff") and the City of Gering, Nebraska, a municipal ("Gering").

Scottsbluff and Gering are parties to an Agreement for Service and Construction of New Landfill dated July 2, 2007 ("Agreement") as well as an Addendum considered effective July 7, 2008 ("Addendum") wherein Scottsbluff and Gering agreed that Gering would accept and dispose of Scottsbluff's municipal solid waste and also provide for roll-offs and compactors within Scottsbluff.

In addition, Scottsbluff and Gering agreed to contribute \$7.50 per ton for every ton of municipal solid waste disposed by them in the Gering landfill to fund a separate interest bearing reserve account which is intended to be used to site, construct and partner in new landfill.

Scottsbluff and Gering now mutually agree that in order to extend the life of the current Gering landfill, Scottsbluff and Gering now terminate the Agreement and Addendum and Scottsbluff will be permitted to contract for and seek a different disposal site for its municipal solid waste and Gering will no longer provide any service to Scottsbluff under the Agreement and Addendum. However, Scottsbluff and Gering will continue to partner and fund the interest bearing reserve account to site, construct and partner in a new landfill.

Scottsbluff and Gering now mutually agree as follows:

1. Termination of Agreement and Addendum: Scottsbluff and Gering mutually agree to terminate, cancel and nullify the Agreement and Addendum and agree that neither party shall be obligated to perform under their terms, except as set forth in paragraph 2. herein.
2. Reserve Account for New Landfill Site:
 - (a) Although Scottsbluff and Gering have mutually agreed to terminate the Agreement and Addendum, both Scottsbluff and Gering agree they both shall continue to contribute \$7.50 per ton of municipal solid waste disposed of by each party to fund a separate interest bearing reserve account ("Reserve Account"). Scottsbluff agrees to provide monthly reports to Gering showing the number of tons of municipal solid waste delivered to its new disposal site, and agrees to contribute \$7.50 per ton for every ton of municipal solid waste disposed of based on the monthly report. Scottsbluff and Gering still intend to partner in a new landfill at a different location, and to use the funds in the Reserve Account to site and construct the same. The funding of the Reserve Account by Scottsbluff and Gering will continue until Scottsbluff notifies Gering, in writing, that Scottsbluff will not participate in

the joint effort to site and construct a new landfill or until Gering agrees to sign and enter into an Interlocal Agreement to partner with Scottsbluff in a joint effort to construct a new landfill. The Interlocal Agreement shall then set forth the parties obligations in regard to the Reserve Account. If either of the parties to this Termination Agreement gives written notice to the other party of its intention not participate in the joint effort to site and build a new landfill, all the money in the Reserve Account will remain in the Reserve Account to be used to site and construct a new landfill by Gering, and Scottsbluff shall forfeit all money contributed into the Reserve Account. In the event neither party goes forward to site and construct a new landfill, the funds accumulated from third party cities or third party independent haulers will be Gering's funds. The funds contributed by Gering and Scottsbluff in the Reserve Account will be divided by them based on each parties contribution per ton of municipal solid waste. The purpose of the Reserve Account being to site and construct a new landfill which shall meet State and Federal requirements for a municipal solid waste facility. These funds shall be audited annually. The operation of the new landfill will be the subject of an Interlocal Cooperation Agreement between Gering, Scottsbluff or any other community or entity specifically allowed only by the agreement of Scottsbluff and Gering to participate. In the event Gering chooses to permit third party cities or third party independent haulers to use the existing landfill, those third party cities / haulers will be charged no less than \$7.50 per ton of municipal solid waste disposed of, which funds will be placed in the Reserve Account, all final charges of which will be determined by Gering. Third party Reserve Account fees will be deposited into the Reserve Account. Gering and Scottsbluff agree to invest such public funds in this Reserve Account consistent and in accordance with Nebraska law.

(b) If Gering and Scottsbluff mutually agree, in writing, to not jointly site and construct a new landfill, then both Gering and Scottsbluff shall be entitled to their respective contributions in the Reserve Account based upon fees per ton delivered and paid, as well as interest accrued on a mutually agreed final date of distribution.

3. Notices: Any notices or other communications between the parties shall be personally delivered, sent by regular mail, or by facsimile transmission, electronic mail, or by facsimile transmission combined with any of the above methods of service, to the addresses set out below, or to such other address as a party may designate, from time-to-time, by written notice to the other. A notice shall be deemed effective upon receipt.

(a) If to GERING:
City of Gering
1025 P Street; P.O. Box 687
Gering, NE 69341
Fax: (308) 436-6899
Attention: City Administrator

(b) If to SCOTTSBLUFF:

City of Scottsbluff
2525 Circle Drive

Scottsbluff, NE 69361
Fax: (308) 630-6294
Attention: City Manager

4. Miscellaneous:

- (a) This Termination Agreement constitutes the entire agreement of the parties with respect to its subject matter, and may only be modified in writing signed by both of the parties.
- (b) Either parties waiver of any one default shall not be a waiver of the same or any other default in the future. In addition, either parties failure to exercise any right given to it by this Termination Agreement shall not be a waiver of any later exercise of that right.
- (c) The provisions of this Termination Agreement are severable and if any provision is held to be invalid, the remainder of the Termination Agreement shall remain in effect.
- (d) This Termination Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute a single instrument.
- (e) This Termination Agreement shall be governed by the laws of Nebraska.
- (f) This Termination Agreement shall be binding on the successors and assigns of the parties.
- (g) Neither party has the right to assign or transfer their interest in this Termination Agreement without the written consent of the other party.
- (h) In the event of disagreement or dispute concerning any of the terms of this Termination Agreement, the parties agree to negotiate and work toward resolving any such disputes or disagreements in good faith.

CITY OF SCOTTSBLUFF, NEBRASKA

CITY OF GERING, NEBRASKA

By _____
Raymond Gonzales, Mayor

By _____
Mark A. Kaufman, Mayor

Attest: _____
City Clerk

Attest: _____
City Clerk