

City of Scottsbluff, Nebraska

Monday, October 1, 2018

Regular Meeting

Item Reports4

Council to consider the Nebraska Platte Alliance Water Supply Interlocal Agreement and authorize the Mayor to sign the agreement.

Staff Contact: Nathan Johnson, City Manager

NEBRASKA PLATTE ALLIANCE WATER SUPPLY INTERLOCAL AGREEMENT

This Interlocal Agreement (the “Agreement”) is made by and between those public agencies forming or joining the Agreement, as set forth below, pursuant to the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 *et seq.*

Table of Contents

A. Recitals _____	1
B. Purpose _____	1
C. Members _____	2
D. Duration _____	3
E. Separate Entity _____	3
F. Governance _____	3
G. Meetings _____	5
H. Assets and Operation _____	6
I. Funding and Liabilities _____	6
J. Dissolution and Withdrawal _____	7
K. Miscellaneous _____	7
Signature Page _____	9
Schedule A _____	10

A. Recitals

1. This Agreement is formed by the “Members” set forth in Schedule A to the Agreement, under the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 *et seq.* The Members are Nebraska municipalities, each with existing sources of potable water and municipal water distribution systems at the time of this Agreement.

2. The Members enter into this Agreement for the Purposes set forth below. The Members are experiencing or anticipate deteriorating water quality in their sources of potable water, and desire to form this Agreement under the terms and conditions below.

B. Purpose

1. The Members are Nebraska municipalities or Nebraska governmental subdivisions. Each has or had a source of potable water for the residents served by the Member and a water distribution system with which to deliver potable water to the residents. Historically, the sources of the Members’ potable water have been ground water through the ownership and use of groundwater wells within or near each Member’s corporate limits or service area (the “Groundwater Wells”). The Members have experienced and anticipate experiencing poor water quality of the potable water pumped from the Groundwater Wells, due primarily to the presence of arsenic, uranium, and nitrates above the federally and state regulated limits.

2. Several Members have constructed or considered construction of a drinking water treatment facility to treat and remove (or lower) the levels of arsenic, uranium, nitrates, and other regulated contaminants before delivery of drinking water to residents. In many cases, the construction and operation of a water treatment facility has been cost-prohibitive, and when constructed the cost of construction and operation has been burdensome and highly inefficient for the Member. Several Members have installed new Groundwater Wells, in lieu of constructing and operating a water treatment facility, but have likewise experienced poor water quality in new Groundwater Wells. All Members have closely monitored their Groundwater Wells, and many have mixed potable water from separate Groundwater Well sources when needed to maintain adequate supply without significant treatment.

3. Wherefore, the Members desire to enter into this Agreement for the purpose of securing and planning for the management of a potable water source from the surface water, stream flow, and storage reservoirs of the North Platte river. Water from the North Platte river shall be stored and treated at one common source, and then distributed to the Members of this Agreement for their municipal water supply.

C. Members

1. The municipalities and governmental entities listed on Schedule A of this Agreement shall be considered the “Members” of this Agreement. Each Member shall appoint one representative, and one alternative representative, to serve on the “Initial Committee” (as defined below). The alternate representative may represent the Member at the Initial Committee if the representative is unable or unavailable to do so.

2. Following the formation of this Agreement, the Members may include one or more future Nebraska municipalities or governmental entities as additional members of this Agreement, as may be desired by such future member and the Members.

i. Acceptance of additional members shall occur by a majority vote of the representatives present at a regular or special meeting of the “Initial Committee” (as defined below), and by duly authorized resolution or action of an additional member’s governing bodies adopting this Agreement.

ii. After the inclusion of additional members to this Agreement, the included Members shall share in the same rights, powers, obligations, and authorities of all Members provided for in this Agreement, but inclusion shall be subject to all terms, conditions, stipulations, requirements, requests, or capital contributions set forth in paragraph C.2.iii below.

iii. The Initial Committee shall have the right to determine and set any terms, conditions, stipulations, requirements, requests, or capital contributions determined necessary for the inclusion of additional members to this Agreement. The inclusion of any additional member shall not be effective until the performance or satisfaction of any such terms, conditions, stipulations, requirements, requests, or capital contributions.

iv. The addition of any new Member shall be memorialized in writing by an amendment to this Agreement or written action of the Initial Committee.

3. Representatives and alternative representatives of the Members may be duly elected officials of each respective entity, but need not be. A Member may appoint whomever it desires as its representative or alternate representative, so long as all representatives and alternative representatives are residents or constituents of the Member municipality or governmental entity at all times during such representation.

4. No municipality or governmental entity shall be required to be a Member in order to purchase water supply from the project, although other barriers to future growth beyond the Members may exist, such as lack of water supply, location within another river basin, cost of extending services, etc.

D. Duration

This Agreement shall be effective upon the final approval of all Members set forth in Schedule A. The duration of this Agreement shall be perpetual. Provided, however, this Agreement may be amended by the Members at any time for any reason, including for the formation of a separate entity corporate and politic and a separate “Board of Directors” (as defined below).

