

**Technology Interlocal Cooperative
Agreement and Bond Measure
Resolution Hearing**

Monday, August 21, 2017 6:00 PM

City of Gering Council Chambers
1025 P Street
Gering, NE 69341



Minutes

1. **Signature of Notification**

Present: Brian Copsey, Brent Holliday, Josh Lacy, B.J. Peters, Brady Shaul, Mary Winn.

2. **Roll Call**

3. **Acknowledge Open Meetings Law**

3.1. Notice of this hearing was published in the Gering Courier on August 10, 2017.

4. **Public Hearing**

4.1. Public comment regarding a proposed interlocal cooperative agreement and bond measure for technology purposes

Mr. Hastings reported on the interlocal agreement which permits access to \$100,000 a year for technology equipment. This has given Gering access to new software, Chromebooks, servers, and other technology hardware.

No one from the public spoke during the hearing.

5. **Adjourn**

Meeting adjourned at 6:02 p.m.

A RESOLUTION AUTHORIZING THE DISTRICT TO CONTINUE ITS PARTICIPATION IN AN INTERLOCAL COOPERATIVE WITH ONE OR MORE NEBRASKA PUBLIC SCHOOL DISTRICTS AND/OR EDUCATIONAL SERVICE UNITS; AUTHORIZING SUCH COOPERATIVE TO ISSUE BONDS ON BEHALF OF THE DISTRICT IN A PRINCIPAL AMOUNT NOT TO EXCEED \$100,000 TO FINANCE THE COST OF ANY ITEM OF HARDWARE OR SOFTWARE USED BY THE DISTRICT IN PROVIDING FOR THE DELIVERY OF INFORMATION, INCLUDING THE PURCHASING OF UPGRADES OR RELATED IMPROVEMENTS TO INFORMATION TECHNOLOGY FOR THE OPERATION OF LIBRARIES OPERATED BY THE DISTRICT; DELEGATING THE AUTHORITY TO DETERMINE THE PRINCIPAL AMOUNTS, MATURITY DATES, INTEREST RATES, REDEMPTION PROVISIONS AND OTHER TERMS OF SUCH BONDS; IMPOSING A TAX TO PAY THE PRINCIPAL OF AND INTEREST ON SUCH BONDS; DESIGNATING THE BONDS AS QUALIFIED TAX-EXEMPT OBLIGATIONS; AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS; PUBLISHING NOTICE OF INTENT TO ISSUE SUCH BONDS; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

BE IT RESOLVED BY THE BOARD OF EDUCATION OF SCOTTS BLUFF COUNTY SCHOOL DISTRICT 0016 (GERING PUBLIC SCHOOLS) IN THE STATE OF NEBRASKA AS FOLLOWS:

Section 1. The Board (the “**Board**”) of Education of Scotts Bluff County School District 0016 (Gering Public Schools) in the State of Nebraska (the “**District**”), hereby finds and determines:

(a) The District is duly organized as a Class III School District under Sections 79-102 and 79-407, Reissue Revised Statutes of Nebraska, as amended, maintaining both elementary and high school grades under the direction of a single board of education, the District embracing territory having a population of more than 1,000 and not more than 150,000 inhabitants.

(b) The Public Facilities Construction and Finance Act, Section 72-2301 et seq., Reissue Revised Statutes of Nebraska, as amended (the “**Act**”), authorizes a qualified public agency, such as the District, to (i) cooperate with one or more qualified public agencies to form a joint entity or joint public agency (the “**Joint Entity**”) for the purpose of issuing bonds to finance joint projects which may be serviced by property taxes, regardless of any statutory debt restrictions, and (ii) levy a tax described therein for the payment of such bonds. A “joint project” includes, but is not limited to, a project financed and operated by at least two or more qualified public agencies cooperating as a joint entity for any item of hardware or software used in providing for the delivery of information, including the purchasing of upgrades or related improvements to information technology for the operation of libraries operated by school districts or educational service units (the “**Project**”).

(c) The Nebraska Interlocal Cooperation Act, Sections 13-801 et seq., Reissue Revised Statutes of Nebraska, as amended (the “**Interlocal Act**”), permits local governmental units, such as the District, to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities. The Interlocal Act further provides that any power or powers, privileges, or authority exercised or capable of exercise by a public agency of the State may be exercised and enjoyed jointly with any other public agency of this state.

(d) The District desires to participate with one or more Nebraska school districts and/or educational service units by affirming an existing Nebraska Technology Financing Cooperative Interlocal Cooperation Act Agreement (the “**Interlocal Agreement**”) in the form attached hereto as Exhibit A, in accordance with the Interlocal Act, and by being a party to a Joint Entity for the purpose of issuing bonds to finance a Project, levying ad valorem taxes to pay its portion of the principal of and interest on such bonds and for other lawful purposes.

