

**CITY OF GERING
CITY COUNCIL SPECIAL MEETING NOTICE AND AGENDA**

Special meeting of the Gering City Council, December 4, 2023 at 5:00 p.m., at Gering City Hall, 1025 "P" Street, Gering, NE.

All agenda items are for discussion.

CALL TO ORDER.

1. Recital of the Pledge of Allegiance
2. Roll Call

OPEN MEETINGS ACT - NEB.REV.STAT. CHAPTER 84, ARTICLE 14

As required by State Law, public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room. Agenda items may be moved up or down on the agenda at the discretion of the Mayor. As required by State Law, additions may not be made to this agenda less than 24 hours before the beginning of the meeting unless they are considered under this section of the agenda and Council determines that the matter requires emergency action.

CURRENT BUSINESS:

1. Approve and authorize the Mayor to sign a Management and Catering Contract for the Gering Civic Center by and between The City of Gering and Faithful Creations Catering, LLC, and Terri Tosh, individually
2. Approve and authorize the Mayor to sign an Agreement by and between the City of Gering and Baker and Associates, Inc. in partnership with JEO for Engineering Design Services for the Construction of a 1.0 Million Gallon Raw Water Terminal Storage Tank

CLOSED SESSION:

(Council reserves the right to enter into closed session if deemed necessary.)

ADJOURN

Agenda Item Summary

For the meeting of: December 4, 2023 special meeting

Agenda item title: Approve and authorize the Mayor to sign Management and Catering Contract for the Gering Civic Center by and between the City of Gering and Faithful Creations Catering, LLC and Terri Tosh, individually

Submitted by: Pat Heath, City Administrator

Explanation of the agenda item: The City advertised for qualifications and proposals for management and catering services for the Gering Civic Center in March of 2023, as Rick and Judy Keller will be retiring in February of 2024. The City did not receive any proposals. In June of 2023, Council approved a Contingency Search Agreement with GPAC, a recruiting agency out of Sioux Falls, SD. City staff have worked closely with Erin Hayes over the last five months to recruit a qualified candidate. Ms. Hayes posted the RFQ in dozens of online locations and talked to numerous potential candidates. A committee of three Council Members and two City staff interviewed two candidates who also came to Gering to tour the Civic Center and learn more about our community and amenities. On November 7, Terri Tosh with Faithful Creations Catering, LLC in Ft. Collins, CO, was interviewed by the committee following a site visit on November 3. Ms. Tosh has over 25 years of experience catering large functions and events and has owned her own catering business. The Committee believes she is a very qualified candidate for the position and instructed staff to negotiate a contract, attached. Legal has also carefully reviewed the contract.

Board/Commission/Staff Recommendation: Staff recommends approving and authorizing the Mayor to sign the Management and Catering Contract as presented.

Does this item require the expenditure of funds? X **yes** **No**

Are funds budgeted? X **yes** **no**

If no, comments:

Estimated Amount \$130,000 graduating to \$135,000 the first year.

Amount Budgeted Up to \$140,000

Department Civic Center

Account 207-06-6106

Account Description Management Contract

Approval of funds available: *Lyndsey Mathews*
City Treasurer/Finance Director

Does this item require a resolution or an ordinance? **yes** X **no**

If a resolution or ordinance is required, it must be attached.

Please list all names and addresses of those to be notified. Selected candiate.

Approved for submittal: *Kathy Welfl*
Mayor, City Council member, City Administrator, City Clerk

Referred to: Civic Center RFQ Committee **Committee**

All Agenda Item Summaries and the required attachments are due by Noon on the Wednesday prior to the Council meeting. If the Wednesday prior to the City Council is a holiday, the deadline is Tuesday at Noon.

MANAGEMENT AND CATERING CONTRACT FOR THE GERING CIVIC CENTER

1. **Agreement.** This Agreement is made and entered into by and between The City of Gering, Nebraska, A Municipal Corporation, hereinafter usually referred to as **CITY**, and Faithful Creations Catering, L.L.C., and Terri Tosh, individually, hereinafter collectively referred to as **CONTRACTOR**.

NOW, THEREFORE, it is hereby agreed as follows:

2. **Independent Contractor.** **CITY** hereby retains **CONTRACTOR** as an independent contractor and **CONTRACTOR** hereby accepts said retainer to act as General Manager and Designated Caterer for operation of the Gering Civic Center.

