

# **City of Scottsbluff, Nebraska**

**Monday, September 16, 2013**

**Regular Meeting**

## **Item Reports6**

**Council to consider a Memorandum of Understanding (MOU) with the Cities of Gering and Terrytown regarding a Brownfields Assessment Coalition Partnership and authorize the Mayor to sign the MOU.**

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

## Background

Twin Cities Development has previously applied for EPA (Environmental Protection Agency) Brownfield Assessment Grants to help assess brownfield sites in Gering, Bayard, Scottsbluff, and Mitchell.

The term “brownfield site” means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or the potential presence of a hazardous substance, pollutant, or contaminant. Due to the collective stigma of contamination and other barriers to redevelopment, brownfields remain unproductive while developers resort to greenfields outside cities.

EPA initiated the Brownfields Action Agenda in 1995 to empower states, tribes, local government, communities and other redevelopment stakeholders to work together in addressing brownfields. EPA has since expanded its brownfield programs to reach over 400 cities across the United States. EPA’s efforts have leveraged billions of dollars in funding and investment for these communities.

State, regional and federal staff is recommending the formation of a Brownfield Assessment Coalition Partnership for a community-wide brownfield assessment application in Western Nebraska. Community-wide support increases the possibility of redevelopment of land throughout the region to provide job opportunities to Nebraskans.

This partnership would include the cities of Gering, Scottsbluff and Terrytown for the purpose of qualifying for up to \$400,000 in funding from the U.S. Environmental Protection Agency. If successful, this federal funding will be used to fund professional engineering and technical services needed to assess existing local brownfield sites; and to develop cleanup plans where necessary.

The formalizing of a tri-party “MOU/MOA” as proposed will establish a general framework for inter-local cooperation in carrying out the full scope of redevelopment of the underutilized or vacant sites throughout the community. If funded, the participating Coalition Partners will amend the MOA/MOU to allot the funds for sites within the defined geographic areas of the grant.

Mike Sarchet, project manager at TCD, is the driving force behind the assessments and has solicited and received the backing and help of environmental agencies across the Midwest over the past five years. Sarchet is responsible for getting funds to assess several local sites, speeding up the potential development of those sites to provide jobs. Some site visits using NDEQ (Nebraska Department of Environmental Quality) funds will begin assessments this September.

A successful community-wide partnership could help to get the EPA grant which would help free up buildings, sites and infrastructure to be used to create economic growth and increase quality of life.

**MEMORANDUM OF UNDERSTANDING REGARDING A BROWNFIELDS ASSESSMENT COALITION PARTNERSHIP FOR THE ENVIRONMENTAL PROTECTION AGENCY ASSESSMENT GRANT BETWEEN THE CITY OF GERING, THE CITY OF SCOTTSBLUFF AND THE CITY OF TERRYTOWN; PROVIDING AUTHORIZATION FOR THE MAYOR OF GERING TO SIGN AND EXECUTE ANY OR ALL DOCUMENTS RELATED THERETO; AND PROVIDING FOR AN EFFECTIVE DATE**

This Memorandum of Understanding (“MOU”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 between the cities of TERRYTOWN, SCOTTSBLUFF and GERING, municipal corporations organized and existing under the laws of the State of NEBRASKA. All parties are collectively referred to as the “Parties” or “Coalition Partners” or “Partners”.

**WHEREAS**, the Partners include the City of GERING, the City of SCOTTSBLUFF, and the City of TERRYTOWN, NEBRASKA; and

**WHEREAS**, each of the Parties has determined that it is in the best interests of the residents of the Parties’ respective jurisdictions that they enter into this MOU to form a Brownfield Assessment Coalition Partnership; and

**WHEREAS**, the purpose of this MOU is to set forth the general intentions of the Parties regarding the EPA Brownfields Assessment Grant Program.

