

**City of Seward, NE**  
**Tuesday, November 3, 2015**  
**Regular Session**

**Item G3**

**CONSIDERATION OF APPROVAL OF AMENDED  
NEBRASKA COMMUNITY ENERGY ALLIANCE (NCEA)  
INTERLOCAL AGREEMENT - Bruce Smith**

*Consideration of a Resolution designating an alternate to represent the City at the annual and other meetings of the NCEA*

**Administrative Report:** The important change is the development of an executive board to enable the membership to be more effective to conducting business.

The revised agreement needs adopted once again by each city. The Board has been working on the revised agreement for over a year.

To reiterate, the changes are necessary for the Membership Board to conduct business. The larger they grow the harder it is to achieve a quorum at the meetings. The creation of an Executive Board is intended to relieve the membership of this problem.

The attached resolution allows for the designation of an alternate to represent the City at the annual meeting. The proposed alternate is the Assistant City Administrator. However, Council may choose to name a different position as the alternate or choose to not name an alternate.

Following review and discussion, a motion to approve the amended agreement and the resolution would be in order.

**Staff Contact:**

NEBRASKA COMMUNITY ENERGY ALLIANCE  
INTERLOCAL COOPERATION AGREEMENT  
(Amended and Restated as of October 2015)

THIS NEBRASKA COMMUNITY ENERGY ALLIANCE INTERLOCAL COOPERATION AGREEMENT ("Amended & Restated Agreement") is made and entered into by and among the following political subdivisions ("Original Members"):

1. City of Bellevue, Nebraska
2. Central City, Nebraska
3. City of Gothenburg, Nebraska
4. City of Holdrege, Nebraska
5. City of Lexington, Nebraska
6. City of Nebraska City, Nebraska
7. City of Seward, Nebraska
8. South Sioux City, Nebraska
9. City of Wayne, Nebraska

and such other parties ("New Members") that may join in this Agreement as herein provided. The Original Members and New Members are individually referred to as an NCEA member or member of NCEA and collectively referred to as "NCEA members" or "members of NCEA"):

WHEREAS, the above-named nine (9) Original Members have previously entered into an INTERLOCAL COOPERATION AGREEMENT BETWEEN THE POLITICAL SUBDIVISION OF THE STATE OF NEBRASKA, FOR THE ADVANCEMENT OF COMPRESSED NATURAL GAS AND ELECTRIC VEHICLE INFRASTRUCTURE AND COMPRESSED NATURAL GAS AND ELECTRIC VEHICLE USE to form the Nebraska Community Energy Alliance ("NCEA") in connection with each respective Original Member's "commitment to participate" submitted to the Nebraska Environmental Trust ("NET") concerning the NET-sponsored project, Connecting Nebraska Communities Driving America's Fuel! ("NET-CNCDAF Project 14/149");

WHEREAS, the Original Members have found it necessary to amend the existing Interlocal Agreement to provide a mechanism to allow additional public agencies as defined in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801 to 13-827 (Reissue 2012)) ("Interlocal Act") as the same may from time to time be amended and entities to join the NCEA together with a need to amend certain provisions of the previously executed Interlocal Agreement;

WHEREAS, the Original Members of the NCEA desire to have a single document that describes the amended agreement of the parties and, therefore, the original Interlocal Agreement is superseded by this Amended & Restated Agreement;

WHEREAS, the members of the NCEA for their common good desire to enter this Amended & Restated Agreement pursuant to the Nebraska Interlocal Cooperation Act, NEB. REV. STAT. §§ 13-801 to 13-827 (Reissue 2012) ("Interlocal Act") as the same may from time-

to-time be amended, for the purpose of identifying, applying for, administering or otherwise making available to its members such grants or funding sources as are proper under this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth below, the members of NCEA being parties hereto agree as follows:

1. **Creation.** The NCEA members hereby create a joint entity to be known as the "Nebraska Community Energy Alliance" hereinafter referred to as "NCEA" which shall constitute a separate body politic. The NCEA shall function as a local subdivision of government which shall be empowered to make all financial and policy decisions affecting the purpose for which it is created.

2. **Purpose.** The NCEA is organized by and for Nebraska's communities to promote transportation and housing choices that include lifecycle cost of ownership, retained energy value, and economic competitiveness by coordinating and leveraging federal and state policies and investments to community projects demonstrating direct high impact.

