

City of Scottsbluff, Nebraska

Monday, December 21, 2020

Regular Meeting

Item Reports⁷

Council to discuss and consider action on a Reserve Account Agreement with the City of Gering; authorize the Mayor to sign the Agreement or give direction to staff.

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" which is subject to forfeit.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Reserve Account 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, which is subject to forfeit. 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 Reserve Account Agreement.

3. PURPOSE.

a. The purposes of this Reserve Account 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.

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

4. TERM.

a. This Reserve Account 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 a future 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 or any future Agreement and to conduct the activities described herein jointly and in equal partnership with one another.

b. After this Reserve Account 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 Reserve Account Agreement or future Interlocal Agreement, upon the unanimous approval of Gering and Scottsbluff.

5. TERMINATION.

a. In the event Gering or Scottsbluff withdraws from this Reserve Account 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. In the event Gering or Scottsbluff withdraws from this Reserve Account Agreement, or fails to participate in a new solid waste disposal facility, the failing party shall forfeit any interest in real or personal property to the extent such property was acquired by the parties using Reserve Account funds pursuant to this Agreement, such forfeiture shall be to the same extent as the failing parties cumulative contributions to the Reserve Account identified in paragraph 10 of the 2007 Agreement.

b. Gering, Scottsbluff, or other Participant, may withdraw from this Reserve Account 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 Reserve Account 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 Reserve Account 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, unless those obligations are terminated under this Reserve Account Agreement or future Interlocal 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 Reserve Account Agreement and shall be responsible for administering the cooperative undertaking set forth herein. All decisions made pursuant to this Reserve Account Agreement shall be made by unanimous consent of both co-administrators. Any decision made pursuant to this Reserve Account 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 Reserve Account 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 Reserve Account 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 Reserve Account 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 Reserve Account Agreement only upon unanimous consent of both co-administrators.

9. INCOME, FINANCING AND BUDGETING. The siting, study, evaluation, establishment, development, funding, construction and operation 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 Reserve Account Agreement will be financed by the Participants through their regular budgetary process.

10. AMENDMENT OF AGREEMENT. This Reserve Account Agreement may only be amended by the unanimous consent of all Participants to this Reserve Account Agreement. The amendment must be in writing and signed by both parties.

11. GOVERNING LAW. This Reserve Account Agreement shall be construed in accordance with and governed by the laws of the State of Nebraska.

12. SEVERABILITY. If any provision of this Reserve Account 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 Reserve Account 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 Reserve Account 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