3a. **Initial CONTRACTOR Compensation and Term.** The **CITY** and **CONTRACTOR** agree that this Management and Catering Contract for the Gering Civic Center shall have an introductory compensation and term as follows: As consideration for the services to be performed herein, **CITY** shall compensate **CONTRACTOR** at the rate of \$130,000.00 annually, which rate shall continue until May 9, 2024. On or before May 9, 2024, the **CITY** shall evaluate **CONTRACTOR's** performance pursuant to this Agreement as described in paragraph 37 herein, and upon satisfactory review the **CITY** shall compensate **CONTRACTOR** at the rate of \$132,500.00 annually beginning May 10, 2024, which rate shall continue until November 9, 2024. On or before November 9, 2024, the **CITY** shall evaluate **CONTRACTOR's** performance pursuant to this Agreement as described in paragraph 37 herein, and upon satisfactory review the **CITY** shall compensate **CONTRACTOR** at the rate of \$135,000.00 annually beginning November 10, 2024, which rate shall continue for the balance of this Agreement, together with CPI adjustments as described in paragraph 3b.

3b. **Continuing CONTRACTOR Compensation and Term.** The term of this Contract shall be sixty (60) months commencing on the 4th day of December, 2023, and ending on the 3rd day of December, 2028, subject to the provisions of paragraph 3(a), and unless sooner terminated pursuant to the provisions contained elsewhere herein. **CITY's** compensation of **CONTRACTOR** as described in paragraph 3a shall be payable in equal bi-weekly installments. The **CITY** and **CONTRACTOR** agree that beginning February 9, 2026, and for every twelve (12) months period following, for the contract term, the **CITY's** payment of compensation to

Contractor will be adjusted based upon the U. S. Department of Labor Consumer Price Index – Midwest Rural on that date. The effective date of this Agreement shall be December 4th, 2023.

Upon the completion of the term of this Agreement, this Agreement shall automatically renew for successive thirty six (36) month terms beginning December 4, 2028, with the same terms and conditions as set forth herein, and with such rate of compensation as existed at the end of the initial term including additional annual CPI adjustments as set forth in paragraph 3b herein. In the event that **CITY** or **CONTRACTOR** wish to terminate this agreement prior to renewal, the terminating party shall provide notice no less than six (6) months prior to the date of termination of this Agreement or any successive term.

4a. CITY Compensation and Term. **CITY** shall receive as compensation for the facility furniture, fixtures and services furnished to **CITY** eighteen percent (18%) of gross receipts per person food and/or beverage charge to **CITY** made by **CONTRACTOR**, which will be added to the bar sales and food/beverage charge, to arrive at the menu price for the term of this Contract as provided in Paragraph No. 3 above.

4b. CITY Reimbursement for Equipment. **CITY** and **CONTRACTOR** understand and agree that the **CONTRACTOR** will need equipment for catering and management of the Gering Civic Center. **CITY** agrees to purchase up to \$30,000.00 of such equipment for **CONTRACTOR'S** use, and **CONTRACTOR** agrees to reimburse **CITY** for such equipment expenditure as follows: In the event that **CITY** purchases equipment for **CONTRACTOR'S** use, **CITY** shall be entitled to 20% of gross receipts as described in paragraph 4a herein (an increase from 18% to 20%) until such time as the **CITY** is fully reimbursed for such equipment purchases. Upon the **CITY's** full reimbursement for any equipment expenditures, the gross receipts payable to **CITY** shall revert to 18% for remainder of this Agreement. In the event that this Agreement is terminated prior to such time as the **CITY** is fully reimbursed for equipment purchases, the **CONTRACTOR** shall be responsible for full repayment to the **CITY** and the **CITY** may elect to reduce or offset any remaining payments due under this Agreement to **CONTRACTOR** by the amount necessary to fully reimburse **CITY**. All equipment purchased by **CITY** pursuant to this paragraph shall remain property of the **CITY** until such time as **CONTRACTOR** has fully reimbursed the **CITY**. **CONTRACTOR** shall be responsible to maintain, repair, and replace all equipment purchased pursuant to this paragraph, and **CITY** shall at no time be responsible to maintain, repair, or replace such equipment. At

such time as the **CONTRACTOR** has fully reimbursed the **CITY**, the **CITY** shall execute a bill of sale in favor of the **CONTRACTOR** transferring ownership of the equipment to **CONTRACTOR**.