**NOW THEREFORE**, the Parties do hereby agree as follows:

**Section 1 - General Terms:** The Coalition Partners heretofore set forth the following format in order to further the mutual goal for assessing brownfields:

- a. The City of Gering shall apply for the Grant.
- b. During the application process, the partners should create a prioritized list of sites to be assessed to determine where funds are to be used if the Grant is awarded. If the grant is awarded, parties may each enter into sub-recipient agreements with the City of Gering defining the roles of the cities in the process and the proportion of funds needed in each city to assess local sites.
- c. Activities funded through the agreement may include inventory preparation, site selection criteria development, assessments, planning (including cleanup planning) relating to Brownfield sites, outreach materials and implementation, and other eligible activities. The Partners may retain consultant(s) and contractor(s) to undertake various activities in accordance with the cooperative agreement. The city of Gering or its designee is responsible for overseeing the work.
- d. Unless otherwise agreed upon in a sub-recipient agreement, it will be the responsibility of each Partner to obtain all required permits, easements, and access agreements as may be necessary to undertake assessments at the selected site. If Partner does not have the capacity to perform these activities, the City of Gering may assist in securing necessary site access agreements and permits.
- e. The Partners will work to develop a site selection process based on agreed-upon factors and will ensure that a minimum of five sites are assessed over the life of this MOU. Selected sites will be submitted to EPA for prior approval to ensure eligibility.
- f. The City of Gering shall have responsibility for ensuring that the other activities as negotiated in the work plan, such as community outreach and involvement, are implemented in accordance with a schedule agreed upon. Gering may retain a consultant to supervise the grant.

**Section 2 – Default/Termination:** In the event the Coalition Partner(s) fails to comply with any of the provisions of this MOU, the City of Gering may terminate this MOU for cause by first notifying the Partner(s) in writing, specifying the nature of the default and providing the Partner(s) with a reasonable period of time in which to rectify such default. In the event the default is not cured within the time period given, the City of Gering thereafter may terminate this MOU upon written notice to the Partner(s) without

prejudice to the City of Gering. Any Party may withdraw from this MOU by providing a 60 days written notice to the other Parties, but will still be bound by the terms of any sub-recipient agreement executed by such withdrawing party.

**Section 3 - Third Party Beneficiaries:** This MOU does not create any relationship with, or any rights in favor of, any third party.

**Section 4 – Severability:** If any provision of this MOU is declared void by a court of law, all other provisions will remain in full force and effect.

**Section 5 - Non Waiver:** The failure of any party to exercise any right in this MOU shall not be considered a waiver of such right.

**Section 6 - Governing Law and Venue:** This MOU is governed in accordance with the laws of the State of Nebraska. Venue shall be in Scotts Bluff County, Nebraska.

**Section 7 - Sovereign Immunity:** Nothing in this MOU shall be interpreted as a waiver of the any partner's sovereign immunity.

**Section 8 – Amendments:** The parties may amend this MOU only by mutual written agreement of all three (3) parties.

**Section 9 - Captions and Section Headings:** Captions and section headings used herein are for convenience only and shall not be used in construing this MOU.

**Section 10 – Construction:** This MOU shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by one of the Parties. It is recognized that each Party has contributed to the preparation or execution of this MOU.

**Section 11 – Notice:** Except as otherwise provided herein, all notices and other communications provided for hereunder shall be in writing and sent by certified mail return receipt requested, or by hand delivery, and shall be deemed effective if mailed, when deposited in a United States Postal Service mailbox with postage prepaid or if hand delivered, when personally handed to the Party to whom the notice or other communication is addressed, with signed proof of delivery. Notices required or permitted under this MOU shall be delivered to:

CITY OF GERING: City of Gering Government Administration Office  
1025 P Street, Gering, NE 69341  
CONTACT PERSON: Edwin Mayo, Mayor  
PHONE: (308) 436-5096  
EMAIL: mayormayo@gering.org

CITY PARTNER: City of Terrytown  
116 Terry Blvd, Gering NE 69341  
CONTACT PERSON: Kent Greenwalt, Mayor  
PHONE: (308) 632-7212  
E-MAIL: kgb2@embarqmail.com

CITY PARTNER: City of Scottsbluff  
2525 Circle Drive, Scottsbluff, NE 69361  
CONTACT PERSON: Randy Meininger, Mayor  
PHONE: (308) 630-6221  
EMAIL: kindy@actcom.net

**Section 12 - Recording of Agreement:** The City of Gering, upon execution of this MOU by all parties, shall record this MOU in the public records of City of Gering.

**Section 13 - Entire Agreement:** This MOU supersedes all prior written or oral agreements, understandings, or representations relating to the Brownfields Assessment Grant Program.

**PASSED AND DULY ADOPTED by**

**ATTEST:**

\_\_\_\_\_  
GERING MAYOR

\_\_\_\_\_  
SCOTTSBLUFF MAYOR

\_\_\_\_\_  
CITY OF TERRYTOWN MAYOR