3. **Membership Board.** The affairs, actions, and conduct of the business of the NCEA shall be by the Membership Board ("Board"). The Board shall exercise authority over NCEA in accordance with applicable laws and shall set the policy delegating to its officers, agents, and committees as appropriate.

**Membership Board Composition.** The Membership Board shall consist of one representative from each NCEA member which representative shall be appointed by resolution of the governing body of such member. Each NCEA member may at its discretion appoint one alternative representative who will represent that NCEA member in the event the representative is unable to attend a meeting of the Board. The representative and alternate shall serve at the pleasure of his or her respective organization. Any vacancy which occurs in the Board shall be filled within thirty days through the appointment of a replacement by the respective NCEA member.

a. **Eligibility.** In addition to any other eligibility requirements, a Board candidate must be a NCEA member representative. No NCEA member may be represented by more than one (1) representative on the Board.

b. **Vacancies.** If a member of the Board of Directors at any time during his or her term of office no longer meets the requirements for the initial appointment of the member, or resigns or no longer is able to serve as a member of the Board of Directors, the office of such Board member shall be deemed to be vacant as of the date such Board member no longer meets such requirements or resigns or is no longer able to serve as a member of the Board. A vacancy on the Board shall be filled by appointment of a new

representative by resolution of the applicable governing body represented by the vacant Board member.

c. **Meetings and Conduct of Business.** Meetings of the Board shall be conducted at least annually and at such other frequent times as may be required by the business of NCEA or governing law. A majority of Board members shall constitute a quorum for the transaction of business provided that the Board shall have no authority to approve any item before the Board, except by an affirmative vote from a majority of its members, unless otherwise specifically required by law. Meetings shall be conducted in accordance with the Nebraska Open Meetings Act, NEB. REV. STAT. §§ 84-1407 (Reissue 2014), *et. seq.* as the same may from time-to-time be amended. Robert's Rules of Order, latest edition, shall govern all meetings of the Board of Directors.

d. Teleconferencing shall be allowed provided that NCEA follows state restrictions on its use.

e. **Officers of the Board.** The Board shall select a chairman, vice-chairman, secretary, and treasurer.

- i. **Chairman.** The Chairman shall preside at all meetings of the Board and have such general powers and duties of supervision and management as shall be necessary and germane or required for the execution and prosecution of the affairs of NCEA.
- ii. **Vice-Chairman.** The Vice-Chairman shall serve in the absence of the Chairman and, in the Chairman's absence, shall have all of the powers and duties of the Chairman and shall have such other powers and duties as the Chairman or members shall from time-to-time delegate to the Vice-Chairman.
- iii. **Secretary.** The Secretary shall keep minutes of all meetings conducted by NCEA and shall be the keeper of the records of NCEA.
- iv. **Treasurer.** The Treasurer shall prepare and submit in writing a quarterly report of the state of finances of NCEA and pay NCEA money only upon authorization granted by the Board or Chairman. Payment of all accounts under authorization shall be made on check signed by the Treasurer.

In addition to the foregoing, the officers shall have such other and additional duties, powers, privileges, and authority as the Board may, in its bylaws or otherwise, determine appropriate or necessary.

f. **Executive Board Composition.** The Executive Board shall consist of the four Membership Board Officers and two At Large members elected by the Membership Board.

Executive Board elections will be held annually at NCEA's Annual Membership Meeting. NCEA Executive Board will meet at a minimum quarterly to monitor organizational operations and conduct routine business.

4. **Projects.**

a. **NET-CNCDAF Project 14/149.** With respect to the NET-CNCDAF Project 14/149, the members participating in such Project agree to cooperate with each other and other public agencies on electric vehicle infrastructure and compressed natural gas and electric vehicle use project activities at the earliest practical time to avoid delays and duplication of effort later, head off potential conflicts, and ensure that planning and project development decisions reflect environmental values. Participating members agree to coordinate to reduce duplication between requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and state and local planning and environmental review requirements, unless the agencies are specifically barred from doing so by applicable law. Members participating in the NET-CNCDAF Project 14/149 also agree to provide a minimum of a 50/50 match as may be required by grants or up to \$15,000 per vehicle and \$3,600 per electric vehicle infrastructure. Said members further agree to provide appropriate insurance coverage for all equipment and vehicles purchased or leased pursuant to the NET-CNCDAF Project 14/149. Participating members also agree to provide information identifying potential impacts and mitigation issues in a combined method.