5. **Payment.** **CITY**, through its Civic Center personnel, shall collect all monies for any and all functions held at the Gering Civic Center and shall pay **CONTRACTOR** for its services by Friday following regular Gering City Council meeting dates, as provided herein.

6. **General Operations.** **CONTRACTOR** shall perform both complex and routine administrative work calculated to create, plan, execute, market and evaluate a variety of conventions and events held at the Gering Civic Center. As such **CONTRACTOR** shall be responsible for implementing and administering the overall operation of the Gering Civic Center, including but not limited to, promotions, sales, conventions, and services. **CONTRACTOR** shall maintain the Civic Center business office open for Civic Center business from 8:00 A.M. to 5:00 P.M. Monday through Friday, inclusive. The Civic Center office may be closed on the following holidays: Thanksgiving, Christmas, New Year's Day, July 4, Memorial Day and Labor Day. All files relating to Civic Center business shall remain the property of **CITY** and shall be stored on site in an appropriate storage receptacle.

7. **Civic Center Manager.** **CONTRACTOR** shall hold the title of Civic Center Manager and is responsible for performing/supervising/administering the services to be rendered to the City of Gering as provided by this Agreement.

8. **Designated Manager and Caterer.** **CITY** hereby designates **CONTRACTOR** the exclusive right to manage the Civic Center and, as its designated caterer, to provide food and beverage preparation and food and beverage distribution services at the Gering Civic Center.

9. **Occupancy and Utilities.** **CONTRACTOR** shall have full use and occupancy of the food and beverage preparation areas in the Gering Civic Center. This kitchen area shall be separately metered for electricity and natural gas. **CONTRACTOR** shall pay the cost of the electricity, sanitation and natural gas used in the food preparation area. **CITY** will provide water and sewer services to **CONTRACTOR** at said facility at no additional cost to **CONTRACTOR**.

10. **Furnishings and Equipment Use.** **CONTRACTOR** shall be responsible for the set up and break down of all furnishings for any and all food and beverage related functions. Non-food and non-beverage related functions and beverage-only related functions shall also be set up and taken down by **CONTRACTOR** at a fee payable to **CONTRACTOR** agreed in

advance between **CONTRACTOR** and **CITY**. **CONTRACTOR** shall be responsible for maintaining good housekeeping and upkeep in all meeting rooms, storage areas, back hallways, equipment areas, and the kitchen area. **CITY** shall furnish the required equipment for such housekeeping and upkeep. The **CITY** shall determine the cleaning standards that are to be maintained. **CITY** shall pay the cost of waxing the back hallways. Said waxing shall occur as reasonably needed and as agreed between the parties.

11. Inventory. **CONTRACTOR** shall be responsible for all inventory losses of china, glass, silver, equipment and linens in excess of five percent (5%) above the beginning inventory. Inventory shall be taken on each anniversary of the date of this agreement. **CONTRACTOR** and a designee of the **CITY** shall conduct the annual inventory.

12. CONTRACTOR Employees. **CONTRACTOR** shall provide all necessary employees to accomplish the work to be performed pursuant to this Agreement.

13. CONTRACTOR Duties and Responsibilities. The following duties and responsibilities shall be performed pursuant to this Agreement:

- A. Supervision of all functions and activities associated with the efficient operation of the Civic Center.
 - B. Preparation of an annual budget for the Civic Center.
 - C. Administer the expenditures of funds allocated through the budget and coordinate the purchase of supplies and materials, including replacement of furniture, fixtures and equipment (with approval of City Administrator).
 - D. Supervise maintenance and operation of the building, grounds and offices occupied by the Gering Civic Center (with back-up by City crews provided by **CITY**).
 - i. **CONTRACTOR** shall be responsible for applying salt on walks in front of and adjacent to the Civic Center following snow storms.
 - ii. **CITY** will provide personnel to clear the Civic Center parking lot of snow when there is accumulation of two inches or more.
 - iii. **CITY** will clear sidewalks of snow.
 - iv. **CITY** will plan and maintain landscaping.
- City Department emergencies and plowing of streets take priority over clearing the Civic Center parking lot. A running list of events (including

times) to be held at the Civic Center will be made continually available to the City Administrator and the Public Works Director during winter months.

v. CITY will maintain the outdoor fountain.