E. Separate Entity

This Agreement, as presented and adopted initially, shall not create or establish a separate legal entity. After amendment of the Agreement as set forth in paragraph F below, it is intended that the Agreement (as amended) will create and establish a separate corporate and politic entity of the state of Nebraska.

F. Governance

1. After adoption of this Agreement, administration of the Agreement shall be the responsibility of the “Initial Committee” as follows:

i. The Initial Committee shall be composed of one representative from each Member.

ii. The Initial Committee shall have the following powers:

a. Make recommendations to Members regarding study, participation, analysis, funding, and development of the purposes and facilities contemplated by this Agreement.

b. Corresponding with and providing direction to all consultants and project managers for this Agreement.

- c. Supervising the progress and decisions made towards completing the goals of the purposes and facilities contemplated by this Agreement.
- d. Administering the terms and conditions of this Agreement.
- e. Authorizing new members to this Agreement, and setting any terms, conditions, stipulations, requirements, requests, or capital contributions set forth in paragraph C.2.iii above.
- f. Administering the powers granted to the Initial Committee by this Agreement.
- g. Directing and overseeing the timing, terms, and approach towards amending this Agreement for the creation of a separate corporate and politic entity of the state of Nebraska, as set forth in paragraph F.3 below.
- h. Adopting bylaws of the Initial Committee and electing officers of the Initial Committee.
- i. Recommending an adopted annual budget to the Members and setting forth requested expenditures of the Members for the projects under this Agreement.
- j. Electing representatives from the Initial Committee to participate in a multi-state governance system for the operation of the projects contemplated by this Agreement.
- k. Keeping the Members advised as to the progress of the Purposes of this Agreement and make official reports of such progress to the Members, as desired.

2. The Members reserve the following duties and responsibilities under this Agreement to themselves:

- i. Terminating this Agreement or withdrawing as a Member to this Agreement.
- ii. Enforcing other parties' obligations to this Agreement.
- iii. Adopting an annual budget for this Agreement and approving expenditures of Members under this Agreement before the creation of a separate corporate and politic entity of the state of Nebraska, as set forth in paragraph F.3 below.
- iv. Amending this Agreement.

3. At the time when it is determined expedient or necessary to form a separate corporate and politic entity of the state of Nebraska, pursuant to Neb. Rev. Stat. § 13-804, the Members agree

that this Agreement shall be amended to do so. Thereafter, the governance of this Agreement shall be placed in a Board of Directors, intended to be composed of one representative from each then-current Member, subject to the terms and conditions of the amended agreement. At that time, each then-current Member to this Agreement shall have the opportunity to become a member of the amended agreement, with equal rights, powers, obligations, and authorities of the other members of the amended agreement at that time.

4. Each representative (and alternative representative) of the Initial Committee shall serve terms of two years, provided that at least half of the representatives of the Initial Committee shall serve a first term of one year, so that at least half of the representatives of the Initial Committee have staggered terms that overlap. If a representative shall resign or be unable to complete the length of his or her appointed term, the alternative representative may complete the remainder of the term, or the Member may appoint another representative to complete the remainder of the term. Notwithstanding the foregoing, a representative shall serve on the Initial Committee until his or her successor is appointed by the Member.

5. Representatives shall serve their Members on the Initial Committee without compensation but shall be entitled to reimbursement of travel costs and expenses incurred in fulfilling their service and duties on the Initial Committee.

6. No representative shall be personally liable for any debts, liabilities, or contracts of the Members or the Initial Committee.

G. Meetings

1. The Initial Committee shall set and hold the first organizational meeting, at the latest, during the first month following the month in which all the Members in Schedule A adopt and approve this Agreement. At the first organization meeting, the representatives of the Initial Committee shall:

i. Elect amongst themselves a president, secretary, and treasurer. The president shall preside over all meetings of the Initial Committee, and shall act as the head of the Initial Committee. The secretary shall publish all meetings of the initial committee, record proceedings and activities, and publish all meeting minutes. The treasurer shall be charged with all financings of the Initial Committee and all Member financial obligations under this Agreement. In the absence of the president, the secretary shall fulfill the president's duties.

ii. Set the fiscal year of the Initial Committee and the date of the annual organizational meeting of the Initial Committee, which may or may not be less than one year following the first organization meeting.

iii. Agree to serve temporary terms until the first annual organization meeting of the Initial Committee, at which time term lengths of the representatives shall be decided according to paragraph F.4 above.

- iv. Select the frequency of future meetings before the first annual organizational meeting, which frequency shall be no less than quarterly.
2. A majority of the representatives (or alternative representatives) serving on the Initial Committee shall constitute a quorum of the Initial Committee. An alternative representative may not count towards a quorum or participate in voting during a meeting unless the representative of the Member is unable or unwilling to attend. All actions of the Initial Committee shall require an affirmative vote of the majority of the quorum present.
3. All representatives and alternate representatives shall be provided notice of all meeting times, dates, and locations, no later than five business days before any meeting. The contact information provided by the representatives and alternative representatives shall be considered the preferred method of contact unless representatives or alternative representatives informs the Initial Committee otherwise. All notices provided by U.S. mail shall be considered provided when notice is deposited with the U.S postal service.

