

City of Seward, NE

Tuesday, March 3, 2015

Regular Session

Item G7

CONSIDERATION OF APPROVAL OF A REVISED INTERLOCAL AGREEMENT WITH THE SEWARD/SALINE COUNTY SOLID WASTE MANAGEMENT AGENCY - Councilmember Lieske

Administrative Report: The changes being made are bringing the bylaws and the interlocal agreement into congruence, as well as making a provision for claims to be paid when there is not a quorum present. Claims paid would have to be retroactively approved and are capped.

Following review and discussion, a motion to approve the interlocal agreement and authorize a representative to execute the agreement would be in order.

Staff Contact:

INTERLOCAL AGREEMENT CREATING THE SEWARD/SALINE
COUNTY SOLID WASTE MANAGEMENT AGENCY

This agreement is made this 14th day of September, 1993, among the following local units of government: the county of Seward County - unincorporated area, the City of Seward, the City of Milford, the County of Saline County - unincorporated area of the northern tier, including the industry within said tier, the City of Crete, the Village of Goehner, the Village of Staplehurst, the Village of Bee, the Village of Garland, the Village of Pleasant Dale, the Village of Beaver Crossing, the Village of Dorchester, the City of Friend, hereinafter referred to as "members," or "Participants" or as "member of the Joint Entity" or as "Participants of the Agency" in the singular.

I

CREATION OF
THE SEWARD/SALINE COUNTY SOLID WASTE MANAGEMENT AGENCY

Pursuant to the provisions of the Nebraska Interlocal Cooperation Act (13-804), the local units of government above named do hereby create, as a public body corporate and politic and as a separate joint entity, the Seward/Saline County Solid Waste Management Agency which shall be hereinafter referred to as "Agency".

II

PURPOSES OF THE AGENCY

- 1: The purpose of the Agency is as follows:
- (a) To develop, process, and implement a Solid Waste Management Plan, to include required Certifications, as required by the Waste Management Act, for Agency Members.
 - (b) To permit its Members to coordinate their resources to fulfill their responsibilities under the Waste Management Act and the rules and regulations promulgated thereunder and to deal effectively with Solid Waste Management.
 - (c) To permit the initial organization of an inter-county and county wide interlocal solid waste management agency where at the decision of its members this agreement is intended to be amended to allow for a more complete and/or more complex interlocal structure. This initial structure is intended to allow the inter-county solid waste management agency to organize and clarify its desired working limits and powers as may be needed to grow into the mature agency the Board of Directors may see as appropriate. Recommendations for amendments are to be presented to said members as it may be considered appropriate by the Board of Directors of the Seward/Saline County Solid Waste Management Agency.

III

POWERS OF AGENCY

The Agency shall be a public body corporate and politic and a separate legal entity exercising public and essential governmental functions to provide for the public health, safety and welfare and shall have the following powers:

- (a) To adopt and have a common seal and to alter the same at pleasure.
- (b) To sue and be sued.
- (c) To make and enforce bylaws or rules and regulations for the management and operation of its business and affairs.
- (d) To make or cause to be made studies and surveys necessary or useful and convenient to carrying out the functions of the Agency.
- (e) To contract with and compensate consultants for professional services including but not limited to architects, engineers, planners, lawyers, accountants, rate specialists, and others found necessary or useful and convenient to the stated purposes of the Agency.
- (f) To provide for a system of budgeting, accounting, auditing (annual audit) and reporting of all Agency funds and transactions, for a depository, and for the bonding of employees.
- (g) To accept gifts or grants or real or personal property, money, material, labor or supplies for the purposes of the Agency, and to make and perform such agreements and contracts as may be necessary or convenient in connection with the procuring, acceptance or disposition of such gifts or grants.

3.02 Reservation of Powers. The following powers shall be reserved to and remain a function of the individual Participants.

- (a) Final action upon the allowance and payment or any claims against a Participant;
- (b) The levy and collection of ad valorem property taxes.

ARTICLE IV

ORGANIZATION

4.01 Participants.

- (a) This Agreement shall become effective when executed (per Article VII) by any two or more of the identified local units of government within Seward County and Saline County.

- (b) The Agency shall be subject to control by the Members in accordance with the terms of this Agreement. The governing body of each member shall have approved this Agreement by resolution. A certified copy of each approving resolution shall be kept on file at the Agency's designated office.