- E. Supervise all record keeping, including an accurate inventory of all equipment and fixtures.
- F. Secure and follow up on leads for meetings, business conferences, special events and conventions to be held at the Civic Center.
- G. Work with the Gering Visitors Bureau, Twin Cities Development (TCD), Chamber of Commerce and other similar organizations to create business for the Gering Civic Center and attract meetings and conventions to be held at the Gering Civic Center.
- H. Establish file system(s) for leads/contacts and perform all sales and promotional duties relating to the same.
- I. Travel and make sales calls to promote the use of the Gering Civic Center and submit bids for meetings and conventions soliciting meetings and conventions to come to the Gering, Nebraska, area and use the Gering Civic Center.
- J. Develop pricing and packaging for presentation to groups and conventions for the use of the Gering Civic Center.
- K. Work closely with food and beverage vendors/suppliers and develop and maintain appealing and competitively priced menus.
- L. Develop and distribute brochures, fliers, news releases and other promotional materials to promote the Gering Civic Center facility and its special events
- M. Coordinate and schedule reservations for use of the Gering Civic Center for conventions and events.
- N. Attend Civic Center functions to promote and network with potential customers.

- O. Respond to public inquiries about events made by telephone, correspondence, or other forms of communication or during public meetings.
- P. Negotiate promotional and trade opportunities with all forms of media.
- Q. Perform miscellaneous duties such as answering telephone, corresponding with prospective users, running necessary errands, picking up supplies needed for activities, and related duties.
- R. Develop, coordinate and implement a marketing plan for the Gering Civic Center.
- S. Manage fiscal duties including budgeting and purchasing.
- T. Develop advertising materials to assist marketing of the Civic Center.
- U. Establish and maintain effective working relationships with employees, vendors, news media, potential users of the Civic Center, and the general public.
- V. The Civic Center Manager shall provide reports as required by the City Administrator concerning the marketing of the Civic Center and Civic Center operations.
- W. The Civic Center Director and **CONTRACTOR** shall provide full and detailed monthly financial reports to the **CITY** related to all aspects of this Agreement, including up to date sales, revenue, expenses, costs and any other financial reporting or supporting documentation requested by **CITY**. The **CONTRACTOR** shall provide an annual accounting and financial report to the **CITY** with respect to each years sales, revenue, expenses, costs, and any other financial reporting or supporting documentation requested by **CITY**.
- X. **CONTRACTOR** will work with existing civic center management caterer from the effective date of this contract until existing civic center management termination date of February 8, 2024, at which time **CONTRACTOR** shall be solely responsible for all duties of **CONTRACTOR** established herein from February 9, 2024, until the termination of this Agreement.

14. **REPAIRS.** **CONTRACTOR** shall be responsible for all repairs to equipment and other property which repairs are needed as a result of negligence or misuse of such property by **CONTRACTOR** employees or agents.

15. **Uniforms.** **CONTRACTOR** shall provide at its expense uniforms for all personnel serving food and beverage at all banquets or other food and beverage functions. The type of such uniforms shall be determined by **CONTRACTOR** with the approval of such uniforms by **CITY**.

16. **General Premises Supervision.** **CONTRACTOR** shall be responsible for the general supervision of the entire premises consisting of the land and building upon which the Civic Center exists and **CONTRACTOR** shall have the use of and shall maintain control over the entire premises of the Gering Civic Center for business and activities relating to Civic Center business. **CITY** will pay for janitorial services for the lobby area, restrooms, and Civic Center offices. **CITY** will pay for maintenance and repairs both inside and outside of the Civic Center building. The Civic Center Director shall call to the attention of the City Administrator any areas the Civic Center Director has noted are in need of repair or maintenance.

17. **Audit.** **CITY** shall, at its discretion and in such manner as determined by **CITY**, audit all Civic Center functions and records, (exclusive of all food and beverage service records of the **CONTRACTOR** in the operation of the Gering Civic Center), including, but not limited to, cash registers, billings, contracts, and exceptions.