b. **Other Projects and Granting Agencies.** As determined by the NCEA Board, NCEA may develop and administer other projects and seek funding for the same. "Other projects" shall be broadly construed but must be consistent with NCEA's purpose, this Agreement, and applicable laws and regulations. "Granting agency" as used in this Agreement, shall also be broadly construed as any entity, individual, or agency providing funding which is developed or administered by NCEA. No project may be developed or administered, nor agreement with any granting agency be entered into, by NCEA unless first being approved by the NCEA Board of Directors.

5. **Additional Members.**

a. **Method.** The Board may invite other public agencies to join the NCEA, and such invitees shall become a New Member by executing a New Member Counterpart of this Agreement and making the initial contribution as described in Paragraph 7.a of this Agreement.

b. **Participation Rights.** A New Member shall not be guaranteed opportunity to participate in grants or other projects in which NCEA is already involved on the date the New Member joins NCEA. A New Member is entitled to consideration by NCEA for participation in any grants or projects in which NCEA becomes involved after the date on which the member joins NCEA.

6. **Powers and Responsibilities.** The powers and responsibilities of NCEA as carried out by the Board shall include, but not be limited to the following:

- a. Set budgets and to provide for a system of budgeting, accounting, auditing, and reporting of all NCEA funds and transactions for a depository and for the bonding of employees and officials;
- b. Establish the fiscal year of the NCEA and establish fiscal policies;
- c. Establish reasonable rules and regulations for the participation in NCEA and participate in any project or funding opportunity obtained or administered by NCEA;
- d. Seek and obtain contracts, agreements and other arrangements whereby NCEA or its members will receive support and assistance for the purpose of pursuing the objects and purposes of NCEA from such other entities as NCEA from time to time shall determine necessary or appropriate, including, but not limited to, for-profit and non-profit organizations, and all other persons, provided, however, such contract shall not exceed any authority or powers delegated to NCEA by its members;
- e. Provide for the identification, obtaining, maintenance, management, reporting, and administration of projects for grant and funding opportunities to further the best interests of the political subdivisions which are parties hereto and the citizens of such political subdivisions consistent with the purpose of NCEA;
- f. Contract for the delegation or performance of duties imposed upon it herein including, but not limited to, the budgeting, accounting, auditing, and reporting and such other professional services including, but not limited to, legal services, financial services, and accounting services. Such contract may be with an outside party or other appropriate vendors. Such contract may be entered into with and between nonparties to this Agreement or with NCEA members;
- g. Manage and review operations;
- h. Address any related questions and concerns of the general public;
- i. Make application for any permits or licenses required by regulating agencies;
- j. Hire and fire such personnel as are needed to carry out the objectives of NCEA, fix their compensation benefits, enact personnel rules and regulations, and enter into employment agreements;

- k. Adopt bylaws and standard operating procedures regarding the organization and operation of the NCEA and amend and repeal bylaws, rules, regulations, or standard operations to carry out and effectuate its powers and purposes;
- l. Make application for and receive grants related to the purposes for which NCEA was formed;
- m. Borrow funds as necessary;
- n. Contract with and compensate consultants for professional services including, but not limited to, lawyers, accountants, and others necessary or useful and convenient to the purposes of NCEA;
- o. Sue and be sued;
- p. Acquire, hold, use and dispense appropriately of funds received;
- q. Acquire, hold, use and dispose of real and personal property for the purposes of the NCEA;
- r. Make or cause to be made any action necessary or useful and convenient to carrying out the functions of the NCEA;
- s. Have a seal and alter the same at pleasure or dispose with the necessity thereof;
- t. Make application for, receive, and accept donations, gifts, grants, the guest appropriations, or other contributions or assistance and monies, services, materials, or otherwise from the United States or any of its agencies from the State or any of its agencies or political subdivisions or from any persons and to use or expend all such contributions in carrying out its operations not inconsistent with the requirements thereof;
- u. Establish advisory groups and/or committees by appointing individuals to carry out the purposes of NCEA and pay necessary and proper expenses of such group as the Board shall determine and dissolve such groups;
- v. Select a financial agent and invest funds or property as allowed under law and in accordance with requirements imposed by any granting agency;
- w. Purchase insurance, bond any employee or agent, for the purpose of protecting NCEA and its members against liability related to the operation or functions of NCEA;

- x. Employ such persons as are necessary to carry out the purposes of NCEA and pay the necessary and proper expenses of said persons; and
- y. Make and execute contracts, leases, and other instruments necessary or convenient to the exercise of its powers.
- z. All other powers authorized by the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 et seq.

