

City of Scottsbluff, Nebraska

Monday, December 4, 2023

Regular Meeting

Item Reports1

Council to discuss and consider action on the Interlocal Cooperation Agreement for Stormwater Specialist with the City of Gering and authorize the Mayor to sign the Agreement.

Staff Contact: Kevin Spencer, City Manager

INTERLOCAL COOPERATION AGREEMENT FOR STORMWATER SPECIALIST

The parties to this Interlocal Cooperation Agreement for the sharing of a Stormwater Specialist (“Agreement”) are the City of Scottsbluff, Nebraska, A Municipal Corporation, hereinafter referred to as “**SCOTTSBLUFF**,” and the City of Gering, Nebraska, A Municipal Corporation hereinafter referred to as “**GERING**” who agree to share the services of a Stormwater Specialist employed by Scottsbluff, hereinafter referred to as **SWS**.

WHEREAS, SCOTTSBLUFF and **GERING** are both regulated under the National Pollutant Discharge Elimination System (NPDES) as Small Municipal Separate Storm Sewer Systems (sMS4s);

WHEREAS, SCOTTSBLUFF, currently employs a **SWS** on staff to assist with the requirements of the NPDES permitting system, but **GERING** does not;

WHEREAS, SCOTTSBLUFF and **GERING** recognize that it will be mutually beneficial to share resources in order to meet similar requirements under the NPDES permitting system;

WHEREAS, SCOTTSBLUFF has agreed to allow its **SWS** to assist **GERING**; and

WHEREAS, SCOTTSBLUFF and **GERING** have each committed funds to pay for a portion of the cost for a Stormwater Specialist to implement the requirements of the NPDES sMS4 permit.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, **SCOTTSBLUFF** and **GERING** agree as follows:

1. **Purpose** – **SCOTTSBLUFF** will allow its **SWS** to assist **GERING** in its NPDES permitting system, as long as **SCOTTSBLUFF** employs a **SWS**. This Agreement shall not relieve any public agency of any obligation or responsibility imposed upon it by law but is intended to cooperate in the implementation of the requirements of NPDES MS4 Permit:
2. **Term and Cost Share** - **SCOTTSBLUFF** and **GERING** agree to fund the salary and benefits for a **SWS** for a one (1) year term, beginning December 11, 2023. **SCOTTSBLUFF** shall pay an amount equal to sixty percent (60%) of the costs, **GERING** shall pay an amount equal to forty percent (40%) of the costs. Costs are defined as salary and fringe benefits, including retirement, FICA, disability, health, and life insurance for one (1) full-time **SWS** working forty (40) hours per week. **GERING** shall pay an amount equal to forty-percent (40%) of the costs. **SCOTTSBLUFF** will bill **GERING** quarterly for **GERING’S** share of the payments due hereunder, and **GERING** shall pay such bills within thirty (30) days after the bills are received.

3. **Evaluations** - **SCOTTSLUFF** and **GERING** shall conduct good-faith discussions to evaluate the **SWS** regularly. The evaluation ensures that the **SWS** meets the requirements of **GERING** and **SCOTTSLUFF**.
4. **Agreement Renewal** - This Agreement may renew automatically for each successive one-year term upon the approval of **SCOTTSLUFF** and **GERING** unless it is determined after good-faith evaluations that the sharing of the **SWS** is no longer beneficial to either **SCOTTSLUFF** or **GERING**. Written notice of any intention to not renew the annual term must be sent to **SCOTTSLUFF** or **GERING** no later than May 1 of a calendar year.
5. **Supplies and Equipment** - **GERING** will provide the **SWS** with a computer, a phone, a vehicle, and anything necessary to complete their duties while in **GERING**.
6. **SWS Duties** - The duties of the **SWS** shall be as follows:
 - 6.1 Administer **SCOTTSLUFF** and **GERING'S** Storm Water Management Plans (SWMP) that have been approved by the Nebraska Department of Environment and Energy.
 - 6.2 Stay up to date on all requirements of the NPDES MS4 Permit and assist in writing a new SWMP during any subsequent permit renewals.
 - 6.3 Complete annual reports to NDEE in accordance with permit requirements.
7. **Scheduling** – 40% of **SWS's** time will be spent in **GERING**, and 60% of **SWS's** time will be spent in **SCOTTSLUFF**. The schedule will be determined by the **SWS** based on the work demands of the **SWS** and the needs of both **SCOTTSLUFF** and **GERING**.
8. **SWS Supervision** - The **SWS** shall be an employee of **SCOTTSLUFF** at all times and for all purposes. **SCOTTSLUFF** shall be directly responsible for all employee costs except as otherwise set forth herein. The supervision of the **SWS** shall be by **SCOTTSLUFF** with input from **GERING**.
9. **Insurance** - **SCOTTSLUFF** shall provide all insurance for the **SWS** with regard to this Agreement. This Agreement does not establish any partnership, joint venture, or any type of legal association between the parties but is to be construed as an interlocal agreement between the parties.
10. **Entire Agreement, Severability** - This Agreement constitutes the entire agreement between the parties and may be amended only by a written document signed by the representatives of the legislative bodies of each of the parties. If any portion of this Agreement is deemed to be unenforceable or against public policy, it shall not affect