18. **Good Housekeeping.** **CONTRACTOR** shall be responsible for supervising good housekeeping in all areas of the Civic Center. Cleaning of all public areas will be paid by **CITY**. Cleaning of all non-public areas will be the responsibility of the **CONTRACTOR**. **CONTRACTOR** may, from time to time, be required to clean a public space when setting up for multiple events in the same space in the course of a day.

19. **Copy Machine.** A copy machine owned by **CITY** is located in the business office of the Civic Center for use for all Civic Center business. **CONTRACTOR** may use said copier for its business not related to Civic Center management business. The cost of said copier, including lease, paper, toner, repair and supplies shall be split equally between **CITY** and **CONTRACTOR**. A copy of the equipment, furniture and fixtures located at the Civic Center is attached hereto and marked Exhibit "A".

20. Computers. CITY shall provide a computer for the purpose of office use and activities related to entering invoices, billings for functions and claims, as well as email. **CONTRACTOR** shall provide a computer for private catering business use which shall not be connected to CITY's server.

21. Insurance. **CONTRACTOR** shall provide all workers' compensation insurance for its employees and general liability insurance for its activities as General Manager of the Gering Civic Center. Said general liability insurance shall be in an amount not less than Two Million Dollars (\$2,000,000.00) bodily injury per person, Two Million Dollars (\$2,000,000.00) bodily injury aggregate liability, and Five Hundred Fifty Thousand Dollars (\$500,000.00) property damage. **CONTRACTOR** shall provide to CITY a certificate of insurance showing such general liability insurance and workers' compensation insurance is in full force and effect at all times. CITY shall be named as an additional insured under the terms of said policies. **CONTRACTOR** shall save CITY harmless, indemnify and defend CITY from any and all injury, loss, claims or damage whatsoever to any person or property while on the leased premises, including payment of CITY attorney's fees and costs. **CONTRACTOR** shall save CITY harmless, indemnify, and defend CITY from any and all liability related to the operation of **CONTRACTOR'S** business, including dram shop and liquor sales liability, including payment of CITY attorney's fees and costs.

22. Event Booking. All functions to take place at Civic Center shall be booked through the Civic Center Manager or their designee/staff. The standard contract used for Civic Center functions may not be changed or altered in any way by **CONTRACTOR** without the express written permission of the City Administrator.

23. Civic Center Priority. **CONTRACTOR** shall give all Civic Center functions priority over functions occurring outside of the Civic Center and being catered by **CONTRACTOR**.

24. Liquor License. **CONTRACTOR** must obtain and retain a State of Nebraska liquor license authorizing it to serve alcoholic beverages and **CONTRACTOR** shall be solely responsible for complying with all State of Nebraska liquor laws and liquor regulations.

25. Guaranteed Attendees. The **CONTRACTOR** shall provide the CITY with a guaranteed number of attendees at any function or event at the Civic Center, at which food or beverage is to be served in the monthly report (13W).

26. **Kitchen Utensils.** **CONTRACTOR** shall provide all kitchen utensils (pots, pans, cutlery, chafing dishes, serving utensils, etc.) needed to properly cater functions at the Civic Center.

27. **Supplies.** **CONTRACTOR** will establish and maintain sufficient credit with vendors/suppliers. **CONTRACTOR** shall purchase all needed food, beverages and related supplies and items necessary for fulfillment of this Agreement and for service of food and beverages at events occurring at the Gering Civic Center. Provided, however, furniture, fixtures, and major equipment shall be furnished by **CITY**.

28. **Audio and Visual Equipment.** **CONTRACTOR** shall be responsible for all set up and break down of audio-visual equipment used at functions at the Gering Civic Center. **CONTRACTOR** shall learn to operate and be responsible for trouble-shooting all audio/video/computer equipment.

29. **Linens.** **CITY** shall pay the cost of cleaning and otherwise maintaining linens for all **CITY** Civic Center functions. **CONTRACTOR** shall pay the cost of cleaning and otherwise maintaining linens for all catering events and private events of **CONTRACTOR**.

30. **Sales Tax Payment.** **CITY** shall be responsible for collecting and paying to the governmental entity entitled thereto all applicable sales tax, if any.

