

**CITY OF SCOTTSBLUFF**  
**City of Scottsbluff Council Chambers**  
**2525 Circle Drive, Scottsbluff, NE 69361**  
**CITY COUNCIL AGENDA**

**Regular Meeting**  
**August 31, 2020**  
**6:00 PM**

1. Roll Call
2. Pledge of Allegiance.
3. **For public information, a copy of the Nebraska Open Meetings Act is available for review.**
4. Notice of changes in the agenda by the city clerk (Additions may not be made to this agenda less than 24 hours before the beginning of the meeting unless added under Item 5 of this agenda.)
5. Citizens with business not scheduled on the agenda (As required by state law, no matter may be considered under this item unless council determines that the matter requires emergency action.)
6. Closed Session
  - a) Council reserves the right to enter into closed session if deemed necessary if the item is on the agenda as per Section 84-1410 of the Nebraska Revised Statutes.
7. Scottsbluff Youth Council
  - a) informational only:
8. Consent Calendar: (Items in the consent calendar are proposed for adoption by one action for all items unless any member of the council requests that an item be considered separately.)
  - a) Approve the minutes of the August 17, 2020 Regular Meeting.
  - b) Approve the absence of Council Member Schaub from the August 17, 2020 Regular Meeting.
9. Public Hearings:
  - a) Council to conduct a public hearing set for this date at 6:05 p.m. for authorizing the final tax request for the 2020-2021 year at a different amount than the prior year request.
10. Resolution & Ordinances:
  - a) Council to consider a Resolution setting the final tax request for the 2020-2021 year at a different amount than the prior year request.
  - b) Council to consider an Ordinance adopting the budget statement to be termed the annual appropriation bill for FY 2020-2021. (second reading)
  - c) Council to consider an Ordinance amending and changing the solid waste

collection fees. (second reading)

11. Reports from Staff, Boards & Commissions:
  - a) Council to discuss and consider action on an Economic Development Agreement for Inventive Wireless of Nebraska, LLC dba Vistabeam.
  - b) Council to discuss and consider action on an Economic Development Agreement for Reverence Funeral Parlor, LLC.
  - c) Council to discuss and consider action on the amendment to the Economic Development Agreement for McKinney Manufacturing and Sales, LLC for COVID accommodations.
  - d) Council to discuss and consider action on the Downtown Gardens Maintenance Agreement with Paige's Posies and authorize the Mayor to sign the Agreement.
  - e) Council update and decisions regarding the City's response to COVID-19.
  - f) Council to discuss and consider action on the Contract with Waste Connections of Nebraska, Inc. to provide disposal services to the City and authorize the Mayor to sign the Contract.
  - g) Council to discuss and consider action on the Interlocal Cooperative Agreement for the Expenditure of Reserve Account Funds with the City of Gering and authorize the Mayor to sign the Agreement.
12. Council reports (informational only): This item is intended for Council Members to update and inform other Council Members of meetings attended since the last City Council meeting.
13. Adjournment.

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

**Item Closed1**

**Council reserves the right to enter into closed session if deemed necessary if the item is on the agenda as per Section 84-1410 of the Nebraska Revised Statutes.**

**Staff Contact:**

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

**Item SBYC1**

**informational only:**

**Staff Contact:**

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Consent1**

**Approve the minutes of the August 17, 2020 Regular Meeting.**

**Staff Contact: City Council**

The Scottsbluff City Council met in a regular meeting on August 17, 2020 at 6:00 p.m. in the Council Chambers of City Hall, 2525 Circle Drive, Scottsbluff. A notice of the meeting had been published on August 14, 2020, in the Star Herald, a newspaper published and of general circulation in the City. The notice stated the date, hour and place of the meeting; that the meeting would be open to the public and that anyone attending was encouraged to wear a mask and to respect social distance guidelines. It also stated that anyone with a disability desiring reasonable accommodations to attend the Council meeting should contact the City Clerk's Office, and that an agenda of the meeting kept continuously current was available for public inspection at the office of the City Clerk in City Hall; provided, the City Council could modify the agenda at the meeting if it determined that an emergency so required. A similar notice had been emailed to each council member, made available to radio stations KNEB, KMOR, KOAQ, and television stations KSTF and NBC Nebraska, and the Star Herald. The notice was also available on the city's website on August 14, 2020. Mayor Gonzales presided and City Clerk Wright recorded the proceedings. The meeting was called to order and the Pledge of Allegiance was recited. Mayor Gonzales welcomed everyone and informed those in attendance that a copy of the Nebraska Open Meetings Act is posted in the back of the room on the west wall for the public's review. The following Council Members were present: Raymond Gonzales, Jeanne McKerrigan, Scott Shaver, and Nathan Green. Also present were City Attorney Kent Hadenfeldt and Interim City Manager Rick Kuckkahn. Absent: Terry Schaub. Mayor Gonzales asked if there were any changes to the agenda. There were none. Mayor Gonzales asked if any citizens with business not scheduled on the agenda wished to include an item providing the City Council determines the item requires emergency action. There were none.

Council Member Green asked that item 8a, approving the minutes of the August 3, 2020 Regular Meeting be removed from the consent calendar and restored to the agenda for discussion.

Moved by Council Member McKerrigan, seconded by Council Member Green that,

- b) A public hearing be set for August 26, 2020 at 6:05 p.m. for the purpose of hearing support, opposition, criticism, suggestions or observations of taxpayers relating to the FY 2020-2021 budget.
- c) A public hearing be set for August 31, 2020 at 6:05 p.m. for authorizing the final tax request for the 2020-2021 year at a different amount than the prior year request.
- d) The bid specifications for the repair of hail damage at the Sanitation and Compost Facility Buildings located at 609 East 2<sup>nd</sup> Street, along with the old landfill and authorizing the city clerk to advertise for bids to be received by September 9, 2020 at 2:00 p.m. be approved, "YEAS," McKerrigan, Shaver, Green, and Gonzales, "NAYS," None. Absent: Schaub.

Regarding the minutes of the August 3, 2020 Regular Meeting, Council Member Green wanted clarification on what was written regarding the agenda item discussing the regional landfill and roll offs. He questioned the wording that stated the City would continue to pay the \$7.50 fee per ton for refuse to Gering. He thought the fee was going to be withheld. City Manager Kuckkahn responded stating, we are working on contracts for both Waste Connections and Gering, hoping to have them at the next meeting. The way it stands now the \$7.50 fee will still continue to be paid, as indicated in the minutes and discussion will continue on possibly taking the roll offs back. Council Member Green moved, seconded by Council Member McKerrigan to approve the minutes of the August 3, 2020 Regular Meeting, "YEAS," McKerrigan, Shaver, Green, and Gonzales. "NAYS," None. Absent: Schaub.

Concerning the claims, Council Member Green questioned a line item where the City pays \$800.00 to haul recycling to Denver. Mr. Kuckkahn stated this is recycling taken to Environmental Services that is then separated. The charge is what we pay a driver to haul the items Denver. Council

Member Green then questioned a line item regarding an internet charge at the swimming pool. Mr. Kuckkahn commented he is not sure, but will check with Finance Director Hilyard regarding the claim. Mr. Green then asked about the several line items for towing, thinking we had one vendor contracted to do all at a different rate. Police Chief Spencer stated we have not had a towing contract in place for a year or two, but we do, however, have a contract on this agenda for Council to discuss.

Moved by Council Member McKerrigan, seconded by Council Member Green, that the following claims, be approved and paid as provided by law out of the respective funds designated in the list of claims dated August 17, 2020, as on file with the City Clerk and submitted to the City Council, "YEAS," Green, Shaver, Gonzales, and McKerrigan "NAYS," None. Absent: Schaub.

#### CLAIMS

3MCOMPANY,PAVEMENTMARKINGTAPE&ADHESIVE,10566.79;ACTIONCOMMUNICATIONS INC.,EQUIP MAINT-PD,760.06ADVANCE AUTO PARTS,CENTRAL GARAGE- XTREME BLUE,409.86;AIRGASUSA,LLC,WELDING WIRE,68.04; ALLO COMMUNICATIONS,LLC,LOCAL TELEPHONE CHARGES,4020.77; ASCHENBRENNER ERIN,REIMB.,30.03; ASSURITY LIFE INSURANCE CO,LIFE INSURANCE,32.95; B & H INVESTMENTS, INC,DEP. SUP. - LIBRARY,575;BERNHARDTJUSTIN,TOWSERVICEPD,380;BLUFFSFACILITYSOLUTIONS,CENTRAL GARAGE- HAND CLEANER,117.24; BOX ELDER VALLEY, INC,EQUIP MAINT PARK,752; CAPITAL BUSINESS SYSTEMS INC.,CONT. SRVCS.,224.6; CARR- TRUMBULL LUMBER CO, INC.,DEPT SUP WTR,17.99; CELLCO PARTNERSHIP,CELL PHONES,1903.04;CITIBANK N.A.,OFFICE CHAIRS FOR WORKSTATIONS,389.97;CITY OF GERING,DISPOSAL FEES- TRASH/RECYCLING FEES,44990.08; CITYOFSCB,POSTAGEPD,46.3;COMPUTERCONNECTION INC,CONTRACTUAL-PD,44; CONTRACTORS MATERIALS INC.,SHRINK WRAP,309.38; CREDIT BUREAU OF COUNCIL BLUFFS,FEE & EMPL. SCREEN - JULY 2020,72; CROELL INC,DEPT SUP,242.36; CYNTHIA GREEN,DEPT SUPP DS,208.13; D & H ELECTRONICS INC.,SUPP - BATTERIES & CONNECTORS,57.47; DALE'S TIRE & RETREADING, INC.,TIRE REPAIRS FOR FLEET,1759.14; DELGADO LUPE,CONSULTING-PD,35;DUANE E. WOHLERS,HAULING RECYCLING TO DENVER. CO,800; ENFORCEMENT VIDEO, LLC,CIP-PO,2770; FASTENAL COMPANY,SUPP - RUSTOLEUM,178.47;FAT BOYS TIRE AND AUTO,EQUIP MAINT,3332.79; FEDERAL EXPRESS CORPORATION,POSTAGE,205.02; FLOYD'S TRUCK CENTER SCOTTSBLUFF,REPAIRS TO UNIT #815,1128.28; FRANCISCO'S BUMPER TO BUMPER INC,TOW SERVICE-PD,220; FREMONT MOTOR SCOTTSBLUFF, LLC,POLICE #1-COIL ASSY,100.16;GENERAL TRAFFIC CONTROLS, INC,SUPP - SHELF RACK FOR T.S. CONTROLLERS,94; GORANSON NICHOLAS,TREE REBATE,74.98; GRAY TELEVISION GROUP INC,CONTRACTUAL SVC,1695; HARGES DANIEL,SCHOOLS & CONF-PD,600; HAWKINS, INC.,CHEMICALS,1290.5; HEARTLAND EXPRESSWAY ASSOCIATION,MEMBERSHIP,5354.64; HICKOX KEVIN,REMAINDER OF BOOTS,64; HOBBS, CHAD,REIMBURSE FOR FUEL PICKING UP EQUIPMENT IN CO,56.83; HONEY WAGON EXPRESS,CONTRACTUAL,225; HYDROTEX PARTNERS, LTD,CENTRAL GARAGE- OIL,395.11; IDEAL LAUNDRY AND CLEANERS, INC.,UNIFORMS-PD,1002.41; INDEPENDENT PLUMBING AND HEATING, INC,GROUND MAINT PARK SOCCER FIELD,1109.48; INGRAM LIBRARY SERVICES INC,BKS.,2601.68; INLAND TRUCK PARTS & SERVICE,ES #820- PTO SHAFTS AND YOKE,880.61; INTERNAL REVENUE SERVICE,WITHHOLDINGS,58444.15; INTERNATIONAL PUBLIC MANAGEMENT ASSOCIATION-HR,PO ENTRY EXAM 6/5/2020,204.5; INTRALINKS, INC,CRADLEPOINT BROADBAND ROUTERS (5),9008.85; INVENTIVE WIRELESS OF NE, LLC,INTERNET WESTMOOR POOL,35.9; J G ELLIOTT CO.INC.,NOTARY BOND-PD,70; KANZLER