4.02 The Board of Directors.

- (a) The affairs of the Agency shall be governed by a Board of Directors, which shall consist of not less than one representative from each Participant appointed by the Participants in the manner specified in this Agreement, and if deemed appropriate, further clarified by the By-Laws of the Agency.
- (b) The Board of Directors shall be responsible for administering the Agency so as to accomplish the objectives of this Agreement, the Interlocal Act, the Waste Management Act, and the Environmental Protection Act and any applicable federal or state statute, law, order, rule or regulation,. Except as provided in By-Laws or resolutions of the Agency, all powers of the Agency shall be exercised by the Board of Directors, acting through its chair or vice-chair and secretary.
- (c) The Board of Directors shall hold an annual meeting at such time and place as the Board of Directors shall designate and shall hold meetings at other times at the call of the chair or vice-chair or upon call of at least one-third of its members. Notice of meetings shall be publicized and meeting agendas made available in compliance with Neb.Rev.Stat. §84-1408, et.seq., as amended from time to time, and as provided in by-laws of the Agency.
- (d) The Board of Directors, at its annual meeting, shall elect three officers who shall serve until the next annual meeting, as long as he or she remains a Member representative or until his or her successor is chosen. There shall be a chair, a vice-chair, and treasurer elected from the representatives of the Participants.
- (e) Each member of the Board of Directors shall have the right to cast one vote per 1000 persons represented by their specific Jurisdictional Area (rounded to the nearest 1000 persons based on the latest US Census, with no Participant having less than 1 vote) on actions of the Board of Directors. The "County Jurisdictional Area"

shall include all unincorporated areas of Seward County and Saline County, respectively.

- (f) A quorum of the Board shall consist of a majority of the weighted votes of all member representatives appointed to the Board as assigned in 4.02 (e) above.
- (g) The Board of Directors may delegate authority to approve and pay expenditures totaling less than \$5,000.00 to the Treasurer per quarter. Any such expenditures so approved and paid shall be presented to the Board for ratification at the Board meeting immediately following payment. All other Board action shall, including any financial expenditures of \$5,000.00 or more, require an affirmative vote of the majority of the total votes constituting a quorum at a meeting under Article 4.02 (f) of this Agreement. Expenditures must be ratified at least annually.
- (h) The duties of the Board of Directors include, but are not limited to, the following:
 - i) Supervision of the development of plans and procedures that will result in the attainment of the objectives of this Agreement.
 - ii) Annual adoption of a budget of revenues and expenditures.
 - iii) Make such administrative arrangements as may be required and which are pertinent to this Agreement, but which are not specifically covered herein.
 - iv) Contract for services as are authorized by the Board as necessary to carry out the functions of the Agency.
 - v) Develop long-range plans.
 - vi) Cause studies to be made as necessary for administration of the aforesaid duties; employ such consultants as are authorized by this Agreement and approve their compensation.
 - vii) Appoint task forces and committees for particular studies. A member may be reimbursed, at the discretion of the Board of Directors, for the time and expenses of any of its employees or agents engaged in such task force and committee work.

ARTICLE V

WASTE MANAGEMENT PLAN: SERVICE AGREEMENTS

ARTICLE VI

FINANCING

6.01 Intent: Obligation of Participants. It is the intention of the parties to this Agreement that the Agency be financed via a mutually agreed method as arrived at by the voluntarily participating member participants through the action of the Agency Board of Directors. If any Participant shall choose not to provide financial support per said mutually agreed to budget plan, that Participant shall be deemed to intend withdrawal, or termination of membership and shall be required to proceed with withdrawal per Article VII.

6.02 In the initial period of formation, no fee is intended. This base level Interlocal Agreement will bring together a Seward/Saline County Solid Waste Management Agency Board of Directors who will, in its first steps after formation clarify the desired extent and limits of powers of the Agency. Said Board may present those findings and recommendations to its Participants as an amendment to this Interlocal Agreement or as an Interlocal Agreement that would succeed this Interlocal Agreement. The intent is to have said call for future financing presented in conjunction with the budgeting cycle of the Participants.

ARTICLE VII

TERM, WITHDRAWAL, DISSOLUTION AND INVOLUNTARY WITHDRAWAL

7.01 Term of Agreement. Subject to earlier termination, as provided below, the term of this Agreement shall be fifty (50) years from the effective date.

7.02 Withdrawal. A Participant cannot withdraw from the Agency prior to dissolution of the Agency except in accordance with the following procedures.