31. **Annual Evaluation.** An annual evaluation of the terms and conditions of this Agreement shall occur annually beginning February 9, 2025, or as otherwise agreed in writing between the parties. All rates, costs, charges, and percentages provided in this Contract are subject to review and, if agreed, changed every six (6) months or on an “as needed” basis as is agreed by **CONTRACTOR** and the **CITY** in writing. All food and beverage rates are also subject to increase in proportion to any increases in costs incurred by **CONTRACTOR** for such food and beverage products or services.

32. **Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of Nebraska, with proper venue being the District Court of Scotts Bluff County, Nebraska.

33. **Time of Essence.** If **CONTRACTOR** shall fail to provide service of reasonable quality based on the same standards provided to its customers by **CONTRACTOR** currently in the management and catering business, **CONTRACTOR** will be notified by the City

Administrator. Three such written notifications in a calendar year will allow for the immediate termination of this Contract.

34. Running Inventory. **CONTRACTOR** shall make a running inventory of all functions to be held at the Gering Civic Center accessible to the City Administrator and Public Works Director at all times.

35. No Equipment Removal. No Civic Center property shall be removed from the Civic Center premises without the express written consent of the City Administrator.

36. Law Compliance. **CONTRACTOR** shall comply with all federal, state, county, and local health ordinances, rules and regulations.

37. Staffing. **CONTRACTOR** shall provide its own administrative and support staff to accomplish the duties and activities required of it by this Agreement. An evaluation of the performance of the terms and conditions of this Agreement shall occur annually or as otherwise agreed in writing between the parties.

38. Default.

a. As described in paragraph 3a herein, the **CITY** shall perform evaluations of the **CONTRACTOR** with respect to the introductory term on or before May 9, 2024 and on or before November 9, 2024. The **CITY** shall have full discretion as a part of these evaluations to determine if **CONTRACTOR** has fulfilled its obligations under this Agreement in a manner which is satisfactory to the **CITY**. The **CITY** shall have the right in its sole discretion, and without notice, to terminate this Agreement on or before either date of evaluation, May 9, 2024 or November 9, 2024. In the event of termination of this Agreement by **CITY** during the introductory term or upon introductory term evaluations, this Agreement shall automatically and immediately terminate and the premises be restored to the **CITY**. Upon such termination there shall be no further obligations whatsoever of the **CITY** to **CONTRACTOR** or from the **CONTRACTOR** to the **CITY**. In the event that introductory term evaluations by **CITY** are satisfactory, this Agreement shall continue pursuant to all terms and conditions herein.

b. In the event the **CONTRACTOR** fails to fulfill any one or more of the terms and provisions of this Contract, the **CITY** shall give the **CONTRACTOR** written notice thereof specifying the default and granting the **CONTRACTOR** sixty (60) days within which to cure the default. If the **CONTRACTOR** shall fail or refuse to cure the default as set forth by **CITY**, the **CITY** may immediately terminate this Contract, retake possession of the leased premises,

and take all commercially reasonable steps in furtherance of the operation of the Civic Center. It is agreed that time is of the essence in this Agreement. **CONTRACTOR** shall be responsible for the payment of any damages or costs incurred by **CITY** in terminating this agreement, retaking possession of the leased premises, and taking commercially reasonable steps in furtherance of the operation of the Civic Center, including costs and damages incurred by City associated with the cancellation of events due to Civic Center not having a suitable operator.

c. Following the completion of the term of this Agreement, **CONTRACTOR** agrees to provide **CITY** no less than six (6) months-notice of termination of this Agreement.

d. If **CONTRACTOR** commits any act which is an offense involving moral turpitude under federal, state or local laws, or which might tend to bring **CONTRACTOR** or **CITY** to public disrepute, contempt, scandal or ridicule, or which may embarrass, offend, insult or denigrate individuals or groups, or that may shock, insult or offend the community of Gering or the **CITY's** workforce or public morals or decency or prejudice to **CITY**, or which results in actual or threatened claims against **CITY**, **CITY** shall have the right to unilaterally terminate this Agreement without liability for the unpaid portion of any compensation due hereunder upon written notice to **CONTRACTOR**.