H. Assets and Operations

1. The Members 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 this Agreement. All funds deposited with the Initial Committee shall be jointly held by the Members according to their contribution and shall be held in trust by the Initial Committee to accomplish the purposes of the contribution. Bids or quotes for purchases or services otherwise required by Nebraska law shall be submitted through the Initial Committee for recommendation and approval by the Members. Once approved by the Members, all contributions shall be made as agreed upon by the Members and paid by each Member's budgetary and claim process.
2. After the formation of a separate corporate and politic entity of the state of Nebraska under paragraph F.3 above, it is intended that all real property and personal property shall be transferred to the Board of Directors and held by the separate corporate and politic entity under the terms and conditions of the amended agreement. At that time, the Board of Directors shall have the power and authority to bind the separate corporate and politic entity in all matters.
3. No Member shall be obligated or liable for any liabilities, claims, contributions, or expenses unless approved by the governing body of the Member, either through adoption of a budget proposed by the Initial Committee or the approval of a specific liability, claim, contribution, or expense. Members shall, however, be obligated and liable for all liabilities, claims, contributions, or expenses approved by the governing body of the Member in that manner.

I. Funding and Liabilities

To provide adequate financial support for the Purposes of this Agreement, each Member may be requested to approve funding of the Initial Committee in amounts proposed by the Initial Committee. Each Member shall be expected to contribute funding if the proposal of the Initial

Committee is approved by that Member. The failure to approve any contribution may subject the Member to withdrawal under paragraph J below.

J. Dissolution, Termination and Withdrawal

1. Any Member may voluntarily terminate their participation in this Agreement before the first annual meeting, provided that written notice of such termination must be delivered to the Initial Committee not less than ninety days before the first annual meeting. Following the first annual meeting, any Member may voluntarily terminate their participation in this Agreement, provided that termination shall not be effective until the end of the fiscal year in which termination occurs, and further provided that written notice of such termination must be delivered to the Initial Committee not less than ninety days before the end of such fiscal year. No termination by a Member shall relieve the Member of any financial liability approved by the governing body of the Member before the effective date of termination.

2. If a Member fails to approve a funding contribution duly proposed at a meeting of the Initial Committee and approved by the governing bodies of two thirds (2/3) of the Members, the Initial Committee may authorize the Member's involuntary withdrawal, provided the Member is given notice of the Initial Committee's intent to force a withdrawal and thirty days in which to reconsider the proposed funding contribution. In the case of involuntarily withdrawal under this subparagraph, the Member shall cease to become a Member of this Agreement and shall not have the rights, powers, obligations, and authorities of a Member. Any funding contribution previously provided by the Member to the Initial Committee before involuntary withdrawal shall not be reimbursed to the Member and shall remain with the Initial Committee.

3. At any time that there is only one Member that has not voluntarily terminated participation or been involuntarily withdrawn from participation in this Agreement, as provided for above, this Agreement shall be considered dissolved. In the event of a dissolution of this Agreement, after the payment of all liabilities previously approved by the Members, the Initial Committee shall distribute any remaining assets and funds held by the Initial Committee back to the Members according to their contributions. Nothing in this Agreement shall prevent the complete dissolution of this Agreement by the consent of all Members.

4. If this Agreement is amended by the consent of less than all Members, the Members that are not parties to the amendment shall be considered to have voluntarily terminated their participation in this Agreement at the end of that current fiscal year, as provided for in paragraph J.1 above.

K. Miscellaneous

1. The provisions of this Agreement shall be severable. If any of the provisions of this Agreement, or the application of any provision to any person, entity or circumstances, are held to be invalid, such invalidity shall not affect other provisions of or applications of this Agreement which can be given affect without the invalid provision or applications.

2. This Agreement shall be binding upon the parties and their successors in interest.
3. This 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.
4. This Agreement shall be construed in accordance with and governed by the laws of the State of Nebraska.
5. The Members agree to execute all future documents and instruments and take any future action necessary to consummate the purposes and intent of this Agreement.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE]

The City of Scottsbluff, Nebraska

Mayor

Date: _____

The City of Bridgeport, Nebraska

Mayor

Date: _____

The City of Bayard, Nebraska

Mayor

Date: _____

The City of Mitchell, Nebraska

Mayor

Date: _____

The City of Terrytown Nebraska

Mayor

Date: _____

The Village of Morrill, Nebraska

Chairperson

Date: _____

The Village of Lyman, Nebraska

Chairperson

Date: _____

[SCHEDULE A]

The City of Scottsbluff, Nebraska

The City of Bridgeport, Nebraska

The City of Bayard, Nebraska

The City of Mitchell, Nebraska

The City of Terrytown, Nebraska

The Village of Morrill, Nebraska

The Village of Lyman, Nebraska