MIKE,BALANCE OF BOOTS,58.64; KNOW HOW LLC,WW #934- INTAKE MANIFOLD,1204.97; KRIZ DAVIS,EQUIP MAINT-PD,459.94; LEAGUE ASSOCIATION OF RISK MANAGEMENT,WORK COMP DEDUCTIBLE 6/30/20,306.73; LEAGUE OF NEBRASKA MUNICIPALITIES,MEMBERSHIP DUES 9/1/20 - 8/31/21,35560;LEE BHM CORP,PUBLISHING,4025.26; LEXISNEXIS RISK DATA MANAGEMENT,CONSULTING-PD,100; M.C. SCHAFF & ASSOCIATES, INC,PROF. SERVICES - PROJ. RM200034-00,11461.91; MACQUEENEQUIPMENTINC,EQUIPMAINT,2612.07;MADISONNATIONALLIFE,INSURANCE,2 412; MATHESON TRI-GAS INC,TRANS STOCK- WELDING WIRE,103.83; MATTHEW M. HUTT,PRE-EMPL.EVALUATION - S.GRIESS,450; MENARDS, INC,DEPT SUP WW,147.76;MIDLANDSNEWSPAPERS,INC,SBSCR.,66.35;MIDWESTCONNECT,LLC,PROCESSI NG UTIL.BILLING - JULY 2020,2250.92; MIZE, ROBERT,WORK BOOTS,167.92; MUNICIPAL EMERGENCY SERVICES INC,LEATHER STRUCTURE BOOTS,327.93; MUNIMETRIX SYSTEMS CORP,IMAGESILO - JULY 2020,39.99; NE CHILD SUPPORT PAYMENT CENTER,NE CHILD SUPPORT PYBLE,916.6; NEBRASKA INTERACTIVE, LLC,DRIVERS LIC. REQ. - JULY 2020,36; NEBRASKA PUBLIC POWER DISTRICT,ELECTRIC,43691.59;NEBRASKA RURAL RADIO ASSOCIATION,CONTRACTUAL SVC,255; NEW YORK TIMES,SBSCR.,520; NORTHWEST PIPE FITTINGS, INC. OF SCOTTSBLUFF,GROUND MAINT PARK,1689.4; ONE CALL CONCEPTS, INC,CONTRACTUAL,213.53;PANHANDLECOOPERATIVEASSOCIATION,FLEETFUEL,19406.28; PANHANDLE ENVIRONMENTAL SERVICES INC,SAMPLES,264; PLATTE VALLEY BANK,HEALTH SAVINGS ACCOUNT,10344.5; PRAISE WINDOWS INC,BLDG MAIN.,250; PT HOSE AND BEARING,DEPT SUP,57.5; QUADIENT LEASING USA INC,CONT. SRVCS.,569.82; RANGEL SARA,CONTRACTUAL-PD,1613.14; REAMS SPRINKLER SUPPLY CO.,DEPT SUPP PARK,1705.23; REGANIS AUTO CENTER, INC,TRANS #430- MODULE, PROGRAM KEYS,572.35; REGIONAL CARE INC,CLAIMS,51932.07; ROBERTA J BOYD,REIMB.,35.52; RON'S TOWING,TOW SERVICE-PD,625; RR DONNELLEY,DEPT SUPPL-PD,85.59; RYAN R KUMM,EQUIP MAINT,80; S M E C,EMPLOYEE DEDUCTIONS,129.5;SANDBERG IMPLEMENT, INC,EQUIP MAINT PARK,684.44; SCB FIREFIGHTERS UNION LOCAL 1454,FIRE EE DUES,300; SCOTTIES POTTIES INC,CONTRACUTAL,360; SCOTTS BLUFF COUNTY COURT,LEGAL FEES- PD,238; SCOTTSBLUFF POLICE OFFICERS ASSOCIATION,POLICE EE DUES,1053; SHERIFF'S OFFICE,LEGAL FEES-PD,76.56; SHERWIN WILLIAMS,WHITE LATEX PAINT,1900; SIMMONS OLSEN LAW FIRM, P.C.,CONTRACTUAL,14519.29; SIMON CONTRACTORS,CONCRETE,5879; SNELLSERVICESINC.,ELECTRICAL,7314.8;SOUNDSLEEPER SECURITY INC.,CONTRACTUAL- PD,14.95; STATE OF NEBRASKA DEPT OF HEALTH,SCHOOLS & CONF,260; SUPERIOR SIGNALS, INC,POLICE STOCK- MODULE LIGHTS,266.68; THOMPSON GLASS, INC,REPLACEMENT WINDOW AT COMPOST FACILITY- HAIL STORM,267.39; TRANS IOWA EQUIPMENT LLC,TRANS #450- RUBBER BUMPERS,220.02;TYLER TECHNOLOGIES, INC,ONLINE UB FEES 8/1/20 - 8/31/20,348; UNION BANK & TRUST,RETIREMENT,36749.31; UNITED STATES GEOLOGICAL SURVEY,JOINT FUNDING AGREEMENT 20NRJFA00240,2250; WESTERNPATHOLOGYCONSULTANTS,INC,PRE-EMPL.SCREENING/RANDOML/JULY,410.25; WESTERN TRAVEL TERMINAL, LLC,VEH MAINT-PD,362; WYOMING CHILD SUPPORT ENFORCEMENT,CHILD SUPPORT,738.08; YOUNG MEN'S CHRISTIAN ASSOCIATION OF SCOTTSBLUFF, NE,YMCA,765; REFUNDS; CROWN WEST, 4.63; T & A INVESTMENTS LLC, 11.24; JOSHUA CAHOJ, 73.02; GIL TRIMBLE, 15.98.



Mr. Kuckkahn presented the July 2020 Financial Report, stating all the City funds are in good shape, mainly because of reduced spending due to the effects of COVID in March and April. He also explained there has been continued revenue coming in because of the hailstorm last year and mass buying related to COVID-19. The City has been diligently working with utility customers to make late payments and the electric revenues are up. We have continued to improve our cash; investment income is down, but we will work with our investment representative to help adjust this.

Ms. Michele Denton, Executive Director of the West Nebraska Arts Center, approached Council regarding a special arts-related wine permit and Special Designated Liquor License for an art exhibit reception on September 3, 2020 from 4:00-8:00 p.m. Ms. Denton stated this will be her fifth permit for the year. Police Chief Spencer commented he has no concerns with this request. Council member Shaver moved, seconded by Council Member Green to approve the special arts-related wine permit for the West Nebraska Arts Center and Special Designated Liquor License for an art exhibit reception on September 3, 2020 from 4:00-8:00 p.m., "YEAS," Shaver, Gonzales, McKerrigan, and Green. "NAYS," None. Absent: Schaub.

Police Chief Spencer was present to answer questions regarding the Police Tow Service three year contract. Chief Spencer informed Council there was only one bid received from Bumper to Bumper. He stated the prices on the bid are reasonable, adding it is good to be consistent with fees for citizens. He is recommending approval. Council Member Green asked about response times and if that is dictated by the City or contractor. Chief Spencer stated that is based on the opinion of contractor and he feels what is listed in the contract is reasonable. He also reminded Council this contract is for Police Tow only. Council Member McKerrigan made the motion, seconded by Council Member Shaver to approve awarding the bid for the Police Tow Service three year contract to Bumper to Bumper, 818 Ave B Suite 1, Scottsbluff, NE from August 2020 to August 2023, "YEAS," McKerrigan, Gonzales, Green, and Shaver. "NAYS," None. Absent: Schaub.

Ms. Starr Lehl, Economic Development Director, approached Council regarding an Economic Development Assistance Agreement for Bluffs Physical Therapy and Hydrozen, LLC. Ms. Lehl stated this application was passed unanimously by the LB840 application committee. The owner Michael Moravec has built a new building on Avenue B, as well as adding other services. The total amount requested is \$87,000; \$57,000 in a forgivable loan based on job creation and \$30,000 in a loan to be paid in annual payments. They are currently combining the grant and loan they were awarded in 2018 due to continued growth and job creation. Council Member Shaver moved, seconded by Council Member McKerrigan to approve the Economic Assistance Agreement for Bluffs Physical Therapy, LLC and Hydrozen, LLC, "YEAS," McKerrigan, Shaver, Green, and Gonzales. "NAYS," None. Absent: Schaub.

Regarding the Economic Development Assistance Agreement with Western Hospitality, LLC, Ms. Lehl approached Council explaining this request is to provide lodging for pilots and staff involved with the U.S National Hot Air Balloon Championships. The amount of the Agreement is \$11,868; The City of Gering is paying for lodging for the pilots of the Old West Balloon Fest. Council Member Shaver moved, seconded by Council Member Green to approve the Economic Development Assistance Agreement for Western Hospitality, LLC, "YEAS," Green, Shaver, Gonzales, and McKerrigan. "NAYS," None. Absent: None.

Mr. Kuckkahn presented to Council the Agreement between the City of Scottsbluff and Pilgrim Productions, LLC. Mr. Kuckkahn explained this Agreement has been brought forth because of a reality television show that will be filming in the area. The City has been asked to provide additional police protection for the event at \$60.00 per hour; there is also an additional equipment charge. Staff is recommending approval. Council Member Green moved, seconded by Council Member McKerrigan to approve the Agreement between the City of Scottsbluff and Pilgrim Productions, LLC and authorize the Mayor to sign the Agreement, “YEAS,” Shaver, Gonzales, McKerrigan, and Green. “NAYS,” None. Absent: Schaub.

With regards to increasing the NPPD lease payment by one-half percent, Mr. Kuckkahn explained the City has an agreement with NPPD that allows us to increase the rate by one-half percent every year capping at 14%. We are currently at 13%; this increase will bring in additional revenue amounting to \$115,000. Council Member McKerrigan made the motion, seconded by Mayor Gonzales to approve increasing the NPPD lease payment by one-half percent, “YEAS,” McKerrigan, Gonzales, Green, and Shaver. “NAYS,” None. Absent” Schaub.

Legal Counsel Hadenfeldt presented the agenda item of approving the amendments to the “Articles of Incorporation” and “Bylaws” of the League of Nebraska Municipalities by voting for proposed actions 1, 2, and 3 on the Regular Member Ballot. Mr. Hadenfeldt explained the League of Municipalities discovered, because of some legal issues, they needed to update their Articles of Incorporation and Bylaws by doing three things; 1) Adding to the articles that it is a public benefit corporation; 2) Allowing members to participate electronically when legally allowed; 3) Requiring a 2/3 vote to amend the bylaws which are all consistent with the Nebraska Business Corporation Act.

Mr. Hadenfeldt added because the City is a member of LONM they are given the opportunity to vote on the actions. Council Member Green made the motion, seconded by Council Member McKerrigan to approve the amendments to the “Articles of Incorporation” and “Bylaws” of the League of Nebraska Municipalities by voting “For” the “Proposed Actions 1, 2, and 3 on the Regular Member Ballot; authorizing the Mayor to sign the Regular Member Ballot, and returning the Ballot to the League by October 1, 2020; no later than 5:00 p.m. (CT), “YEAS,” Green, Shaver, Gonzales, and McKerrigan. “NAYS,” None. Absent: Schaub.

Mr. Geoff Nemnich, 23 Club President, approached Council regarding additional funding. He reviewed phase 1 of the project, showing pictures, to give Council an idea of what the complex will look like. He then addressed phase 2 of the project. Phase 2 consists of field resurfacing, landscaping, irrigation, and parking lot upgrades to include adding lighting. He commented he would like to do both phases at the same time because it will save money, plus be more efficient.

Council Member Green asked what percentage of parking will be removed due to the project. Mr. Jack Baker, with Baker and Associates, stated just the areas between the fields that are blocked off. Mr. Nemnich came forward and added there will be over 150 parking spots, if it is organized. He explained by restriping, adding a one way street, and creating diagonal parking there could be 100 parking spots added easily. He also informed Council he has met with the school board and they are receptive to splitting the cost, with regards to a shared space between the fields and the school, to add parking; they just would like to see a bid to estimate what the costs will be, as well as have an agreement in place with the City.

Mr. Nemnich then explained to complete phase 2 they would need an additional \$250,000 and

asked Council if they would consider the request with this years' budget cycle. He added, by considering this, it would be a cost savings in the long run and get the project completed quicker.

Council Member Shaver stated his concern is, when we did the first phase, we were going to do a whole lot of it as "in kind" and it turned into money and you're talking change orders and everything else; we don't know where we stand on the first section yet. He thinks until we know where we stand on the first section it is dumb to get further in until we know where we stand on that. Mr. Baker addressed the "in kind" work by explaining it had been added to the contract to be bid on to allow for the work to be done sooner.

Mayor Gonzales added, by commenting, that several organizations will benefit from this project. Council Member McKerrigan agreed, stating the City can save money by doing two phases at one time and that is beneficial, too. Council Member Green asked how much phase 3 will cost. Mr. Baker stated the lighting will be approximately \$514,000, but that includes 25 year maintenance. Mr. Nemnich also added they will continue to fund raise and apply for grants to help fund phase 3, as this phase can be done at any time.

Mayor Gonzales then asked Council if they would be receptive to funding phase 2. Council Members Green and Shaver both agreed they are not comfortable at this time. They would like to see where we are at. Council Member McKerrigan added she is open; stating when cost savings is involved it is beneficial and working with the high school is good strategy. She thinks this will be a good project to put the excess funding towards. Mayor Gonzales agreed with Council Member McKerrigan and stated he supports funding the project.

At the end of discussion, Mayor Gonzales asked Mr. Kuckkahn to bring the priority projects Council discussed at the budget hearing back to the next meeting with whatever information he can provide.

Under Council Reports, Council Member Shaver stated there is a 911 meeting on August 18<sup>th</sup>. He will not be able to attend and has asked that either Fire Chief Schingle or Police Chief Spencer attend for the City to be represented. Council Member McKerrigan attended an RC&D meeting; they are looking at combining with League Management because they are not able to get a quorum at the meetings. She also gave an update on the Senior Center. They are closed right now; they do not have a cook or site manager. Gering is delivering the meals for Scottsbluff Seniors as they look to fill the positions. Ms. Starr Lehl, Economic Development Director gave an update on WNED. She informed Council LB424, the Land Bank Bill passed. Also, the Heartland Expressway annual meeting is August 18<sup>th</sup> at the Gering Civic Center. City Manager Kuckkahn attended the PADD meeting on the 13<sup>th</sup>. He stated they hired an Executive Director and are going through the transition.

Council Member McKerrigan made the motion, seconded by Council Member Green to adjourn the meeting at 7:24 p.m. "YEAS," Green, Shaver, Gonzales, and McKerrigan. "NAYS," None. Absent: Schaub.