39. Cooperation/Access. At all times during the term of this agreement, **CONTRACTOR** agrees to allow **CITY** and its agents complete access to the Gering Civic Center. In the event of termination of this agreement, **CONTRACTOR** shall allow the **CITY** or its agents, in connection with such access, to prepare for and transition to a new contractor. Subject to the consent of the **CITY**, **CONTRACTOR** agrees to work and cooperate with the **CITY** and the new contractor to accommodate a smooth transition of the management and catering for the Gering Civic Center.

40. Non-Assignment. **CONTRACTOR** may not sell, assign, or modify its interest in this agreement, or any part thereof, without express written consent of the **CITY**.

41. Corporate Entities. **CONTRACTOR** and **CITY** mutually agree and understand that **CONTRACTOR** may wish to establish a corporate entity through which to operate with respect to this Agreement. The **CITY** agrees to allow **CONTRACTOR's** corporate entity to be joined as a party to his Agreement by way of an Addendum to be signed in the future between the parties, with such future corporate entity being subject to all the same terms and conditions as

CONTRACTOR herein, with **CONTRACTOR** in his individual capacity remaining a party to the Agreement.

42. Nondisclosure and Noncompetition. At all times while this agreement is in force **CONTRACTOR** agrees to refrain from disclosing trade secrets, customer lists, or other confidential or sensitive material related to this agreement to any party other than **CITY**. **CONTRACTOR** agrees to take commercially reasonable measures to prevent accidental disclosure of such information. **CONTRACTOR** further agrees that at all times while this agreement is in force **CONTRACTOR** shall not own, work, or consult for any business which is engaged in the business of catering, convention management, or event management and which competes with the interests of **CITY**. **CONTRACTOR** further agrees that after the expiration or termination of this agreement, **CONTRACTOR** shall not own, work, or consult for any business which competes with **CITY** with respect to catering, convention management, or event management for a period of three (3) years within a sixty (60) mile radius of the City of Gering, Nebraska. In the event **CONTRACTOR** violates the nondisclosure or noncompetition portions of this agreement, **CONTRACTOR** agrees to pay liquidated damages in the amount of fifty percent of the annual compensation paid to **CONTRACTOR** under this agreement for the most recent year in which the agreement was in force at the time of the violation.

43. Entire Agreement. This agreement is the entire agreement between **CITY** and **CONTRACTOR** and this Agreement includes all of the agreements made between **CITY** and **CONTRACTOR** pertaining to management and catering services to be rendered to it to the Gering Civic Center. This agreement may be amended only by an agreement in writing which is signed by authorized representatives of the **CITY OF GERING**, a municipal corporation, and **CONTRACTOR**, a Nebraska Corporation.

ENTERED INTO this ____ day of _____, 2023.

[SIGNATURE PAGE TO FOLLOW]

**“CITY”
CITY OF GERING,**

A Municipal Corporation

(SEAL)

Kent Ewing, Mayor

Kathleen J. Welfl, City Clerk

“CONTRACTOR”

Terri Tosh, individually, and as
Member/Owner of Faithful Creations
Catering, L.L.C.
Contractor

STATE OF NEBRASKA)
) ss.
COUNTY OF SCOTTS BLUFF)

The foregoing instrument was acknowledged before me the ____ day of _____, 2023, by Kent Ewing, Mayor of the City of Gering, Nebraska, a Municipal Corporation, on behalf of said City of Gering, Nebraska.

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me the ____ day of _____, 2023, by Terri Tosh, individually, and as Member/Owner of Faithful Creations Catering, L.L.C., as contractor.

Notary Public

Exhibit "A"

CIVIC CENTER INVENTORY

THIS WILL BE UPDATED BEFORE SIGNING

FURNITURE

EQUIPMENT

November 22, 2023

Pat Heath
Annie Folck
City of Gering
1025 P Street
Gering, NE 69341

RE: City of Gering RAW Water Terminal Storage Tank Proposal

Dear Pat & Annie

In response to your request, we submit the following information and Agreement for your consideration:

Scope of Work: Baker & Associates, Inc. will provide engineering design services for a RAW Water Terminal Storage Tank located in Gering, Nebraska. Services will include a site survey, design, plans & specifications, bidding oversight and contractor questions, construction administration, including submittals and pay requests, and construction observation. Services will include up to 3 meetings with the Owner for design review. Construction services include compaction testing, concrete testing, pressure testing and inspections for the steel weld and coating.