7. **Finances and Budget.**

a. **Funding.** Annually or at such other frequent intervals as the Board may determine, each of the NCEA members shall contribute such funds as are necessary to conduct the operations of NCEA. Each NCEA member shall make an initial contribution of One Thousand Dollars (\$1,000.00). This initial contribution shall be deposited in an account in the name of NCEA at a bank insured by the FDIC and selected by the Board.

b. **Assessment.** NCEA shall be funded by the revenues derived from granting agencies and/or other sources identified by the Board, provided, however, that in the event that funds derived from granting agencies and other sources identified by the Board are insufficient to service debt of NCEA, then in and in that event, the members of NCEA shall be assessed on proportional basis based on total funding received by the member during the preceding 24 month period as compared to total funding received by all NCEA members during the same preceding 24 month period, as determined as of the date of assessment. Each NCEA member shall have 60 days after receipt of notice from NCEA that an assessment is due to contribute its share of the funds required under the terms of the assessment.

c. **Budget.** In addition to any budget, reporting, or other financial requirements of any particular project or imposed by a granting agency, the NCEA Board shall, annually, beginning no more than 30 days after the formation of the NCEA and commencement of business, and continuing each year thereafter during the existence of the NCEA, establish and adopt a budget for the administration and management of the projects undertaken by the NCEA in fulfillment of its purpose. Upon completion of the budget, the Board shall determine the assessment to be submitted by each NCEA member and shall thereafter assess each NCEA member for said amount if any said amount has been determined as an assessment.

8. **Conflicts of Interest.** The members of NCEA agree to act in good faith in fulfilling the purpose of NCEA. It is expressly acknowledged and agreed that the NCEA is a public body and no profit or dividend will inure to the benefit of any individual. No Board member, public official, contractor or agent representing NCEA shall transact any business in his or her official NCEA capacity with any entity in which he or she, or any member of his or her immediate family, has a personal interest, without prior approval of the NCEA Board.



9. **Limitation of Liability.**

a. **Indemnification.** Each NCEA member shall indemnify and hold harmless NCEA against any and all losses, claims, liabilities, suits or judgments, costs and expenses suffered by NCEA as a result of the member's breach of any obligation undertaken by such member or representation made by such member. NCEA shall likewise indemnify and hold harmless each NCEA member against any and all losses, claims, liabilities, suits or judgments, costs and expenses suffered by such member as a result of NCEA's breach of any obligation undertaken by NCEA.

b. **Right to Inspect.** Each NCEA member shall have the right to inspect the books or records maintained by NCEA upon demand made to NCEA and costs of such inspection shall be the responsibility of the inspecting member.

c. **Participation.** No NCEA member shall be liable for any expenses or costs with respect to any project in which the member is not a participant or a recipient of funding or other benefit.

10. **Adherence to Applicable Requirements.** The NCEA members agree to:

- a. Pass appropriate ordinances or resolutions requiring compliance with any reporting or other requirements imposed by applicable law, NCEA or a granting agency; and
- b. Submit such forms, financial reporting, or other information as is required by applicable law, NCEA or a granting agency.

11. **Withdrawal of Member.** In the event any member of NCEA desires to withdraw from this Agreement, said member shall forfeit any future opportunities for funding administered by NCEA, but shall remain liable for fulfilment of any obligation undertaken by the withdrawing member with respect to any granting agency, or the NCEA, and shall remain responsible for any unpaid assessments assigned to the member by the NCEA and any financial assurances that may have been provided by the member to the NCEA or a granting agency. Any member seeking to withdraw from membership in NCEA shall file in the office of NCEA a certified copy of the resolution of the member's governing body approving withdrawal and the withdrawal shall be effective upon such filing.