(e) On August 21, 2017, the Board held a public hearing, as required by the Act, at the time and the place designated in the notice thereof. At such public hearing all persons desiring to express a position concerning the District’s participation in the Joint Entity, the amending, modifying or supplementing, as necessary, of the Interlocal Agreement, the issuance by the Joint Entity of the Bonds, the application of the proceeds thereof to finance the Project and the levy by the District to pay its portion of the principal of and the interest on the Bonds were given an opportunity to do so.

(f) Notice of such public hearing was published in the *Gering Courier*, a legal newspaper of general circulation within the District, at least 10 days prior to the date of such public hearing.

(g) All comments relating to each of, the Joint Entity, the Interlocal Agreement, the Project, the Bonds and the tax described herein have been heard and have been duly considered by the Board in connection with the adoption of this Resolution.

(h) Prior to the issuance and delivery of the Bonds, the District will retire its portion of all outstanding bonds payable from the tax levy authorized by the Act.

(i) All conditions, acts and things required by law to exist or to be done precedent to the issuance of general obligation bonds by the Joint Entity on behalf of the District as authorized in the amount not to exceed \$100,000 do exist and have been done in due form and time as required by law.

Section 2. The Board hereby authorizes and approves (a) the participation of the District in a Joint Entity pursuant to the Interlocal Act, the Act and other laws to provide financing, services and support to all members of the Joint Entity including but not limited to issuance of bonds, disbursement of bond proceeds to members, retention of bond paying agent, record keeping and other administrative services relating to the financing of information technology for members, and for other lawful purposes; (b) the amendments, modifications or supplements to the Interlocal Agreement as are necessary to enable the Joint Entity to issue the Bonds; and (c) the Superintendent or a designee proceeding in accordance therewith according to the terms and conditions as presented or such other or additional terms and provisions as negotiated and approved by the Superintendent or a designee. The Board hereby further directs the Superintendent or a designee to sign, execute, and deliver such documents, to act as a member of the Joint Entity’s governing board and as the District’s representative on all matters related to all of such documents, and to take or cause to be taken any and all other action and sign any other documents as may be necessary to complete the transaction, and to implement and administer the same through the course of the Interlocal Agreement and the life of the Joint Entity as contemplated thereby, for and on behalf of the District, unless or until this action is changed or modified by the Board.

Section 3. For the purpose of financing the Project and paying the costs of issuing the bonds herein authorized, the District, in accordance with its authority under the Act and the Interlocal Act, hereby authorizes the Joint Entity to issue its negotiable general obligation bonds on behalf of the District in an aggregate principal amount of not to exceed One Hundred Thousand Dollars (\$100,000) (the “**Bonds**”).

Section 4. The President of the Board or the Superintendent is each individually authorized and directed, in the exercise of his or her independent judgment and absolute discretion, to hereafter approve and ratify, in connection with the issuance and sale of any Bonds by the Joint Entity on behalf of the District, in a certificate (the “**Award Certificate**”) executed at the time of sale of the Bonds by the Joint Entity to the Purchaser set forth in Section 5 hereof and in concert with the other members of the Joint Entity, and in each case in accordance with and subject to the provisions of this Resolution, the following: (i) the Date of Original Issue, (ii) the aggregate principal amount of Bonds to be issued, not to exceed the limitation set forth in Section 3, (iii) the dates on which a principal maturity of the Bonds shall occur and the principal amount of the Bonds to mature on such dates, (iv) the date of final maturity of the Bonds, which shall in no event be later than December 15, 2022, (v) the date or dates upon which the Bonds shall be sold, (vi) the rate or rates of interest to be carried by each maturity of the Bonds, such that the average coupon rate on the Bonds shall not exceed 5.00%, (vii) the method by which such rate or rates of interest shall be calculated, (viii) the Interest Payment Dates for the Bonds, (ix) the redemption dates and prices and all terms relating thereto, if any, (x) all of the other terms of the Bonds not otherwise determined or fixed by the provisions of this Resolution, (xi) the form, content, terms and provisions of any bond purchase agreement entered into by the Joint Entity with a Purchaser in connection with the sale of the Bonds, (xii) the purchase price for the Bonds, which shall not be less than 95.00% of the aggregate principal amount thereof, (xiii) the form and contents of any preliminary official statement or other offering materials of the District utilized in connection with any offering or sale of the Bonds to the public, and (xiv) the form, content, terms, and provisions of any closing and other documentation executed and delivered by the District in connection with the authorization, issuance, sale and delivery of the Bonds.