the remaining portions of this Agreement.

11. **Controlling Law** - The terms of this Agreement shall be interpreted and enforced under the laws of the State of Nebraska. It is agreed that if any part, term, condition or provision of this Agreement is held to be illegal or in conflict with any other laws of Nebraska, or the United States, the validity of the remaining parts, terms, conditions or provisions should not be effected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain that particular part, term, condition or provision held to be invalid.
12. **Liability and Indemnification** — To the extent allowed by law, each party shall indemnify, defend and hold harmless each other and all other parties for damages, claims, demands, suits, judgments, costs and expenses arising from this Agreement.
13. **Administration** – No separate legal or administrative entity is created by this Agreement and not property, either personal or real, will be jointly acquired or owned under this Agreement. All property acquired under the terms of this Agreement, if any, shall belong to the acquiring party and shall be disposed of by the party who acquired the property. The City Manager for **SCOTTSBLUFF** will administer the cooperative undertaking described in this Agreement.
14. **Financing and Budgeting** - This Agreement and the matters contemplated herein do not require joint financing, nor shall a joint budget be required. Each party will budget separately to pay the costs and expenses incurred to fulfill its obligations under this Agreement. For planning and budgeting purposes, **SCOTTSBLUFF** shall provide **GERING** the estimated cost of the **SWS** no later than May 15 of each year.
15. **Expenses** - Except as otherwise provided herein, each party shall be responsible for its own expenses related to this Agreement.
16. **Taxes** - This Agreement does not grant the Parties any authority to levy, collect, or account for any tax authorized under Nebraska Revised Statutes sections 13-318 through 13-326 or 13- 2813 through 2816.
17. **Employment Eligibility Verification** - The Parties shall use a federal immigration verification system to determine the work eligibility status of employees who are physically performing services within the State of Nebraska. If a party employs or contracts with any subcontractor in connection with this Agreement, the contracting party shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
18. **Termination** - Either party may terminate this Agreement for any or no reason at any time by giving the other party at least ninety (90) days prior written notice of the same. Any joint funds or property in possession of the Parties as a result of this Agreement shall be divided and distributed to the party that contributed to it or

funded its purchases.

19. ***Appropriation of Funds*** - The Parties' obligations under this Agreement are expressly subject to the appropriation of funds by the **GERING**'s City Council and the **SCOTTSBLUFF**'s City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for the performance of the obligations under this Agreement, the Parties may terminate this Agreement by written notice to the other.
20. *Notice* – Any written notice under this Agreement shall be valid if sent to the following address:

GERING
Attn: City Administrator
1025 P Street, P.O. Box 687
Gering, NE 69341

SCOTTSBLUFF
Attn: City Manager
2525 Circle Drive
Scottsbluff, NE 69361

[SIGNATURE PAGE WILL FOLLOW]

This Agreement was signed by each party on the date shown in the following acknowledgments.

City OF SCOTTSBLUFF, NEBRASKA
A Municipal Corporation,

CITY OF GERING, NEBRASKA
A Municipal Corporation,

By _____
Jeanne McKerrigan, Mayor
City of Scottsbluff, Nebraska

By _____
Kent Ewing, Mayor
City of Gering, Nebraska