---

Mayor

Attest:

---

City Clerk  
"SEAL"

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Consent2**

**Approve the absence of Council Member Schaub from the August 17, 2020 Regular Meeting.**

**Staff Contact: City Council**

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Pub. Hear.1**

**Council to conduct a public hearing set for this date at 6:05 p.m. for authorizing the final tax request for the 2020-2021 year at a different amount than the prior year request.**

**Staff Contact: Liz Hilyard, Finance Director**

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Resolut.1**

**Council to consider a Resolution setting the final tax request for the 2020-2021 year at a different amount than the prior year request.**

**Staff Contact: Liz Hilyard, Finance Director**

RESOLUTION NO. \_\_\_\_\_

WHEREAS, Nebraska Revised Statute 77-1601.02 provides that the Governing Body of the City of Scottsbluff passes by a majority vote a resolution or ordinance setting the tax request: and

WHEREAS, a special public hearing was held as required by law to hear and consider comments concerning the property tax request;

NOW, THEREFORE, the Governing Body of the City of Scottsbluff, resolves that:

1. The 2020-2021 property tax request for non-bond purposes be set at \$1,086,493.00.
2. The 2020-2021 property tax request for bond purposes be set at \$944,515.00.
3. The total assessed value of property differs from last year's total assessed value by 3%.
4. The tax rate which would levy the same amount of property taxes as last year, when multiplied by the new total assessed value of property, would be \$.209526 per \$100 of assessed value.
5. The City of Scottsbluff proposes to adopt a property tax request that will cause its tax rate to be \$.2160 per \$100 of assessed value.
6. Based on the proposed property tax request and changes in other revenue, the total operating budget of the City of Scottsbluff will exceed last year's by 7%.
7. The 2020-2021 property tax request for the City of Scottsbluff Off Street Parking District be set at \$54,100.00.
8. The total assessed value of property differs from last year's total assessed value by 4%.
9. The tax rate which would levy the same amount of property taxes as last year, when multiplied by the new total assessed value of property, would be \$.169195 per \$100 of assessed value.
10. The City of Scottsbluff proposes to adopt a property tax request that will cause its tax rate to be \$.176587 per \$100 of assessed value.
11. Based on the proposed property tax request and changes in other revenue, the total operating budget of the City of Scottsbluff will be less than last year's by 16%.

12. A copy of this resolution be certified and forwarded to the County Clerk on or before October 13, 2020.

PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk (seal)



# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Resolut.2**

**Council to consider an Ordinance adopting the budget statement to be termed the annual appropriation bill for FY 2020-2021. (second reading)**

**Staff Contact: Liz Hilyard, Finance Director**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO ADOPT THE BUDGET STATEMENT TO BE TERMED THE ANNUAL APPROPRIATION BILL; TO APPROPRIATE SUMS FOR NECESSARY EXPENSES AND LIABILITIES; TO PROVIDE FOR AN EFFECTIVE DATE AND TO PUBLISH IN PAMPHLET FORM.**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SCOTTSBLUFF, NEBRASKA:**

1. That after complying with all procedures required by law, the budget presented and set forth in the budget statement is approved as the Annual Appropriation Bill for the fiscal year beginning October 1, 2020 through September 30, 2021. All sums of money contained in the budget statement are appropriated for the necessary expenses and liabilities of the City of Scottsbluff.

2. The Council determines that it is necessary to exceed the allowable growth for restricted funds for the next fiscal year by an additional one percent as permitted under §13-519 of the Nebraska statutes, and as approved by at least 75% of the Council.

3. A copy of the budget document shall be forwarded as provided by law to the Auditor of Public Accounts, State Capitol, Lincoln, Nebraska, and to the County Clerk of Scotts Bluff County, Nebraska, for use by the levying authority.

4. This Ordinance shall become effective upon its passage, approval and publication shall be in pamphlet form.

PASSED AND APPROVED on \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk (Seal)

Approved as to form:

\_\_\_\_\_  
City Attorney

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Resolut.3**

**Council to consider an Ordinance amending and changing the solid waste collection fees. (second reading)**

**Staff Contact: Liz Hilyard, Finance Director**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF SCOTTSBLUFF AMENDING AND CHANGING THE SOLID WASTE COLLECTION FEES AT CHAPTER 6 ARTICLE 6 OF THE MUNICIPAL CODE, REPEALING PRIOR PROVISIONS OF THE MUNICIPAL CODE, PROVIDING FOR AN EFFECTIVE DATE AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF SCOTTSBLUFF, NEBRASKA.

Section 1. Section 6-6-23 of the Scottsbluff Municipal Code is amended to provide as follows:

**6-6-23. Residential.**

The minimum bimonthly charges for collection and disposal service to residential units for solid waste and the single stream recycling program all of which is contained in approved containers shall be as follows, effective for all billings made after December 25, 2020:

One-family unit (including mobile homes with  
an individual water or sewer connection) . . . . . \$46.46

One-family two container unit (including mobile homes with an individual  
water or sewer connection) . . . . . \$106.25

The minimum requirement for one-family two container units is twelve months from  
the date of request for two container service.

Multifamily structures (including mobile home parks with a single water or  
sewer connection)

Bimonthly Rate Per Unit	
2 to 4 units . . . . .	\$46.46
5 to 6 units . . . . .	\$41.75
7 to 10 units . . . . .	\$39.45
11 to 16 units . . . . .	\$37.13
17 to 39 units . . . . .	\$34.75
40 to 59 units . . . . .	\$32.42
60 or more units . . . . .	\$30.19

Hotels, motels and rooming houses shall be considered as commercial establishments and shall pay charges based on the charges provided for institutional business, commercial and industrial establishments as provided in this Chapter. The charges for quantities or services which exceed those covered by the minimum charge shall be an amount equal to the reasonable cost of the service as determined by the City Manager or the designee of the City Manager.

The rates and fees provided in this section shall be effective with respect to usage for which billings are made after December 25, 2020.

Section 2. Section 6-6-24 of the Scottsbluff Municipal Code is amended to provide as follows:

**6-6-24. Institutional; business; commercial; industrial.**

(a) The bimonthly charges for collection and disposal of solid waste of institutional, business, commercial and industrial establishments, and solid waste in required containers at construction sites, shall be based upon the number of approved containers collected per collection. Where an establishment has its own water or sewer connection, the fact that it shares a building with another establishment, or does not occupy the entire building, shall be of no significance. The charge per approved container per collection shall be as follows:

	Each time container is emptied	Bimonthly minimum
90 gallon	\$12.01	\$96.08
1.5 cubic yard	\$16.02	\$128.12
3.0 cubic yard	\$30.48	\$243.84

The rates and fees provided in this section shall be effective with respect to usage for which billings are made after December 25, 2020.

Section 3. Existing Sections 6-6-23 and 6-6-24, of the Scottsbluff Municipal Code are hereby repealed, provided however that the rates provided for in such prior sections shall remain effective until midnight, December 25, 2020. This Ordinance shall not be construed to effect any cause of action, civil or criminal, existing or actions pending, at the time this Ordinance becomes effective.

Section 8. This Ordinance shall become effective upon its passage, approval as provided by law, and publication shall be in pamphlet form.

**PASSED and APPROVED** on \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk (Seal)

Approved as to Form:

\_\_\_\_\_  
Deputy City Attorney

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Reports1**

**Council to discuss and consider action on an Economic Development Agreement for Inventive Wireless of Nebraska, LLC dba Vistabeam.**

**Staff Contact: Starr Lehl, Economic Development Director**

## **ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT**

This Agreement is made on August 31, 2020, between the City of Scottsbluff, Nebraska (the “City”) and Inventive Wireless of Nebraska, L.L.C. (the “Applicant”).

### **Recitals:**

a. The City has adopted an Economic Development Plan pursuant to the Nebraska Local Option Municipal Economic Development Act (the “Plan”). Pursuant to the Plan, the City has implemented an Economic Development Program (the “Program”).

b. The Applicant has made application for assistance from the Program (the “Application”), reviewed by the Committee (as defined below) in August of 2020.

c. The Applicant has received assistance from the Program pursuant to a previous application and Economic Development Assistance Agreement dated January 19, 2018 (the “2018 Agreement”). It is intended that the 2018 Agreement will continue in full force and effect, that this Agreement and the 2018 Agreement shall operate and stand independent of each other (except as set forth herein), and that this Agreement shall not act a novation, refinance, or replacement of the 2018 Agreement.

d. The Administrator of the Program (the “Administrator”) and the City Economic Development Application Review Committee (the “Committee”) have reviewed the Application and recommended to the City Council (the “Council”) that a grant (the “Grant”) and a Loan (the “Loan”) be made to the Applicant from the City of Scottsbluff Economic Development Fund (the “Fund”) as provided for in this Agreement. The City Council has approved the Committee’s recommendation.

e. The parties now desire to enter into this Agreement for the purpose of setting out the terms and conditions of the Grant and the Loan.

### **Agreement:**

#### **1. Purpose of Grant:**

The Applicant’s business known as “Vistabeam” is continuing the expansion of its business with a new branch location in Scottsbluff, Nebraska (the “Business”). The Grant and the Loan is to be used to fund to capital asset purchase of the new branch location and the initial operating capital costs of the expansion, job creation, and capital asset purchase.

#### **2. Amount of Grant and Loan:**

The following amounts shall be payable to the Applicant from the City of Scottsbluff Economic Development Fund (the “Fund”) at the Closing (as provided for below).

a. The Grant shall be in the amount of \$50,000 (the “Grant Amount”) representing the addition of 5 employees. The Grant shall in the form of a promissory note (the “Forgivable Note”) which may be repaid according to the terms of this Agreement, to be signed at Closing in the form of the attached Exhibit A.

b. The Loan shall be in the amount of \$100,000 shall be represented by a promissory note (the “Non-Forgivable Note”) to be signed at the Closing in the form of the attached Exhibit B. The Non-Forgivable Note shall carry interest from October 1, 2020 (the “Note Interest Date”), at which time it shall carry interest at the Applicable Federal Mid-Term rate for the month of September 2020, and shall be repaid over 60 equal monthly payments of principal and interest, the first payment being due November 1, 2020. Each subsequent payment shall be due on the first of each month thereafter, until the Non-Forgivable Note is paid in full.

### **3. Closing:**

The Grant Amount and the Loan Amount shall be scheduled as a claim at the next Council meeting following the signing of this Agreement. The “Closing” shall occur following the satisfaction of all conditions to Closing as provided for below, but no earlier than 5 business days after the Council meeting where the claim is approved.

### **4. Possible Grant Repayment:**

The Grant Amount and Forgivable Note shall be subject to repayment to the City if the Applicant does not fully earn the Job Credits (as provided for below). The Applicant may earn job credits, to be applied against the balance of the Forgivable Note during the Term of this Agreement. In connection with the calculation of the Job Credits:

a. The “Effective Date” of this Agreement for Job Credit calculation purposes shall be October 1, 2020 (the “Effective Date”).

b. The term of this Agreement shall begin on the Effective Date and shall continue for 5 years from the Effective Date (the “Term”).

c. A “Year” shall mean the 12-month period ending as of the day prior to each annual anniversary of the Effective Date.

### **5. Employee Definitions:**

a. “Full Time Employee” shall mean a bona fide employee of the Applicant who (1) is classified by the Applicant as full time; and (2) subject to normal and reasonable waiting periods, is eligible for the Applicant’s normal fringe benefit package. This normal fringe benefit package must, at the least, include a health insurance plan which provides for at least 75% of the premium for employee’s coverage to be paid by the Applicant.



b. “Eligible Full Time Employee” shall mean a Full Time Employee who: (1) primarily works in Scotts Bluff County, and (2) resides within 60 miles of the corporate limits of the City; provided, however any Full Time Employee who does not reside within 60 miles of the corporate limits of the City at the time that the Full Time Employee is hired by the Applicant, shall nevertheless be considered an Eligible Full Time Employee if the Full Time Employee moves to a residence within the required geographic area within 6 months of the hiring of the Eligible Full Time Employee.

c. “Full Time Equivalent” Employees (the “FTE’s”) shall be the total of (i) the number of Eligible Full Time Employees which are paid based on a salary, plus (ii) with respect to hourly Eligible Full Time Employees, the number arrived at by dividing the total hours paid by the Applicant to its hourly Eligible Full Time Employees during a Year divided by 2,080 hours, and then rounded down to the nearest tenth; provided, however, the maximum hours paid that can be counted for any one hourly Eligible Full Time Employee shall not exceed 2080 hours.

d. “Eligible FTE’s” shall mean the FTE’s calculated for a Year less 25 (allowing for a portion of the existing employees of the Applicant).

## **6. Job Credits:**

“Job Credits” shall be calculated as follows:

a. The Applicant shall receive an “Annual Job Credit” during the Term equal to the Eligible FTE’s multiplied by \$2,000.

b. The amount of the Annual Job Credit may not exceed \$10,000 per Year (the “Maximum Annual Credit”).

c. In the event that the Applicant earns credits in excess of the Maximum Annual Credit in any one Year, the excess credits may be carried back to one or more prior Years where the Maximum Annual Credit was not earned, as long as the Maximum Annual Credit is not exceeded for any one Year. Excess credits may not be carried forward.

## **7. Grant Repayment:**

At the end of the Term, the total of the cumulative Annual Job Credits will be subtracted from the Grant Amount owed on the Forgivable NOte. Any balance shall be repaid to the Fund within 90 days of the end of the Term (the “Repayment”), and any amount not paid within this time period shall then carry interest at the rate of 7% per annum until paid. If there is no balance, then the Applicant shall be considered as having satisfied its obligations under the Grant, the Forgivable Note, and this Agreement and no repayment shall be due.

## **8. Representations and Warranties of the Applicant:**

The Applicant represents and warrants the following, all of which shall survive the Closing:

a. The Applicant is a limited liability company organized and existing under the laws of Nebraska. The Applicant has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. The Applicant's execution, delivery and performance of this Agreement have been authorized by all necessary action on the part of the Applicant. This Agreement, and each agreement and instrument delivered by the Applicant pursuant to it, is the legal and binding obligation of the Applicant, enforceable against the Applicant in accordance with its terms.

b. No representation or warranty made by the Applicant in this Agreement contains or will contain any untrue statement of any material fact, or omits or will fail to state any material fact known to the Applicant that are required to make the statements not misleading.

c. The execution and performance of this Agreement will not violate any provision of law, or conflict with or result in any breach of any of the terms or conditions of, or constitute a default under any indenture, mortgage, agreement or other instrument to which the Applicant is a party or by which they are bound.