Section 5. The Superintendent or any officer of the Board is hereby authorized to take all actions necessary to effect the delivery of the Bonds by the Joint Entity on behalf of the District to D.A. Davidson & Co., as the original purchaser thereof (the “**Purchaser**”), inclusive of the power and authority to execute such orders, certificates, receipts and other documents as may be necessary or desirable to effect such delivery.

Section 6. The sale proceeds of the Bonds issued on behalf of the District shall be held by the District Treasurer in a separate fund and applied (a) to pay the costs of issuance of the Bonds, (b) to pay interest when due on the Bonds and (c) to pay the costs of constructing, purchasing and equipping the Project.

Section 7. For the repayment of the Bonds herein authorized, the District represents, warrants and covenants that it shall cause to be levied and collected annually a special levy of taxes on all the taxable property in the District sufficient in rate and amount to pay the interest on and the principal of the Bonds issued on behalf of the District, in a principal amount not to exceed \$100,000, as and when such interest and principal become due, which taxes shall be in excess of and in addition to all other taxes now or hereafter authorized to be levied by the District and shall not be subject to any statutory limitations. Such tax levy and receipts are pledged to the Joint Entity for the repayment of the principal of the Bonds issued on behalf of the District and all interest thereon. The District authorizes the Joint Entity to re-pledge the District’s pledge hereunder to the repayment of the Bonds. The District represents, warrants and covenants that the second largest participant in the Joint Entity (which may be the District) will pay at least 25% of the total debt service on the Bonds. The full faith, credit and resources and the tax power of the District are hereby irrevocable pledged to the prompt payment on the principal of the Bonds issued on behalf of the District up to \$100,000 and the interest thereon.

Section 8. (a) The District hereby establishes a 2017 Bond Fund of the District (the “**Bond Fund**”), into which there shall be deposited as and when received all proceeds of the tax levy provided for hereby. All amounts deposited and credited to the Bond Fund shall be expended and used by the District for the sole purpose of paying to the Joint Entity moneys sufficient to pay the principal of,

premium, if any, and interest on the Bonds issued on behalf of the District as and when the same become due and paying the usual and customary fees and expenses of the bond registrar.

(b) The District Treasurer is authorized and directed to withdraw from the Bond Fund and forward to the Joint Entity, or to the bond registrar on behalf of the Joint Entity, sums sufficient to pay both its portion of principal and premium, if any, and interest on the Bonds as and when the same become due, and also to pay the charges made by the bond registrar for acting in such capacity in the payment of the principal of and the interest on the Bonds, and the charges shall be forwarded to the bond registrar over and above the amount of the principal of and the interest on the Bonds. If, through the lapse of time, or otherwise, the Owners of Bonds shall no longer be entitled to enforce payment of the District's obligations, it shall be the duty of the bond registrar to return the funds to the District. All moneys deposited with the bond registrar shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

(c) Any moneys or investments remaining in the Bond Fund after the retirement of the Bonds shall be transferred to the general fund of the District.

Section 9. (a) The District covenants and agrees that (i) it will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "**Code**"), including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds, and (ii) it will not use or permit the use of any proceeds of Bonds or any other funds of the District nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds. In addition, the District will adopt such other resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the District.

(b) The District covenants and agrees that (i) it will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds, (ii) it will use the proceeds of the Bonds as soon as practicable and with all reasonable dispatch for the purposes for which the Bonds are issued, and (iii) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the District in any manner, or take or omit to take any action, that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

(c) Subject to subparagraph (e) below, the District covenants and agrees that it will pay or provide for the payment from time to time of all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any Treasury Regulations applicable to the Bonds from time to time. This covenant shall survive payment in full or defeasance of the Bonds. The District specifically covenants to pay or cause to be paid to the United States, the required amounts of rebatable arbitrage at the times and in the amounts as determined by the Arbitrage Instructions, if any. Notwithstanding anything to the contrary contained herein, the Arbitrage Instructions may be amended or replaced if, in the opinion of counsel nationally recognized on the subject of municipal bonds, such amendment or replacement will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(d) The District covenants and agrees that (to the extent within its power or direction) it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a "private activity bond".

(e) The District makes the following representations in connection with the exception for small governmental units from the arbitrage rebate requirements under Section 148(f)(4)(D) of the Code:

- (i) the District is a governmental unit under Nebraska law with general taxing powers;
- (ii) none of the Bonds is a private activity bond as defined in Section 141 of the Code;
- (iii) ninety-five percent or more of the net proceeds of the Bonds are to be used for local governmental activities of the District;
- (iv) the aggregate face amount of all tax-exempt obligations (other than “private activity bonds,” but including any tax-exempt lease-purchase agreements) to be issued by the District during the current calendar year is not reasonably expected to exceed the sum of \$5,000,000; the District understands that, for this purpose, (y) the District and all entities which issue bonds on behalf of the District are treated as one issuer; and (z) all bonds issued by an entity subordinate to the District are treated as issued by the District; and
- (v) the District (including all subordinate entities thereof) will not issue in excess of \$5,000,000 of tax-exempt bonds (other than “private activity bonds,” but including any tax-exempt lease-purchase agreements) during the current calendar year without first obtaining an opinion of nationally recognized counsel in the area of municipal finance that the excludability of the interest on the Bonds from gross income for federal tax purposes will not be adversely affected thereby.