NDEE review fees are not included in this proposal. They will be estimated at \$7,600.00 and will be paid by the Owner.

Scheduling: The above-described Scope of Work will be completed on the approximate timeline below. In the event that Baker & Associates, Inc. is obstructed or delayed in the completion of said services by any act of the Client, or the Client's agents or by any act beyond the control of Baker & Associates, Inc. including, but not limited to, inclement weather, illness, strikes, or delay created within or by approving agencies, then the time herein fixed for the completion of the services shall be extended for a period of time equivalent of the time lost by reason of any or all of the aforementioned causes.

Approximate project timeline is as follows:

Design:	December 2023 – February 2024
Bidding and Negotiation:	February – March 2024
Project Construction:	March - October 2024

Dates shown are an approximate assumption based on assumed review time.

Method of Payment: Compensation to Baker & Associates, Inc. for services described in this agreement shall be as outlined below:

Design	\$55,000	Lump Sum
Bidding and Construction Admin	\$30,000	Lump Sum
Construction Observation & Testing	\$50,000	Hourly NTE
Total Estimated Fee:	\$135,000	
Estimated Geotechnical Investigation by Terracon (as necessary)	\$5,000	Lump Sum

Amendment of Agreement: This Agreement may be amended only in writing and signed by the Client and Baker & Associates, Inc.

If the foregoing Agreement and the attached Terms and Conditions are acceptable, please acknowledge by signing below. The signed, returned copy is our authorization to proceed. This Agreement is null and void unless executed by the Client and returned to Baker & Associates, Inc. within thirty (30) days.

Respectfully submitted,

Baker & Associates, Inc.



Jack W. Baker

The above proposal is accepted by The City of Gering

BY: _____
For the City of Gering, Nebraska

DATE: _____

Terms and Conditions

Baker & Associates, Inc., a Nebraska corporation, shall perform the services outlined in this agreement for the stated fee arrangement.

Access To Site:

Unless otherwise stated, Baker & Associates, Inc. will have access to the site for activities necessary for the performance of the services. Baker & Associates, Inc. will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage.

Dispute Resolution:

Any claims or disputes made during the performance of services outlined in this agreement between the Client and Baker & Associates, Inc. shall be submitted to non-binding mediation. Client and Baker & Associates, Inc. agree to include a similar mediation agreement with all contractors, subcontractors, subconsultants, supplies and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.

Billing/Payments:

Invoices for Baker & Associates, Inc.'s services shall be submitted, at the Baker & Associates, Inc.'s option, either upon completion of such services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. If the invoice is not paid within 30 days, Baker & Associates, Inc. may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service. Retainers shall be credited on the final invoice.

Late Payments:

Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% (or the legal rate) on the then unpaid balance. In the event any portion or all of an account remains unpaid 90 days after the billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

Indemnification:

Client shall indemnify and hold Baker & Associates, Inc., harmless from all claims of any kind or nature, damages, losses, costs, and expenses, including litigation costs and attorney's fees, arising from any claims, suits or any other action made as a result of or pertaining to the operations of the City. Baker & Associates, Inc. shall indemnify and hold Client harmless from all claims of any kind or nature, damages, losses, costs, and expenses, including litigation costs and attorney's fees, arising from any claims, suits or any other action made as a result of or pertaining to the operations of Baker & Associates, Inc.

Certifications, Guarantees and Warranties:

Baker & Associates, Inc. shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence Baker & Associates, Inc. cannot ascertain.

Termination of Services:

This agreement may be terminated by the Client or Baker & Associates, Inc. should the other fail to perform its obligations hereunder. In the event of termination, the Client shall pay Baker & Associates, Inc. for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses.

Documents:

All documents produced by Baker & Associates, Inc. under this agreement shall remain the property of Baker & Associates, Inc. as instruments of service and may not be used by the Client for any other endeavor without the written consent of Baker & Associates, Inc. Baker & Associates, Inc. shall retain all common law, statutory and other reserved rights, including the copyright thereto. Final documents shall be the hard or paper document that is signed and sealed by the Engineer. Electronic media shall not be provided, unless specifically agreed to in the Scope of Services.

Applicable Law:

Unless otherwise specified, this Agreement shall be governed by the laws of the State of Nebraska.