All representations and warranties made by the Applicant shall survive the Closing.

## **9. Representations and Warranties of the City:**

The City represents and warrants the following, all of which shall survive the Closing:

a. The City is a municipal corporation organized and existing under the laws of Nebraska, and has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. The City's execution, delivery and performance of this Agreement has been authorized by all necessary action on the part of the City. This Agreement, and each agreement and instrument delivered by the City pursuant to it, is the legal and binding obligation of the City, enforceable against the City in accordance with its terms.

b. No representation or warranty made by the City in this Agreement contains or will contain any untrue statement of any material fact, or omits or will fail to state any material fact known to the City that is required to make the statements not misleading.

## **10. Certification of the Applicant:**

The Applicant certifies to the City that it has not filed an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act, or its program or legislative successor, for the Business. In the event that the Applicant files such an application,

it shall advise the City in writing, and the City shall have the option to review the status of the Assistance, to include determining that the unearned portion of the Assistance is due and payable if the Applicant is awarded incentives under the Nebraska Advantage Act, or its program or legislative successor.

#### **11. Conditions to Closing:**

The City's obligation to proceed with the Closing is subject to the Applicant's fulfillment of each of the following conditions at or prior to the Closing:

- a. All representations and warranties of the Applicant shall be true as of the Closing.
- b. The Applicant shall have delivered to the City:
  - (1) A Certificate or Letter of Good Standing from the Nebraska Secretary of State.
  - (2) A copy of the current and correct Certificate of Organization and Operating Agreement of the Applicant certified by the secretary of the Applicant to be correct; and
  - (3) Certified resolution of the Members of the Applicant authorizing this Agreement and providing for signature authority.
- c. In order to secure the Repayment and the Forgivable Note and the Non-Forgivable Note, the Applicant shall have delivered to the City the following:
  - (1) An updated guaranty (the "Guaranty") of Matthew M. Larsen in the form of the attached Exhibit C.
  - (2) A Deed of Trust (the "Deed of Trust") covering the real estate where the Business is located, in the form of the attached Exhibit D. The Deed of Trust shall be subordinate to a prior deed of trust in favor of Platte Valley Bank recorded against the real estate.
- d. The Applicant shall in all material respects have performed its obligations, agreements, and covenants contained in this Agreement to be performed by it, on, or before the Closing.
- e. There shall have been no material adverse change in the operation or financial status of the Applicant and the Closing of this Agreement shall constitute the Applicant's representations that there has been no such material adverse change.

## **12. Annual Reports:**

The Applicant shall annually, within 60 days of the end of each Year, provide to the Administrator a report in form and substance acceptable to the Administrator which calculates the Annual Job Credit (the "Annual Report"). The Administrator shall have the right at any time to (i) require that the Annual Reports be reviewed at the Applicant's expense by a Certified Public Accountant reasonably acceptable to the Administrator, or (ii) hire, at the Administrator's own expense, an independent Certified Public Accountant or other business or financial expert, to review the books and records of the Applicant pertaining to the Annual Report and any other terms and conditions as provided for in this Agreement. If after a review or audit of the Applicant's records it is discovered that the Annual Job Credit claimed on the Annual Job Credit Report exceeds 10% of the Annual Job Credit as determined by the Administrator, then the Administrator may require the Applicant to reimburse the Fund for the actual cost of the audit.

## **13. Early Termination:**

a. The Applicant shall have the right at any time to terminate its participation in the Program by notifying the Administrator in writing of its desire to do so.

b. The Administrator shall have the right to terminate the Applicant's participation in the Program if the Applicant is in default of any of the terms and conditions of this Agreement, which default is not cured within 30 days of written notice by the Administrator.

c. In the event of a termination as described in this paragraph, the total of the Annual Job Credits as of the end of the Year immediately preceding the termination will be subtracted from the Grant Amount. This amount shall then be immediately due and payable to the Fund. Interest shall accrue at the rate of 7% per annum on any amounts not immediately paid.

d. If the Annual Job Credit determined for any Year is less than 80% of the Maximum Annual Credit, then the Administrator may require repayment of the difference between that Year's Annual Job Credit and the Maximum Annual Credit. Any balance shall be repaid to the Fund within 30 days of written demand of the Administrator, and any amount not paid within this time period shall then carry interest at the rate of 7% per annum until paid. If the amount repaid pursuant to this subparagraph is later earned by the Applicant, then the City shall pay the amount so earned to the Applicant within 30 days of the determination by the Administrator that the amount previously repaid has been earned.

## **14. Default:**

The Applicant shall be in default if any of the following happen:

a. Failure to comply with any of the terms of this Agreement, the 2018 Agreement, or any other agreement entered into connection with this Agreement, to include an assignment not permitted under this Agreement.

- b. Any warranty, representation or statement made or given to the City by the Applicant proves to have been false in any material respect when made or given.
- c. Dissolution or liquidation of the Applicant, the termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy of the Applicant.
- d. The Applicant ceases to operate a branch of the Business in Scottsbluff, Nebraska.
- e. The Applicant intentionally or materially misstates the Annual Job Credit on an Annual Report. A material misstatement shall be considered to have occurred if the Annual Job Credit claimed on the Annual Report exceeds 10% of Annual Job Credit as reasonably determined by the Administrator.
- f. Transfer of sale of a majority of the membership interest of the Applicant by Matthew M. Larson, which results in Matthew D. Larsen owning less than 51% of the ownership interests in the Applicant.

**15. Assignability:**

The Administrator may assign his interest in this Agreement to any successor administrator designated by the City Council. The Applicant may not assign or transfer their interest in this Agreement without the consent of the Administrator. Assignment shall include a transfer of ownership which results in Matthew D. Larsen owning less than 51% of the ownership interests in the Applicant.

**16. Confidentiality:**

It is agreed that this Agreement and its terms are public record and are not confidential. However, the City agrees to take reasonable steps to insure that any financial and proprietary information provided in connection with this Agreement by the Applicant shall remain confidential and shall not be revealed or disclosed to outside sources unless the information is public knowledge, is independently developed, or is required to be disclosed by law or legal process.

**17. Notices:**

- a. Any notices or other communications between the parties shall be personally delivered, sent by regular first-class mail, by Federal Express or similar service that records delivery, or by facsimile transmission combined with any of the above methods of notice, 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.

- b. If to the City:

City of Scottsbluff  
2525 Circle Drive  
Scottsbluff, NE 69361  
Fax: (308) 632-2916  
Attention: City Manager

- c. If to the Applicant:

Inventive Wireless of Nebraska, L.L.C.  
1225 Sage Street  
Gering, NE 69341  
Attn: Matt Larsen

**18. Miscellaneous:**

a. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, and may only be modified by a writing signed by both of the parties.

b. The City's waiver of any one default shall not be a waiver of the same or any other default in the future. In addition, the City's failure to exercise any right given to it by this Agreement shall not be a waiver of any later exercise of that right.

c. The provisions of this Agreement are severable and if any provision is held to be invalid, the remainder of the Agreement shall remain in effect.

d. This 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 Agreement shall be governed by the laws of Nebraska.

f. This Agreement shall be binding on the successors and assigns of the parties.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE]

City of Scottsbluff, Nebraska

Inventive Wireless of Nebraska, L.L.C.

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Matthew M. Larsen,  
Member & CEO

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Reports2**

**Council to discuss and consider action on an Economic Development Agreement for Reverence Funeral Parlor, LLC.**

**Staff Contact: Starr Lehl, Economic Development Director**



## **ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT**

This Agreement is made on August 31, 2020, between the City of Scottsbluff, Nebraska (the “City”) and Reverence Funeral Parlor, LLC (the “Applicant”).

### **Recitals:**

a. The City has adopted an Economic Development Plan pursuant to the Nebraska Local Option Municipal Economic Development Act (the “Plan”). Pursuant to the Plan, the City has implemented an Economic Development Program (the “Program”).

b. The Applicant has made application for assistance from the Program (the “Application”);

c. The Administrator of the Program (the “Administrator”) and the City Economic Development Application Review Committee (the “Committee”) have reviewed the Application and recommended to the City Council (the “Council”) that a loan (the “Loan”) be made to the Applicant from the City of Scottsbluff Economic Development Fund (the “Fund”) as provided for in this Agreement. The City Council has approved the Committee’s recommendation.

d. The parties now desire to enter into this Agreement for the purpose of setting out the terms and conditions of the Loan.

### **Agreement:**

#### **1. Purpose of Assistance:**

The Applicant is opening interment, cremation, and mortuary care service (the “Business”) in Scottsbluff, Nebraska. The proceeds of the Loan shall be used to assist with respect to start-up expenses in opening the Business, including real estate purchase and operating capital.

#### **2. Terms of Loan:**

The Loan shall be in the amount of \$50,000 and shall be represented by a promissory note (the “Note”) to be signed at the Closing in the form of the attached “Exhibit A”. The Note shall be interest free until October 1, 2020 (the “Note Interest Date”), at which time the Note shall carry interest at the Applicable Federal Mid-Term rate for the month of September 2020 and shall be repaid over 60 equal monthly payments of principal and interest. The first payment shall be due on January 1, 2020, with each additional payment due on the same day of each subsequent month until the Note is paid in full.\

#### **3. Closing:**

As soon as the Applicant has satisfied the conditions to Closing (as provided for below),

the Note and any other documents provided for this Agreement shall be signed. The amount of the Loan shall be scheduled as a claim at a City Council meeting. The “Closing”, to include disbursement of the Note shall then occur within 10 business days after the Council meeting where the claim is approved.

#### **4. Job Credits and Time of Annual Payment:**

a. As long as the Applicant is not in default of the Note, this Agreement, or any other document entered into pursuant to this Agreement, the Applicant shall be eligible for credit against the balance due under the Note for Job Credits earned during a Year. A “Year” shall mean the 12-month period ending on each September 30, with the first Year beginning October 1, 2020. “Annual Job Credits” shall be calculated and applied as follows:

b. The effective date of this Agreement for Job Credit calculation purposes shall be October 1, 2020 (the “Job Credit Effective Date”). The term of this Agreement for Job Credit calculation purposes shall begin on the Job Credit Effective Date and shall continue for 5 years from the Job Credit Effective Date (the “Term”).

c. In order to receive Annual Job Credits, the Applicant must file an Annual Report as provided for below. Upon receipt of an Annual Report, the City will make a preliminary review based on the Annual Job Credits claimed. The amount of the job credit shall be applied as an additional principal payment against the Note, applicable as of the anniversary of the Job Credit Effective Date. The City shall update the Applicant when and if the Loan is repaid sooner than the initial amortization schedule due the application of additional principal payments from job credits.

#### **5. Employee Definitions:**

a. “Full Time Employee” shall mean a bona fide employee of the Applicant who (1) is classified by the Applicant as full time; and (2) subject to normal and reasonable waiting periods, is eligible for the employer’s normal fringe benefit package. The normal fringe benefit package must, at the least, include a health insurance plan which provides for employee coverage substantially paid for by the Applicant.

b. “Eligible Full Time Employee” shall mean a Full Time Employee who: (1) primarily works in the City, and (2) resides within 60 miles of the corporate limits of the City; provided, however any Full Time Employee who does not reside within 60 miles of the corporate limits of the City at the time that the Full Time Employee is hired by the Applicant, shall nevertheless be considered an Eligible Full Time Employee if the Full Time Employee moves to a residence within the required geographic area within 6 months of the hiring of the Eligible Full Time Employee.

c. “Full Time Equivalent” Employees (the “FTE’s”) shall be the total of (i) the number of Eligible Full Time Employees which are paid based on a salary, plus (ii) with respect to hourly Eligible Full Time Employees, the number arrived at by dividing the total hours paid by

the Applicant to its hourly Eligible Full Time Employees during a Year divided by 2,080 hours, and then rounded down to the nearest tenth; provided, however, the maximum hours paid that can be counted for any one hourly Eligible Full Time Employee shall not exceed 2,080 hours.

**6. Job Credits:**

“Job Credits” shall be calculated as follows:

a. The Applicant shall receive an “Annual Job Credit” during the Term equal to the FTE’s multiplied by \$2,000.

b. The amount of the Annual Job Credit may not exceed \$6,000 per Year (the “Maximum Annual Credit”).

c. In the event that the Applicant earns credits in excess of the Maximum Annual Credit in any one Year, the excess credits may be carried back to one or more prior Years where the Maximum Annual Credit was not earned, as long as the Maximum Annual Credit is not exceeded for any one Year. Excess credits may not be carried forward.

**7. Representations and Warranties of the Applicant:**

The Applicant represents and warrants the following, all of which shall survive the Closing:

a. The Applicant is a limited liability company organized, existing, and in good standing under the laws of Nebraska. The Applicant has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. The Applicant’s execution, delivery and performance of this Agreement have been authorized by all necessary action on the part of the Applicant. This Agreement, and each agreement and instrument delivered by the Applicant pursuant to it, is the legal and binding obligation of the Applicant, enforceable against the Applicant in accordance with its terms.

b. The Applicant’s principal source of revenue will be from the sale of services in interstate commerce. The principal source of the Applicant’s income will be from the sale of mortuary services, rather than the sale of merchandise and retail items. The Applicant anticipates sales to residents of Wyoming, South Dakota, and Colorado, as well as to their family members upon death.

c. No representation or warranty made by the Applicant in this Agreement contains or will contain any untrue statement of any material fact, or omits or will fail to state any material fact known to the Applicant that are required to make the statements not misleading.

d. The execution and performance of this Agreement will not violate any provision of law, or conflict with or result in any breach of any of the terms or conditions of, or constitute a

default under any indenture, mortgage, agreement or other instrument to which the Applicant is a party or by which it is bound.

e. All representations and warranties made by the Applicant shall survive the Closing.