(f) The District hereby designates the Bonds as “qualified tax-exempt obligations” as defined in Section 265(b)(3) of the Code. In addition, the District hereby represents that:

- (i) the aggregate face amount of all tax-exempt obligations (other than private activity bonds that are not “qualified 501(c)(3) bonds”) which will be issued by the District (and all subordinate entities thereof) during current calendar year is not reasonably expected to exceed \$10,000,000; and
- (ii) the District (including all subordinate entities thereof) will not issue an aggregate principal amount of tax-exempt obligations (other than private activity bonds that are not “qualified 501(c)(3) bonds”) during current calendar year, including the Bonds, in excess of \$10,000,000, without first obtaining an opinion of nationally recognized counsel in the area of municipal finance that the designation of the Bonds as “qualified tax-exempt obligations” will not be adversely affected.

Section 10. The delivery of the Preliminary Official Statement (the “**Preliminary Official Statement**”) on behalf of the District is hereby confirmed, ratified, authorized and approved, and the distribution of the Preliminary Official Statement by the Purchaser is hereby authorized subject to the approval of the final form of such Preliminary Official Statement by the Superintendent or the President of the District in the Award Certificate.

Section 11. The District reserves the right to issue refunding bonds, or to have the Joint Entity issue such bonds on its behalf, and provide for the investment of the proceeds thereof for purposes of providing for the payment of principal and interest on the Bonds in such manner as may be prescribed by law from time to time but specifically including the provisions of Sections 10-142 and 10-717 through 10-719, inclusive, Reissue Revised Statutes of Nebraska, or any amendment thereto.

Section 12. Without in any way limiting the power, authority, or discretion elsewhere herein granted or delegated, the Board hereby (1) authorizes and directs all of the officers, employees, and agents

of the District to carry out, or cause to be carried out, and to perform such obligations of the District and such other actions as they, or any one of them shall consider necessary, advisable, desirable, or appropriate in connection with this Resolution, and the issuance, sale, and delivery of the Bonds, including, without limitation and whenever applicable, the execution and delivery of all other related documents, instruments, certificates, and opinions; and (2) delegates, authorizes, and directs the President, the Vice President, the Secretary, the Treasurer, the Superintendent or any other officer of the Board or the District the right, power, and authority to exercise her or his own independent judgment and absolute discretion in determining and finalizing the terms, provisions, form and contents of each of the foregoing. The execution and delivery by such officer of any such documents, instruments, certifications, and opinions, or the doing by them of any act in connection with any of the matters which are the subject of this Resolution, shall constitute conclusive evidence of both the District's and their approval of all changes, modifications, amendments, revisions, and alterations made therein, and shall conclusively establish their absolute, unconditional, and irrevocable authority with respect thereto from the District and the authorization, approval, and ratification by the District of the documents, instruments, certifications, and opinions so executed and the action so taken.

Section 13. If any one or more of the provisions of this Resolution should be determined by a court of competent jurisdiction to be contrary to law, then such provisions shall be deemed severable from the remaining provisions of this Resolution and the invalidity thereof shall in no way affect the validity of the other provisions of this Resolution or of the Bonds and the owners of the Bonds shall retain all the rights and benefits accorded to them under this Resolution and under any applicable provisions of law.

If any provisions of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid in any particular case in any jurisdiction or jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstances, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 14. As required by the Act, the District shall publish notice of its intention to have the Joint Entity issue the Bonds pursuant to the Act and the Interlocal Act. The Superintendent is hereby directed to publish such notice in the form attached hereto as Exhibit B in the *Gering Courier*, being a newspaper of general circulation published in the District, at least twice after the adoption of this Resolution. Such publications shall be at least three weeks apart, and the first publication shall be no later two weeks from the adoption of this Resolution.

Section 15. This Resolution shall take effect and be in force from and after its passage as provided by law.

[Signature Page To Follow]

ADOPTED this 21st day of August, 2017.

SCOTTS BLUFF COUNTY SCHOOL DISTRICT
0016 (GERING PUBLIC SCHOOLS) IN THE
STATE OF NEBRASKA

ATTEST:

Secretary

By: _____
President