12. **Termination of Agreement.**

a. **Duration.** NCEA shall continue in existence and operation for the active life of the NET-CNCDAF Project 14/149, including all phases of the NET-CNCDAF Project 14/149, and thereafter as determined by the Board to be beneficial to the constituents of the members hereto, unless terminated as herein provided, but this Agreement shall terminate on or before the date which is sixty (60) years after execution of this Agreement by the first member unless extended in writing and approved by the Board.

b. **Dissolution.** NCEA may be dissolved by the governing bodies by a majority of the NCEA members adopting resolutions approving such dissolution, provided that NCEA may not be dissolved until all funding obligations, including but not limited to any reporting or other obligations to a granting agency, outstanding notes, agreements, or contractual obligations and legal claims shall have been satisfied in full. Upon dissolution of NCEA, each member shall become the owner of a fractional undivided interest in all remaining assets of NCEA. Each member's undivided fractional interest in such assets shall be determined in accordance with the total membership of NCEA at time of dissolution.

13. **Miscellaneous.**

- a. **Amendment and Modification.** This Agreement may be amended or modified only upon approval of a majority of the NCEA Membership Board.
- b. **Assignment.** No member may assign its rights under this Agreement.
- c. **Counterparts.** Original counterparts of this Agreement shall be executed and delivered by each Original and New member to the NCEA. Executed originals shall be placed on file at an office designated by the Board. The NCEA members agree that the separately executed copies of this Agreement constitute the NEBRASKA COMMUNITY ENERGY ALLIANCE INTERLOCAL COOPERATION AGREEMENT of the NCEA and shall be given full force and effect.
- d. **Effective Date.** This Agreement shall become effective upon the signing of all governing bodies of the respective original nine (9) named members hereto after each such member has adopted resolution approving and authorizing the execution of this Agreement. The NCEA established hereby shall come into existence upon the first meeting of the NCEA at a duly called public meeting. Each NCEA member shall provide to the NCEA a certified copy of each resolution approving and authorizing the execution of this Agreement and designating a Voting Delegate for the purpose of the annual membership meeting.
- e. **Governing Law.** This Agreement and all disputes related to or arising therefrom shall be governed, construed, and enforced in accordance with the laws of the

State of Nebraska, without regard to conflict of law rules, and exclusive jurisdiction of any dispute shall rest with the courts of the State of Nebraska.

- f. **Integration.** This Agreement contains the entire agreement of the parties. No representations were made or relied upon by any party other than those expressly set forth herein. All prior and contemporaneous negotiations, discussions, memos and other writing are merged and incorporated herein, it being the intention of the parties that this be a final and full expression of the their agreement. No agent, employee or other representative of any party hereto is empowered to alter any of the terms herein unless such alteration is done in writing and signed by all parties hereto.
- g. **Severability.** If any provision, term, or clause in this Agreement is held unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect.
- h. **Headings.** The headings used in this Agreement are for convenience only and shall not be used to construe the terms of this Agreement.

IN WITNESS WHEREOF, the below New Members have signed and executed this agreement on the dates shown next to their respective signatures as follows:

\_\_\_\_\_  
(Name of New Member)

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print name and title: \_\_\_\_\_

**RESOLUTION NO.**

WHEREAS, the City of Seward, Nebraska, has entered into an agreement to create the Nebraska Community Energy Alliance and to become a member thereof, for the purpose of identifying, applying for, administering or otherwise making available grants and funding sources to members thereof;

WHEREAS, on June 17, 2014, the Seward City Council voted to approve the Nebraska Community Energy Alliance Interlocal Cooperation Agreement (Amended and Restated as of June 2014).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEWARD, NEBRASKA:

SECTION 1. That the City of Seward hereby appoints the Seward City Administrator to serve as a director on the initial board of directors for the Nebraska Community Energy Alliance.

SECTION 3. That the City of Seward hereby designates the Seward City Administrator to serve as its voting delegate to represent the City at the annual membership meeting of the Nebraska Community Energy Alliance and at such other frequent times as may be required by the business of NCEA or governing law, and designates the Assistant City Administrator to represent the City as an alternate.

The Mayor declared the resolution adopted

Dated this 3rd day of November, 2015.

CITY COUNCIL, CITY OF SEWARD,  
NEBRASKA

\_\_\_\_\_  
Joshua Eickmeier, Mayor

ATTEST: \_\_\_\_\_  
Bonnie Otte  
Assistant Administrator/  
Clerk-Treasurer/  
Budget & Human Resource Director