## **8. Representations and Warranties of the City:**

The City represents and warrants the following, all of which shall survive the Closing:

a. The City is a municipal corporation organized and existing under the laws of Nebraska, and has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. The City's execution, delivery and performance of this Agreement has been authorized by all necessary action on the part of the City. This Agreement, and each agreement and instrument delivered by the City pursuant to it, is the legal and binding obligation of the City, enforceable against the City in accordance with its terms.

b. No representation or warranty made by the City in this Agreement contains or will contain any untrue statement of any material fact, or omits or will fail to state any material fact known to the City that is required to make the statements not misleading.

## **9. Certification of the Applicant:**

The Applicant certifies to the City that it has not filed nor does it intend to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for the Business, or under its program or legislative successor. In the event that the Applicant files such an application, it shall advise the City in writing, and the City shall have the option to review the status of the Loan, to include determining that the balance of the Loan is due and payable if the Applicant is awarded incentives under the Nebraska Advantage Act, or its program or legislative successor.

## **10. Conditions to Closing:**

The City's obligation to proceed with the Closing is subject to the Applicant's fulfillment of each of the following conditions at or prior to the Closing:

a. All representations and warranties of the Applicant shall be true as of the Closing.

b. The Applicant shall have delivered to the City:

(1) Evidence of Good Standing of the Applicant from the Nebraska Secretary of State.

(2) A copy of the current and correct Certificate of Organization and Operating Agreement of the Applicant certified by the members (the “Members”) to be correct;

(3) Certified resolutions of the Members authorizing this Agreement and providing for signature authority.

c. In order to secure the Loan and the Repayment, the Applicant shall have delivered to the City the following:

(1) A guaranty (the “Guaranty”) of Stefanie and Oscar Gonzalez. The Guaranty shall be in the form of the attached “Exhibit B”.

(2) A Security Agreement covering the Applicant’s inventory, equipment, accounts, and general intangibles. The Security Agreement shall be in the form of the attached “Exhibit C”.

(3) A Deed of Trust on Lots 1 and 2, Block 7, Laucomer Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska, executed by the owner thereof. The Deed of Trust shall be in the form of attached “Exhibit D.”

d. The Applicant shall in all material respects have performed its obligations, agreements, and covenants contained in this Agreement to be performed by them, on, or before the Closing.

e. The Applicant shall have received a commitment for and closed on a loan from Platt Valley Bank in the amount of at least \$350,000, and the loan proceeds have been dispersed to the Applicant or made available to the applicant by Platte Valley Bank.

f. There shall have been no material adverse change in the operation or financial status of the Applicant and the Closing shall constitute the Applicant’s representations that there has been no such material adverse change.

g. In requesting the disbursement of the Loan, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

## **11. Annual Reports:**

In order to obtain Job Credits, the Applicant shall annually, within 60 days of the end of each Year, provide to the Administrator a report in form and substance acceptable to the Administrator which calculates the Annual Job Credit for the Year (the “Annual Report”). The Administrator shall have the right at any time to (i) require that the Annual Reports be reviewed at the Applicant’s expense by a Certified Public Accountant reasonably acceptable to the Administrator, or (ii) hire, at the Administrator’s own expense, an independent Certified Public Accountant or other financial expert, to review the books and records of the Applicant pertaining

to the Annual Report and any other terms and conditions as provided for in this Agreement. If after a review or audit of the Applicant's records it is discovered that the Annual Job Credit claimed on the Annual Job Credit Report exceeds 10% of the Annual Job Credit as determined by the Administrator, then the Administrator may require the Applicant to reimburse the Fund for the actual cost of the audit.

## **12. Default:**

The Applicant shall be in default in this Agreement and the Note if any of the following happen:

- a. Failure to comply with any of the terms of this Agreement, the Note, the Security Agreement, the Deed of Trust, or the Guaranty to include an assignment not permitted under this Agreement.
- b. Any warranty, representation or statement made or given to the City by the Applicant proves to have been false in any material respect when made or given.
- c. Dissolution or liquidation of any of the Applicant, the termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy of the Applicant.
- d. The Applicant ceases to conduct the Business or moves the Business outside of the City.

## **13. Assignability:**

The Administrator may assign his interest in this Agreement to any successor administrator designated by the City Council. The Applicant may not assign or transfer its interest in this Agreement without the consent of the Administrator. Assignment shall include a transfer of ownership of the Applicant which results in the Members owning less than 51% of the ownership interests of the Applicant.

## **14. Confidentiality:**

It is agreed that this Agreement and its terms are public record and are not confidential. However, the City agrees to take reasonable steps to insure that any financial and proprietary information provided in connection with this Agreement by the Applicant shall remain confidential and shall not be revealed or disclosed to outside sources unless the information is public knowledge, is independently developed, or is required to be disclosed by law or legal process.

## **15. Notices:**

- a. Any notices or other communications between the parties shall be personally

delivered, sent by certified or registered mail, return receipt requested, by Federal Express or similar service that records delivery, 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.

b. If to the City:

City of Scottsbluff  
2525 Circle Drive  
Scottsbluff, NE 69361  
Attention: City Manager

c. If to the Applicant:

Reverence Funeral Parlor  
770 J. St.  
Gering, NE 69341  
Attention: Stefanie Gonzalez

**16. Miscellaneous:**

a. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, and may only be modified by a writing signed by both of the parties.

b. The City's waiver of any one default shall not be a waiver of the same or any other default in the future. In addition, the City's failure to exercise any right given to it by this Agreement shall not be a waiver of any later exercise of that right.

c. The provisions of this Agreement are severable and if any provision is held to be invalid, the remainder of the Agreement shall remain in effect.

d. This 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 Agreement shall be governed by the laws of Nebraska.

f. This Agreement shall be binding on the successors and assigns of the parties.

*[Signature page to follow]*

**Signature Page to Economic Development Assistance Agreement between  
the City of Scottsbluff, Nebraska and Reverence Funeral Parlor, LLC**

City of Scottsbluff, Nebraska

Reverence Funeral Parlor, LLC

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Stefanie Gonzales, Member



# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Reports3**

**Council to discuss and consider action on the amendment to the Economic Development Agreement for McKinney Manufacturing and Sales, LLC for COVID accommodations.**

**Staff Contact: Rick Kuckkahn, Interim City Manager**

## **Amendment to Economic Development Assistance Agreement**

This Amendment to the Economic Development Assistance Agreement (the “Amendment”) is made Effective April 1, 2020, and is by and between the City of Scottsbluff, Nebraska (the “City”) and McKiney Manufacturing and Sales, LLC., a Nebraska limited liability company (the “Applicant”).

### **RECITALS:**

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated December 2, 2019 (the “Agreement”). The Agreement was made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Agreement as set forth below.

### **AMENDMENT:**

1. Assistance Modification. The “Assistance” obligations as defined in the Agreement, and the terms of paragraph 2.d of the Agreement, are hereby amended as follows:

a. The balance of the Note owed on April 1, 2020 shall become payable in 118 equal monthly payments of principal and interest, payable under an Amended and Restated Note, carrying interest at the rate set forth in the Note. Interest on the original Note shall be waived from April 1, 2020 to June 30, 2020. The first monthly payment due under the Amended and Restated Note shall be due and payable on October 1, 2020, and each monthly payment shall be due on the first of each month thereafter. Job credits will continue to be applied to the Amended and Restated Note.

2. Modified Non-Forgivable Note. The terms, conditions, and obligations of the “Note” executed as of December 5, 2019 shall be incorporated into and Amended and Restated Note executed by the Applicant, in the form of the attached Exhibit A, the terms of which are incorporated herein by reference.

3. FTE Employees. Paragraph 5.c of the Agreement is hereby amended in total as follows:

“c. “Full Time Equivalent” Employees (the “FTE’s”) shall be the total of (i) the number of Eligible Full Time Employees which are paid based on a salary, plus (ii) with respect to hourly Eligible Full Time Employees, the number arrived at by dividing the total hours paid by the Applicant to its hourly Eligible Full Time Employees during a Year divided by 2,080 hours, and then rounded down to the nearest tenth; provided, however, the maximum hours paid that can be counted for any one hourly Eligible Full Time Employee shall not exceed 2,080 hours. For the “Year” ending December 31,

2020, the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full-Time Employees during that Year divided by 1,560 hours and then round it down to the nearest hundredth. For such Year ending December 31, 2020, the maximum hours paid that can be counted for any Eligible FTE shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an FTE during the Year ending December 31, 2020 shall be presumed to have been paid 1,560 hours. The modification of hours for FTE credits shall only apply to the Year beginning January 1, 2020 and ending December 31, 2020.”

4. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator’s responsibilities and authorities under of the Program. The Amendment, and those adjustments made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic.

5. All other terms and conditions of the Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

6. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

McKiney Manufacturing and Sales, LLC

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Roger McKinney, Member

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Reports4**

**Council to discuss and consider action on the Downtown Gardens Maintenance Agreement with Paige's Posies and authorize the Mayor to sign the Agreement.**

**Staff Contact: Leann Sato, Stormwater Specialist**

# Agenda Statement

Meeting Date: August 31, 2020

**AGENDA TITLE:** Downtown Gardens Maintenance Agreement

**SUBMITTED BY DEPARTMENT/ORGANIZATION:** Stormwater

**PRESENTATION BY:** Rick Kuckkhan

**SUMMARY EXPLANATION:**

This is one-year agreement between Paige's Posies and the City for contracted maintenance of the downtown parking lot gardens and bulb-outs. The City will pay the Contractor a total of \$25,290.00 from the following departments BID \$10,535 for five parking lot sites; Stormwater Department \$12,962 for six stormwater mitigation sites and Water Department \$2,107 for one demonstration site.

**BOARD/COMMISSION RECOMMENDATION:**

The downtown gardens are an affiliate site of the Nebraska Statewide Arboretum (NSA). NSA has recommended the return to contracted care since 2018. The above departments are willing to share the costs of maintenance similar to what with contracted care prior to 2018.

**STAFF RECOMMENDATION:**

Stormwater recommends Council approve the agreement and have the Mayor sign after approval.

---

Resolution ☐      Ordinance ☐      EXHIBITS  
Contract ☐      Minutes ☐      Plan/Map ☐

Please provide all visual presentation materials.

Other (specify) ☐ \_\_\_\_\_

**NOTIFICATION LIST:** Yes ☐    No ☐    Further Instructions ☐

---

City of Scottsbluff  
Office of the City Manager

Effective date: January 20, 2017

## MAINTENANCE AGREEMENT

This Maintenance Agreement ("Agreement") is made between the City of Scottsbluff, Nebraska, a Municipal Corporation, hereinafter called "City," and Paige's Posies, LLC, a Nebraska limited liability, hereafter called "Contractor."

1. Areas of Maintenance: The City owns several areas in and around its corporate limits which require maintenance. Those "Areas of Maintenance" include:

- a. Parking Lots 1 and 10, 1617 and 1620 Avenue A (Invoiced to BID)
- b. Parking Lot 3, 1815 1<sup>st</sup> Avenue, across from WNAC (Invoiced to BID)
- c. Parking Lot 4, 1700 1<sup>st</sup> Avenue, behind Midwest (Invoiced to BID)
- d. Parking Lots 8 and 16, 1701 Avenue A, behind 24 HR Fitness (Invoiced to BID)
- e. Parking Lot 12, 126 West 18<sup>th</sup> Street SE of Public safety Building (Invoiced to BID)
- f. Broadway Bulbouts from 19<sup>th</sup> Street to 15<sup>th</sup> Street (Invoiced to Stormwater)
- g. Broadway Island 2300 Broadway (Invoiced to Stormwater)
- h. East Overland Entryway, 1300 1<sup>st</sup> Avenue (Invoiced to Stormwater)
- i. Public Safety Building Rain Garden, 198 West 19<sup>th</sup> Street (Invoiced to Stormwater)
- j. Serenity Garden, 22 South Beltline Highway West, Behind Y to the Broadway Bridge (Invoiced to Stormwater)
- k. Parking Lot 2, 17<sup>th</sup> Street & 2<sup>nd</sup> Avenue east of Western States Bank (Invoiced to Stormwater)
- l. Wellhouse 3/Broadway Pumphouse, 2302 Broadway (Invoiced to Water Department).

2. Term: The term of this Agreement covers the maintenance requirements from October 1, 2020 to September 30, 2021 or until Fall cleanup, whichever is the last to occur. These maintenance requirements shall be conducted in three seasonal phases as described in paragraphs 4., 5. and 6.

3. Maintenance Seasonal Phases: The Contractor agrees that they will provide three separate seasonal maintenance phases for the areas described in paragraph 1. Those three seasonal phases include a spring cleanup phase, a summer maintenance phase and a fall/winter phase. During all phases, Contractor agrees to use sufficient weed control and appropriate fertilizer for plants and trees to promote a healthy growth.

4. Spring Cleanup Phase: Contractor agrees that the spring cleanup phase will include an initial clean up to begin in March as the weather permits. Spring cleanup will include:

- a. Picking up trash that gathered over the winter, pruning and/or cutting back grasses and perennials, shrubs shall be pruned to reduce size for visual obstruction and to eliminate dead, diseased or broken branches. Trees shall be structurally pruned to ANSI 300 standards.

b. Contractor will provide mulch. Contractor will provide a quote for mulch and installation when needed or requested. All mulch shall be in a small diameter and organic. Contractor will restore mulch depth to 1 inch around perennials and up to 3 inches around trees and shrubs. Mulch shall not touch any tree trunk. Mulch will be billed after acceptance of Contractor's quote and installation of material.

c. Contractor may use pre-emergent in a 6 inch band on bed edges adjacent to cement areas. Any pre-emergent must be labeled for use around trees, shrubs and grasses. Contractor agrees to use no other pre-emergent.

5. Summer Maintenance Phase: Contractor agrees to summer maintenance phase between April 1st and October 1st of the growing season, both the City and Contractor realize this Agreement begins and ends during this phase.

a. The summer maintenance shall incorporate a watering schedule to set and maintain a drip system for watering as well as to inspect the drip system monthly, at a minimum, to insure emitters are clear, tubing free of leaks, and release proper amounts of water.

b. Contractor agrees to check, at a minimum, each week to insure that trees and plants have adequate water. The parties agree the goal is for the beds to become self-sustaining after establishment and therefore, Contractor will monitor, at least weekly, to determine the appropriate amount of water needed to maintain the health and welfare of the plants and trees. The water should follow low water use guidelines for regular watering during establishment.

c. Contractor agrees to let the plants seed down, the plants will be dead-headed in the event of storm damage, trash will be picked up, the plant beds will be weeded and monitored for disease and insect issues. Contractor agrees to notify the storm water department if issues are discovered. In addition, the Contractor agrees to replace and move mulch away from the crowns of plants as needed after storms, monitoring the staking of trees to include removing stakes from all established trees and addressing tree stakes and straps as needed.

The City advises and the Contractor understands that trees currently growing are on a separate valve system in all of the locations, except Lot 4, and that rain sensors are available in the system for Lots 1 and 10. The Contractor agrees, if possible, the drip system should remain off after plants are established allowing sites to function naturally. Both parties understand and agree the watering and maintenance frequency is expected to vary depending upon rainfall, irrigation settings and fertility programs, Contractor agrees to use its best efforts to adjust watering and maintenance to the conditions.

6. Fall/Winter Phase: The Contractor agrees that the fall phase will include a leaf and debris clean up in the Fall of each year, after the leaves have fallen from trees. The

Contractor then agrees to call the Storm Water Department to schedule a meter shutoff.

7. Equipment and License: The Contractor will provide its own equipment, lubricants, bags, labor and all other things necessary to perform the work described herein to complete the three phases. The Contractor shall maintain a Chemical Applicators License during the term of this Agreement and provide a photocopy of the license to the City. The Contractor is responsible for providing the necessary chemical use records should a question or claim arise. The Contractor will be responsible to the City only for the manner in which the work is done and is not subject to the City's control concerning the details of how the work is to be done, except as noted. Contractor will be deemed as an independent contractor and under no circumstances will be deemed an employee of the City.

8. City's Obligation and Invoicing: The City will be responsible for the irrigation systems in the Areas of Maintenance set forth in paragraph 1. herein, including winterization of the systems each Fall. The City will work with Contractor when notified of issues in regard to the drip or irrigation systems. The City will pay the Contractor the sum of \$25,290.00 for the term of this Agreement (City's Obligation"). Payments will be made on a monthly basis with payment to be made no later than 15 days after submission by the Contractor of invoices for the monthly payment as set forth in this paragraph. Contractor agrees that locations a. through e. in paragraph 1. will be invoiced to the City of Scottsbluff BID (\$877.91 monthly or \$10,535 annual = \$2,107 per site x 5 sites/12 months); locations f. through k. will be invoiced to the Scottsbluff Stormwater Department (\$1,053.50 monthly or \$12,962 annual = \$2,107 per site x 6 site/months) and location l. will be invoiced to the Scottsbluff Water Department (\$175.58 monthly or \$2,107 annual = \$2,107 per site x 1 site/12 months. In addition, the City's Obligation will include reimbursement to Contractor for the purchase and use of fertilizer, pre-emergent, or weed killer at the locations listed in paragraph 1 of this Agreement. Reimbursement will occur within 15 days of presentation and approval by the City of statements showing the cost and amount of application of those items. Items of additional maintenance, not set forth herein, will be considered over and above the City's Obligation and must be agreed to and will be paid according to paragraph 13.e. of this Agreement.

9. Indemnification: To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the City, and its council members, officers, agents, and employees (each "indemnified party") from and against and reimburse the indemnified party on demand for any damages, payment, loss, claim, cost or expense (including professional fees and reasonable costs of investigation incurred in defending against any such damages, payment, loss, claim, cost or expense) made or incurred by or asserted against an indemnified party as a result of or in connection with Contractor's actions or inactions under this Agreement or the actions or inactions of any contractor, subcontractor, consultant, sub-consultant, or agent of the Contractor, provided that nothing herein shall require Contractor to indemnify, defend or hold harmless an indemnified party for payments, losses, claims, costs, or expenses resulting from the indemnified party's own negligence.

10. Assignment: This Agreement may not be assigned by Contractor without the prior written consent of the City.



11. **Termination:** This Agreement may be terminated by the City in the event the Contractor:

a. Acts with gross negligence or willful misconduct in connection with the performance of any of its responsibilities.

b. Defaults in the performance of any of the duties set forth in this Agreement, including failing to maintain a Chemical Applicators License or failing to provide chemical use records upon request and a reasonable time.

c. Acts against the best interests of the City in any material respect.

d. Upon ten days written notice provided by the City.

12. **Insurance:** During all times Contractor performs services for the City, Contractor agrees to maintain in effect a policy of professional liability insurance protecting Contractor and its employees in an amount of not less than \$1,000,000.00. Contractor shall maintain in effect a policy of Workers' Compensation Insurance as required by law. Contractor shall also maintain in effect an insurance policy in an amount of not less than \$1,000,000.00 which protects Contractor and the City from damages resulting from Contractor's conduct. Certificates showing that Contractor has the required insurance shall be filed with the City and updated as necessary. Certificates shall provide not less than ten days prior written notice of cancellation or material changes of terms of the policy. All such certificates shall name the City as an additional insured.

13. **Miscellaneous:**

a. The parties shall comply with and apply Nebraska law, without reference to the conflicts of law provisions thereof, in the performance and interpretation of this Agreement.

b. Contractor shall not subcontract or assign any portion of the services required hereunder without the prior written consent of the City.

c. This Agreement represents the entire understanding between the Contractor and the City and it supersedes all prior representations or agreements whether written or oral. This Agreement may be altered only by a written amendment signed by both the Contractor and the City.

d. If for any reason, whatsoever, any one or more of the provisions or any portion of any provision of this Agreement shall be held

or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any other provision of this Agreement inoperative, unenforceable, or invalid.

e. Additional maintenance in the Areas of Maintenance listed herein are excluded from this Agreement and will be in addition to the City's Obligation in under this Agreement. Additional maintenance for those areas shall be discussed and agreed to by both parties before it becomes the City's Obligation. Contractor will quote the additional maintenance by time and materials prior to commencement and the additional maintenance will be billed after completion only when both parties are in agreement the additional maintenance should be completed.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

DATED: \_\_\_\_\_, 2020.

CITY OF SCOTTSBLUFF, NEBRASKA

By \_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

PAIGE'S POSIES, LLC  
a Nebraska limited liability company,

By \_\_\_\_\_

Paige Manning, Member



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/29/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b>  American Family Insurance - Business Insurance PO Box 5316 Binghamton, NY 13902	<b>CONTACT NAME:</b> American Family Insurance - Business Insurance	
	<b>PHONE (A/C, No, Ext):</b> 866-908-0626	<b>FAX (A/C, No):</b>
	<b>E-MAIL ADDRESS:</b> service@amfambusinessinsurance.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Midvale Indemnity Company	<b>NAIC #</b> 27138
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 155481011799571

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY						
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	N	N	GLP1034306	01/26/2020	01/26/2021	EACH OCCURRENCE \$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000
							MED EXP (Any one person) \$5,000
							PERSONAL & ADV INJURY \$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$2,000,000
	OTHER:						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident)
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB <input type="checkbox"/> OCCUR						EACH OCCURRENCE
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE
	DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N <input type="checkbox"/>	N/A					PER STATUTE
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/>						OTH-ER
	(Mandatory in NH)						E.L. EACH ACCIDENT
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE
	PROFESSIONAL LIABILITY						E.L. DISEASE - POLICY LIMIT
							OCCURRENCE
							AGGREGATE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Landscape and Gardening Services

**CERTIFICATE HOLDER****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

Hello PAIGE MANNING,

Thank you for shopping with us. We'd like to let you know that we have received your order and are preparing it for shipment. Once your package ships we will send an email with a link to track your order. If you would like to view the status of your order, please visit [Check Order Status](#) on [UNL Marketplace](#). If you have any questions about your order please contact us at [vschroeder2@unl.edu](mailto:vschroeder2@unl.edu) or call us at 800-627-7216 Monday - Friday, 9am - 5pm CST.

## Order Confirmation

Order #900005793

Placed on Thursday, August 13, 2020

Your order is billed to:

**PAIGE MANNING**

**Paige's Posies LLC**

**2422 AVENUE C**

**SCOTTSBLUFF, Nebraska, 69361**

**United States**

**T: 3086375881**

Your chosen payment method:

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Reports5**

**Council update and decisions regarding the City's response to COVID-19.**

**Staff Contact: Rick Kuckkahn, Interim City Manager**

# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Reports6**

**Council to discuss and consider action on the Contract with Waste Connections of Nebraska, Inc. to provide disposal services to the City and authorize the Mayor to sign the Contract.**

**Staff Contact: Rick Kuckkahn, Interim City Manager**

## DISPOSAL SERVICE AGREEMENT

This Disposal Service Agreement (this “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between City of Scottsbluff, Nebraska, a municipality organized and existing under the laws of the State of Nebraska with an office at 2525 Circle Dr, Scottsbluff, NE 69361 (hereinafter referred to as “Customer”), and Waste Connections of Nebraska, Inc., a Delaware corporation, with an office at 710 Country Club Road, Gering, Nebraska 69341 (hereinafter referred to as “WC of NE”).

### ARTICLE I DESIGNATED WASTES

During the term of this Agreement, subject to any periodic quantity or other limitation imposed by applicable federal, state, local or administrative law, rule, regulation, order, consent agreement, ordinance, permit (including, but not limited to, WC of NE’s transfer station operating permit with the Nebraska Department of Environmental Quality (“NDEQ”) or otherwise, WC of NE, during normal hours of operation, shall receive and dispose of all the non-hazardous municipal solid waste (“Solid Waste”) and recyclable material as further described on Exhibit A attached hereto and incorporated herein by reference (“Recyclable Material” and together with Solid Waste collectively referred to as ~~collectively “Solid-Acceptable Waste”~~ as further set forth on Exhibit A attached hereto and incorporated herein by reference, excluding any and all: (i) radioactive, volatile, corrosive, highly flammable, liquid, explosive, biomedical, infectious, biohazardous, pathological, toxic or hazardous material as defined by applicable federal, state or local laws or regulations, and/or (ii) materials WC of NE is unable to accept in accordance with its municipal solid waste permit with the NDEQ (collectively (“Excluded Waste”), delivered by Customer or its agent to the WC of NE Transfer Station located at 710 Country Club Road, Gering, NE 69341 (the “Transfer Station”), and Customer shall deliver all of the Solid-Acceptable Waste it collects, or contracts with third parties to have collected, to the Transfer Station. Customer shall arrange to use the Transfer Station as its exclusive disposal facility for Solid-Acceptable Waste. The term “hazardous waste” as used herein shall include, but not be limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Agency or any state agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, and including future amendments thereto, and applicable state and local law.

Upon reasonable requested by WC of NE, Customer shall, but in event more than two (2) time per calendar year, in addition to any labeling, placarding, marking, manifest or other such documentation required by law, provide WC of NE, with a representative sample of the Solid Waste to be disposed at the Transfer Station that would be of material significance to the handling of such Solid Waste (together, a “Waste Profile”). ~~Customer shall promptly furnish, upon request, to WC of NE any information regarding known, suspected, or planned changes in composition of such Solid-Acceptable Waste hereunder, and Customer shall update the applicable Waste Profile accordingly. Customer warrants that all Solid Waste specified in a Waste Profile and delivered to WC of NE shall conform to the description set forth on the Waste Profile.~~ Customer has an obligation to inform WC of NE of any new information, or information not previously provided to WC of NE by Customer, which may affect the acceptability of the waste by WC of NE. Further, Customer shall comply with reasonable WC of



~~NE requests for evidence of Customer's continuing compliance with the terms of the Agreement including but not limited to the following: (i) providing new, updated waste profiles on the Solid Waste(s) offered for disposal or, (ii) providing appropriate certification that the Solid Waste being offered for disposal is accurately reflected by the appropriate application or, (iii) re-sample the Solid Waste at Customer's expense if reasonable cause exists as to its acceptability under the terms of this Agreement or, (iv) allow WC of NE to re-sample the Solid Waste if reasonable cause exists as to its acceptability under the terms of this Agreement (and Customer shall be responsible for all costs and expenses associated with such sampling if such waste is determined to be Excluded Waste), or (v) all of the above. Provided, the determination of Excluded Waste must be evidenced by samples of Excluded Waste present at the Transfer Station before Customer is required to comply with any of WC of NE's request.~~

## ARTICLE II TITLE

Title to the SolidAcceptable Waste delivered to the Transfer Station by Customer or Customer's third party contractors shall be transferred to and vest in WC of NE at the time the SolidAcceptable Waste is fully unloaded at the working face of the Transfer Station and Customer's vehicle has departed such working face. Prior thereto, title to the SolidAcceptable Waste shall be in, and risks and responsibilities therefore shall be borne by, Customer. Title to and liability for Excluded Wastes shall at no time vest or be transferred to WC of NE, and shall at all times remain with Customer.

~~Notwithstanding the foregoing, in the event that any such Excluded Waste is found at any time WC of NE's municipal solid waste permit with NDEQ, or such Customer shall work with WC of NE to reasonably accomplish, at Customer's sole cost and in a timely fashion, the removal from the Transfer Station and/or otherwise lawful disposal of such Excluded Waste. If Customer fails to timely cooperate with WC of NE to effect removal of the Excluded Waste, Customer may arrange for the transportation and disposal of the Excluded Waste at a facility permitted to accept such wastes and Customer shall promptly reimburse Customer for all costs incurred by Customer in connection therewith. Waste materials which are discovered to be or contain any Excluded Waste may be refused or rejected by WC of NE at any time (even after acceptance by WC of NE). WC of NE has the right to refuse, or to reject after acceptance, any load(s) of waste(s) delivered to the Transfer Station, including if WC of NE believes Customer has breached (or is breaching) its representations, warranties, covenants or agreements hereunder, or any applicable federal, state or local laws, regulations, rules or orders, even if only a portion of such waste load includes Excluded Waste. WC of NE shall have the right to inspect all vehicles and disposal containers of waste haulers, including Customer's vehicles, in order to determine whether the waste is Acceptable Waste or Excluded Waste pursuant to this Agreement and all applicable federal, state and local laws, rules and regulations. WC of NE's exercise, or failure to exercise, its rights hereunder shall not operate to relieve Customer of its responsibilities or liability under this Agreement. If it is determined that waste provided by Customer is Excluded Waste and if such waste is in WC of NE's possession, WC of NE shall either: (i) prepare such Excluded Waste for lawful transportation by WC of NE and return to Customer, or (ii) require Customer to promptly remove such Excluded Waste, within a reasonable time after rejection by WC of NE. Customer shall be responsible for, and bear all expenses, costs, fines, penalties, liabilities, and damages incurred by WC of NE, as a result of the treatment or disposal of Excluded Waste,~~



including, without limitation, the reloading and removal of Excluded Waste delivered to the Transfer Station.

### ARTICLE III COMPLIANCE WITH LAWS

WC of NE and Customer shall comply with all applicable administrative, local, state, and federal laws, rules and regulations pertaining to the delivery and disposal of the SolidAcceptable Waste. Customer shall also comply with work and safety rules, which have been promulgated and provided in written form to Customer by WC of NE to govern operations at the Transfer Station. This Agreement provides Customer with a license to enter the Transfer Station for the limited purpose of, and only to the extent necessary for, off-loading SolidAcceptable Waste at the Transfer Station in the manner directed by WC of NE. Except in an emergency, Customer's personnel shall not leave the immediate vicinity of their vehicle. After off-loading the SolidAcceptable Waste, Customer's personnel shall promptly leave the Transfer Station. Under no circumstances shall Customer or its personnel engage in any scavenging of waste or other materials at the Transfer Station. WC of NE reserves the right to make and enforce reasonable rules and regulations concerning the operation of the Transfer Station, the conduct of the drivers and others on the Transfer Station premises, quantities and sources of waste, and any other matters necessary or desirable for the safe, legal and efficient operation of the Transfer Station including, but not limited to, speed limits on haul roads imposed by WC of NE, and the wearing of hard hats and other personal protection equipment by all individuals allowed on the Transfer Station premises. To the extent Customer is provided with written copies of the rules and regulations, Customer agrees to conform to such rules and regulations as they may be established and amended from time to time. WC of NE may refuse to accept SolidAcceptable Waste from and shall deny an entrance license to, any of Customer's personnel whom WC of NE believes is under the influence of alcohol or other chemical substances. Customer shall be solely responsible for its employees and subcontractors performing their obligations in a safe manner when at the facility of WC of NE.

~~WC of NE shall have the right to inspect all vehicles and containers of waste haulers, including Customer's vehicles, in order to determine whether the waste is Solid Waste or Excluded Waste pursuant to this Agreement and all applicable federal, state and local laws, rules and regulations. WC of NE's exercise, or failure to exercise, its rights hereunder shall not operate to relieve Customer of its responsibilities or liability under this Agreement.~~

### ARTICLE IV DISPOSAL RATES

The rates for disposal of ~~the~~ Solid Waste and Recyclable Materials to be paid by Customer under this Agreement are set forth in Exhibit AB. The rates in Exhibit AB shall be subject to adjustments as set forth in Exhibit AB and in this Article IV.

In addition to all rate adjustments provided for in Exhibit A, WC of NE, in its sole direction, may request an adjustment to the rates set forth herein to fully cover costs arising from, relating to, or

associated with the adoption of new, or changes in existing, federal, state, local or administrative laws, rules, regulations or regulatory requirements or guidelines (including changes in construction or interpretation thereof or changes in the manner of method of enforcement thereof). WC of NE will make such request at least thirty (30) days prior to the effective date of such adjustments, and Customer will approve or deny such adjustment requests within such thirty (30) day period. If Customer denies any such request or fails to act within the time period set forth above, WC of NE, in its sole and absolute discretion, may terminate this Agreement on one hundred twenty (120) days' prior written notice to Customer. WC of NE will, r endeavor to notify Customer of an impending rate adjustment and indicate the reason for said adjustment at least thirty (30) days in advance of its implementation.

## **ARTICLE V TERM AND TERMINATION**

The effective date of this Agreement is \_\_\_\_\_, 2020 (the "Effective Date"). The term of this Agreement shall run for a period of five (5) years from the Effective Date, unless sooner terminated by the written consent from both parties, or as a result of an Event of Default, as defined below.

It shall constitute an "Event of Default" under this Agreement if either party breaches this Agreement or defaults in the performance of any of its obligations contained herein, and such breach or default shall continue for a period of thirty (30) days after the breaching/defaulting party's receipt of written notice from the other party specifying such breach or default and requiring it to be remedied; provided, however, that if any such breach or default (except the nonpayment of amounts due and owing by Customer) cannot with due diligence be remedied by the breaching/defaulting party within such thirty (30) days, and such party commences to remedy such breach or default within such thirty (30) day period and thereafter prosecutes such remedy with reasonable diligence, the period of time for remedy of such breach of default shall be extended so long as the breaching/defaulting party prosecutes such remedy with reasonable diligence, but in no event beyond sixty (60) days after receipt of the default notice. Following the occurrence of any Event of Default, the non-breaching party/defaulting party may terminate this Agreement and/or exercise any other remedy it may have under this Agreement, applicable law and principles of equity.

## **ARTICLE VI PAYMENT**

Customer agrees to make payment within thirty (30) days after receipt of invoice, which payment shall be submitted to the WC of NE office on such invoice. If Customer fails to make timely payment of an undisputed invoiced amount, WC of NE may suspend Customer's right to use the Transfer Station at any time and for such period of time as Customer remains delinquent in its payment obligations. WC of NE may impose and Customer agrees to pay a late fee as reasonably set by WC of NE for all past due payments, and interest on all past due payments at the rate of one and one-half percent (1½%) per month, provided that no such late fee or interest charge shall exceed the maximum rate allowed therefor by applicable law.

## ARTICLE VII INDEMNITY / INSURANCE

Customer hereby agrees to indemnify and hold WC of NE and its employees and agents harmless from and against any and all loss, damage, liability, or expense (including, but not limited to, reasonable attorneys fees and related costs) arising out of any claim for loss of or damage to property, including WC of NE's property, and injuries to or death of persons, including Customer's or WC of NE's employees, caused by or resulting from the negligence or willful misconduct, breach of this Agreement or violation of any federal, state or local laws or regulations by Customer or its employees, agents or elected officials, or the delivery to the Transfer Station pursuant to this Agreement of Excluded Waste.

WC of NE hereby agrees to indemnify and hold Customer and its employees, agents and elected officials harmless from and against any and all loss, damage, liability, or expense (including, but not limited to, reasonable attorney fees and related costs) arising out of any claim for loss of or damage to property, including Customer's property, and injuries to or death of persons, including WC of NE's or Customer's employees, to the extent caused by or resulting from the negligence or willful misconduct of WC of NE, its employees or agents or WC of NE's violation of any federal, state or local laws or regulations.

The indemnity obligations set forth herein shall survive the expiration or earlier termination of this Agreement.

Each party shall maintain in full force and effect throughout the term of this Agreement the following types of insurance in at least the amounts specified below:

<u>Coverages</u>	<u>Minimum Amounts of Insurance</u>
Worker's Compensation	Statutory
Employer's Liability	\$500,000 each Bodily Injury by Accident \$500,000 policy limit Bodily Injury by Disease \$500,000 each occurrence Bodily Injury by Disease
General Liability	\$2,000,000 combined single limit
Automobile Liability	\$2,000,000 combined single limit

All insurance will be by insurers authorized to do business in the state in which the Transfer Station is located. Prior to Customer being allowed on Transfer Station premises, Customer ~~upon request shall~~ provide ~~each part WC of NE shall provide the other~~ with certificates of insurance evidencing the above coverage. Customer warrants that it will secure the above minimum amounts of insurance from any subcontractor. Each party shall be named as additional insured under all of the other party's insurance policies, with the exception of workers' compensation policies. To the extent of each party's indemnification obligations hereunder, each party agrees to waive all rights of recovery by way of subrogation against the other party in

connection with any claims and/or damages covered by any of the insurance policies required under this Section, and each party shall cause all such insurance policies to provide that the insurance company waives all right of recovery by way of subrogation against the other party in connection with any claims and/or damages covered by such policies.

## **ARTICLE VIII FORCE MAJEURE**

Except for the obligation to pay for services rendered, neither party hereto shall be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including, but not limited to, strikes, riots, war, fire, acts of God, pandemic, or the revocation, suspension, denial, surrender or modification of any permit, license or approval regarding use, operation or closure of the Transfer Station.

## **ARTICLE IX ASSIGNMENT**

This Agreement is assignable, subject to the prior written consent of both parties, and shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns; provided, however, that no such consent shall be unreasonably withheld, conditioned or delayed, nor shall such consent be required in the event of WC of NE's assignment of this Agreement to an affiliate of WC of NE, however, WC of NE agrees to provide written notice of the assignment and contact information of the assignee to Customer within thirty (30) days of the assignment.

## **ARTICLE X ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between WC of NE and Customer with respect to Customer's disposal of ~~Solid~~[Acceptable](#) Waste at the Transfer Station, and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, with respect to the subject matter hereof. No changes, alterations or modifications to this Agreement will be effective unless in writing and signed by WC of NE and Customer.

## **ARTICLE XII MISCELLANEOUS**

Savings Clause. Invalidation of all or any portion of the provisions herein contained by law, judgment, or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Waivers. One or more waivers of any covenant or agreement contained herein by a party shall not be constructed as a waiver of a further breach of the same.

Captions. The captions and Article headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe neither the scope of this Agreement nor the intent of any provision thereof.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one agreement binding on the parties hereto. Facsimile copies of signature pages shall be deemed originals.

Governing Law. This Agreement shall be governed by the laws of the State of Nebraska, without regard to that state's conflicts of laws jurisprudence.

Attorneys Fees. In any dispute to enforce this Agreement, the prevailing party is entitled fully to recover its reasonably incurred costs, including reasonable attorneys' fees incurred in the enforcement of its rights hereunder. In determining which party is the "prevailing party," the Court must take into account the claims pursued, the claims on which the pursuing party was successful, the claims on which the defending party was successful, the amount of money sought, the amount of money awarded, and offsets or counterclaims pursued (successfully or unsuccessfully) by the other party. Notwithstanding the foregoing, if a written settlement offer or counteroffer is not accepted and the judgment or award finally obtained (not including costs and reasonable attorneys' fees) is equal to or more favorable than such offer, or counteroffer, then the offeror is deemed to be the prevailing party.

Notices: All notices or other communications to be given hereunder shall be in writing and shall be deemed given when mailed by registered or certified United States mail at the addresses first hereinabove written.

***[Signature Page Follows]***

IN WITNESS WHEREOF, the parties have executed this Disposal Service Agreement as of the date first above written.

WC of NE:

Customer:

**WASTE CONNECTIONS OF NEBRASKA,  
INC.**

**CITY OF SCOTTSBLUFF, NEBRASKA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT AB****SERVICE DETAIL / RATES FOR SOLID WASTE DISPOSAL****Solid Waste Service Detail**

The transfer station is available Monday thru Friday, from 7:00 a.m. to 4:00 p.m. for the receipt of Solid Waste. -Solid Waste accepted at the transfer station will be transported to our Subtitle D regulated J Bar J Landfill located south of Ogallala in Perkins County, Nebraska. The landfill is licensed by the Nebraska Department of Environmental Quality as a municipal solid waste landfill. The landfill meets or exceeds all of the state design and operational criteria. The landfill is in full compliance with all of Title 132 (Solid Waste Rules and Regulations) and has no groundwater contamination or gas migration issues.

**Recyclable Material Service Detail**

The transfer station is available Monday through Friday—, from 7:00 a.m. to 4:00 p.m. for the receipt of Recyclable Materials. WC of NE may from time to time change the days and times on which it will accept Recyclable Materials on thirty (30) days prior written notice to Customer. For the purposes of this Agreement, “Recyclable Materials” shall mean: Food Boxes/Boxboard, Plastic Bottles & Containers (#1-#7), Newspaper, Cardboard (Cut Down to 3’x3’ or Less), Brown Paper Bags, Aluminum Foil & Trays (Cleaned), Phone Books, Hard/Soft Back Books, Catalogs & Magazines, Paper (White, Colored & Green Bar), Junk Mail, Tin & Aluminum Cans (Including Caps & Lids). Customer agrees to comply with any description of and/or procedures with respect to removal of contaminants or preparation of Recyclable Materials as reasonably provided by WC of NE. In the event that any Recyclable Materials furnished to WC of NE by Customer are, due to presence of contaminants, rejected by a recycling facility or otherwise are reasonably determined by WC of NE not to be resalable or to have a reduced resale value, WC of NE may, reject such load(s) of Recyclable Materials. Customer shall pay WC of NE the Basic Solid Waste Disposal Price for and rejected loads of Recyclable Materials (instead of the Basic Recyclable Material Disposal Price).

**Rates**

A) Basic Disposal Prices. The basic disposal price paid by Customer to WC of NE for Solid Waste (excluding any special waste) delivered to the Transfer Station hereunder (the “Basic Solid Waste Disposal Price”) shall be Forty--Three 00/100 Dollars (\$43.00) per Ton. The basic disposal price paid by Customer to WC of NE for Recyclable Material (excluding any special waste) delivered to the Transfer Station hereunder (the “Basic Recyclable Material Disposal Price”) shall be Ninety-Eight 00/100 Dollars (\$98.00) per Ton. Neither ~~the~~ Basic Solid Waste Disposal Price nor the Basic Recyclable Material Disposal Price does not include sales, use, refuse collection, solid waste taxes, or local program fees, if applicable, for which Customer shall be solely responsible. The disposal price for special waste shall be as agreed to between the parties from time to time.

B) CPI Adjustment. There shall be no escalation in the Basic Solid Waste Disposal Price until \_\_\_\_\_, 2021. On that date and each year thereafter, the Basic Solid Waste Disposal Price and the Basic Recyclable Material Disposal Price shall be increased as follows:

The Basic Solid Waste Disposal Price and the Basic Recyclable Material Disposal Price shall each automatically increase by one hundred percent (100%) of the actual percentage change in the Consumer Price Index for the Prior Rolling Twelve-Month Period (as defined below). The Consumer Price Index or “CPI-U” means the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, 1982-84=100, as prepared by the United States Department of Labor, Bureau of Labor Statistics (“BLS”), or its successor. If BLS designates an index with a new title or code number or table number as being the continuation of the index cited above, the new index will be used. Otherwise, the parties shall agree upon a new index. The “Prior Rolling Twelve Month Period” shall be calculated by establishing the CPI-U on each \_\_\_\_\_ as compared to the immediately preceding \_\_\_\_\_ during every year of the term.

C) Additional Basic Recyclable Material Disposal Price Adjustment. Customer acknowledges and agrees that the Basic Recyclable Material Disposal Price is based off of the current material recovery facility processing fee of Forty and 00/100 Dollars (\$40.00) per Ton (“Processing Fee”) at the Waste Management Material Recovery Facility located at 5395 Franklin Street, Denver, Colorado (“WM MRF”). In addition to all other rate adjustments provided for herein, beginning on October 1, 2020 and on every January 1<sup>st</sup>, April 1<sup>st</sup>, June 1<sup>st</sup>, and October 1<sup>st</sup> thereafter for the remainder of the Term, the Basic Recyclable Material Disposal Price shall automatically adjust on a dollar-for-dollar basis based on any adjustments in the Processing Fee being charged at the WM MRF on such January 1<sup>st</sup>, April 1<sup>st</sup>, June 1<sup>st</sup>, and October 1<sup>st</sup>. For the avoidance of doubt and by way of example only, if the Basic Recyclable Material Disposal Price is \$98.00 per Ton, and on October 1, 2020, the Processing Fee at the WM MRF is \$43.25 per Ton, the Basic Recyclable Material Disposal Price beginning on October 1, 2020 shall be \$101.25 per Ton.

D) Maximum Basic Recyclable Material Disposal Price. Notwithstanding anything contained herein to the contrary, if at any time the Basic Recyclable Material Disposal Price exceeds One Hundred Ten and 00/100 Dollars (\$110.00) per Ton, Customer may discontinue its recycling program and cease bringing Recyclable Materials to WC of NE.



# **City of Scottsbluff, Nebraska**

**Monday, August 31, 2020**

**Regular Meeting**

## **Item Reports<sup>7</sup>**

**Council to discuss and consider action on the Interlocal Cooperative Agreement for the Expenditure of Reserve Account Funds with the City of Gering and authorize the Mayor to sign the Agreement.**

**Staff Contact: Rick Kuckkahn, Interim City Manager**

**GERING AND SCOTTSBLUFF  
INTERLOCAL COOPERATIVE AGREEMENT  
FOR THE EXPENDITURE OF RESERVE ACCOUNT FUNDS**

This Interlocal Cooperative Agreement for the expenditure of Reserve Account funds ("Reserve Account Agreement") made between the City of Scottsbluff, Nebraska, a municipal corporation ("Scottsbluff") and the City of Gering, Nebraska, a municipal corporation ("Gering").

WHEREAS, the Interlocal Cooperation Act, at Nebraska Revised Statute §13-801 et.seq. provides that two or more public agencies may enter into an agreement for the joint or cooperative action, and this Agreement is made and entered into pursuant to the provisions of the Act; and

WHEREAS, Gering and Scottsbluff desire to make the most efficient use of their taxing authority and other powers to enable them to cooperate with each other on the basis of mutual advantage to provide a facility and solid waste disposal services for the residents in a manner pursuant to the most efficient provision of solid waste disposal services; and

WHEREAS, Gering and Scottsbluff have entered into an Agreement for the construction of a new landfill and sanitation services dated July 2, 2007 (hereinafter "2007 Agreement") in which they agreed they would partner in the siting, construction and operation of a new solid waste disposal facility. Pursuant to that 2007 Agreement, Gering and Scottsbluff have accumulated funds for the siting and construction of a new solid waste disposal facility and established a non-refundable "Reserve Account for New Landfill Site."

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, it is agreed by the parties as follows:

1. **DEFINITIONS.** For the purpose of this Reserve Account Agreement, the following definitions apply:
  - a. Solid Waste Disposal Facility shall mean (a "Facility") and site owned jointly by Gering and Scottsbluff for the processing, treatment and disposal of solid waste.
  - b. Participant means an entity which is a public agency within the meaning of the Interlocal Cooperation Act, including Gering and Scottsbluff, which is either a "county" or a "municipality" within the meaning of such terms as defined in the Integrated Solid Waste Management Act and a signatory to this Agreement, regardless of when the signing occurs.
  - c. Reserve Account means the non-refundable "Reserve Account for New Landfill Site" identified in paragraph 10 of the 2007 Agreement. The 2007 Agreement is attached hereto as Exhibit "A" and incorporated fully herein by reference.
2. **NO SEPARATE LEGAL ENTITY.** No separate legal or joint entity shall be created by this Agreement.

3. PURPOSE.

a. The purposes of this Agreement are to carry out those public powers, duties and obligations of the governing bodies of Gering and Scottsbluff relating to expenditure of Reserve Account funds for the siting, funding, development, and construction of a site for a Solid Waste Disposal Facility within Scotts Bluff County.

b. In order to obtain the objectives and purposes of this Agreement, Gering and Scottsbluff will observe the applicable provisions of this Agreement in good faith and will cooperate with all or any other Participants that may become party to this Agreement when possible.

4. TERM.

a. This Agreement shall be effective the \_\_\_\_ day of \_\_\_\_\_, 2020, and continue in full force and effect for the life of the currently existing Gering Landfill, or until an Interlocal Agreement is entered into by Gering and Scottsbluff for the operation of a new joint solid waste disposal facility, whichever occurs sooner. Both Gering and Scottsbluff agree to participate jointly with any and all other parties that may become a signatory on this Agreement and to conduct the activities described herein jointly and in equal partnership with one another.

b. After this Agreement is signed, any other county, city, political subdivision or other public agency meeting the requirements set forth in the Interlocal Cooperation Act, may from time to time become a Participant by the execution of this Agreement upon the unanimous approval of Gering and Scottsbluff.

5. TERMINATION.

a. In the event Gering or Scottsbluff withdraws from this Agreement, including any other Participant that becomes a Participant in the future, that Participant will forfeit any and all money contributed into the Reserve Account pursuant to Paragraph 10 of the 2007 Agreement, but will continue to be a responsible Participant for its pro-rata share of any liability entered into while a Participant.

b. Gering, Scottsbluff, or other Participant, may withdraw from this Agreement upon one year's written notice to the other Participants. If Gering or Scottsbluff withdraw from this Agreement, the withdrawing City shall be considered to have failed to participate in the joint effort to site and build a new landfill pursuant to Paragraph 10 of the 2007 Agreement.

6. ENFORCEMENT. In the event that either Participant fails to perform its obligations pursuant to this Agreement, written notice will be given to the Participant specifying the failure to perform and establishing a reasonable period for the Participant to fulfill its obligations. The Participants shall work together in good faith to resolve any dispute regarding performance. If the failing Participant

continues to fail to perform its obligations, the other Participant may immediately terminate the failing Participant's participation in this Agreement. This will not limit the right of the any Participant to enforce the rights and obligations established herein or in any service agreement including the 2007 Agreement. Any Participant so terminated shall remain obligated to fulfill its contractual obligations under any service agreement including the 2007 Agreement.

7. ADMINISTRATORS. Gering's City Administrator, or his or her Designee, and Scottsbluff's City Manager, or his or her Designee, shall be considered co-administrators of this Agreement and shall be responsible for administering the cooperative undertaking set forth herein. All decisions made pursuant to this Agreement shall be made by unanimous consent of both co-administrators. Any decision made pursuant to this Agreement without the unanimous consent of both co-administrators shall be null and void. Both of the administrators agree to expend funds from the Reserve Account by unanimous consent of both co-administrators for the siting, funding, and construction of a new joint solid waste disposal facility pursuant to all applicable laws, rules and regulations as set forth by the Nebraska Department of Environmental Quality and shall perform all the duties and functions to administer this Agreement upon the direction of their respective Mayors and City Councils.

- a. The duties of the co-administrators shall include, but not be limited to, the following:
  - (i) Supervising the attainment of the objectives and purposes of this Agreement and making recommendations to the Participant's governing bodies;
  - (ii) Administering the terms and conditions of this Agreement;
  - (iii) Administering the powers of this Agreement; and
  - (iv) Specifying the duties and authorities of any other committees or working groups that may be established from time to time by the Co-Administrators.
- b. The governing bodies of Gering and Scottsbluff shall expressly reserve certain duties under this Agreement which shall include:
  - (i) Approving additional Participants;
  - (ii) Termination of Agreement;
  - (iii) Enforcement of parties obligations;
  - (iv) Amending this Agreement;
  - (v) Financing of any personal or real property purchase; and
  - (vi) Providing directives to their respective co-administrator with respect to all aspects of carrying out the undertaking set forth herein.

8. MANNER OF ACQUIRING, HOLDING AND DISPOSING OF REAL AND PERSONAL PROPERTY. Both Gering and Scottsbluff shall jointly cooperate and shall jointly have the authority to acquire, hold and dispose of real property and personal property needed for the joint operation of the Solid Waste Disposal Facility. Bids or quotes for personal property which may be acquired pursuant to this Agreement shall be submitted through co-administrators and presented to the Participants governing body. Once approved, all invoices submitted shall be paid out of the Reserve Account funds, or in the event that said expenditure exceeds the available Reserve Account funds in whole or in part, said expenditure shall be divided equally and paid for by each Participant's budgetary process and the personal property shall be held in the name of the Participant which instigated the purchase, but said property shall be used for purposes related to this Agreement only upon unanimous consent of both co-administrators.
9. INCOME, FINANCING AND BUDGETING. The siting, study, evaluation, establishment, development, funding and construction of the solid waste disposal facility will be on an equal basis between each Participant. The cost to purchase equipment and operating supplies, as well as the cost of personnel to operate the Facility shall be divided equally between the Participants or as the Participants shall agree. All income or losses generated from the operation of the Facility shall be divided equally between the Participants or as the Participants agree. This Agreement will be financed by the Participants through their regular budgetary process.
10. AMENDMENT OF AGREEMENT. This Agreement may only be amended by the unanimous consent of all Participants to this Agreement. The amendment must be in writing and signed by both parties.
11. GOVERNING LAW. This Agreement shall be construed in accordance with and governed by the laws of the State of Nebraska.
12. SEVERABILITY. If any provision of this Agreement shall be declared invalid or unenforceable by a court of competent jurisdiction, such declaration shall not affect the validity of the remaining provisions of this Agreement.
13. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be and constitute one in the same instrument.
14. BINDING AGREEMENT. This Agreement shall be binding upon the parties and their successors in interest.
15. 2007 AGREEMENT. The 2007 Agreement and Addendum shall continue in full force and effect. This Reserve Account Agreement shall not be considered a waiver of any legal or equitable right that has arisen or may arise in the future with respect to the 2007 Agreement and Addendum. Any terms, conditions or provisions in this Reserve Account Agreement which shall contravene the 2007 Agreement and Addendum are to be considered null and void.

16. INTERLOCAL AGREEMENT FOR THE OPERATION OF A SOLID WASTE DISPOSAL FACILITY. Gering and Scottsbluff, and any other Participant, agree that a future interlocal agreement will be needed to establish the rights and responsibilities of parties with respect to solid waste disposal issues for a new joint facility, including but not limited to the funding, operation, maintenance, repair, and eventual closure of the new joint solid waste disposal facility. Gering, Scottsbluff, and any other Participant agree to work together in good faith to set forth those rights and responsibilities in a future interlocal agreement.

IN WITNESS WHEREOF we have subscribed our names this \_\_\_\_ day of \_\_\_\_\_, 2020

CITY OF GERING, NEBRASKA,

By: \_\_\_\_\_  
Mayor

Attest : \_\_\_\_\_  
City Clerk

CITY OF SCOTTSBLUFF, NEBRASKA,

By: \_\_\_\_\_  
Mayor

Attest : \_\_\_\_\_  
City Clerk