(a) Notice. The withdrawing Participant shall serve notice of this intent to withdraw on the Agency by certified mail, return receipt requested, addressed to the Chairman of the Board of the Agency. The notice shall state the name of the withdrawing Participant and its intention to withdraw from the Agency, and shall be signed by a duly authorized representative of the Participant. The Notice of withdrawal will be deemed served when received by the Agency.

(b) Time of Notice, Effective Date. A Notice of withdrawal may be served at any time, and shall be effective 30 days from the date it is served.

(c) Notice, Self-Executing. A notice of withdrawal is self-executing, not requiring Agency action to be effective. A Participant which has once served a notice of withdrawal in accordance with this Agreement cannot rescind the notice, but may re-apply for participation in accordance with the procedures set forth in the Agreement.

(d) Effect of Withdrawal Notice. A notice of withdrawal shall not affect a participant's obligations under any Service Agreement with the Agency, nor shall such notice of withdrawal relieve such Participant from any contract or obligation entered into by Agency, as provided in Section 7.05. A notice of withdrawal relinquishes any rights of the Participants to funds, facilities, or property of the Agency.

7.03 Dissolution. The Agency may be dissolved in the following manner.

(a) The Board of Directors shall adopt a resolution recommending that the Agency be dissolved, and directing that the question of such dissolution be submitted to a vote of the governing bodies of the Participants to be held no later than forty-five (45) days after the date the resolution is adopted by the Agency.

(b) The resolution shall be deemed adopted when less than 2 Participants remain as members/have not adopted the resolution of dissolution.

(c) Upon the resolution being deemed adopted, a written notice of dissolution of the Agency shall be filed in the office of the Secretary of State and in the office of the Seward County Registrar of Deeds and in the office of the Saline county Registrar of Deeds.

7.04 Distribution of Assets. Upon dissolution of the Agency, the Board of Directors shall continue in existence for so long and be empowered to conduct such business of the Agency as is necessary to wind up the Agency's affairs.

7.05 Non-Impairment and No Relief from Liability. Anything herein to the contrary notwithstanding, no Participant may withdraw or in any way terminate, amend, or modify in any manner to the detriment of any holders of any obligation issued by the Agency, either this Agreement or any contract of or with the Agency. Neither withdrawal nor dissolution, obligation or undertakings whatsoever of the Agency, all of which shall continue, according to their terms in full force and effect and all Participants and former Participants shall continue to be bound thereby. Neither withdrawal nor dissolution shall relieve any Participant or former Participant, of any liability, obligation, cost, expense, duty or undertaking imposed by this Agreement or by any applicable law.

7.06 Formalizing Extended Liability. Prior to the movement of any municipal solid waste on behalf of the Agency, the Board of Directors shall formally clarify the extent of liability of any Participant. The base concept being that liability for waste generated by a specific jurisdictional area shall stay with that jurisdictional area in spite of withdrawal. However, future actions of the Agency cannot be construed to expand the liability of any Participant beyond the waste it contributed while a Participant in Seward County/Saline County Solid Waste Management Agency.

7.07 Involuntary Withdrawal. In the event a Participant fails to perform its obligations pursuant to this Agreement, the Board of Directors shall give written notice to such Participant specifying such failure to perform and establishing a reasonable period that the Participant shall have to fulfill its obligation pursuant to this Agreement. If the Participant's failure to perform its obligation is continuing, the Board of Directors may immediately terminate such entity's participation in the Agency and suspend all services of the Agency. This provision shall not limit the right of any other Participants to enforce the rights and obligations established pursuant to any Waste Management Plan, Service Agreement or other project or transaction under a separate agreement with the Agency until payment or performance of the obligation or completion of the plan, project or transaction in accordance with its terms.

ARTICLE VIII

MISCELLANEOUS

8.01 Change of Form of Government. This Agreement shall survive a transition or change in the form of government of the Participants and any successor in interest shall be bound by the terms of this Agreement as if any original party hereto. In the event any Participant in which any Agency Facilities or properties are located is merged into any other political entity, the Agency shall retain full ownership and right to own, operate, use and control such Facilities and properties.

8.02 Not for Profit Entity. The Agency shall be operated as a not for profit entity and no part of its earnings, assets or properties shall inure to the benefit of any individual.

8.03 Assignment. This Agreement shall not be assignable by any party hereto.

8.04 Amendments. Any participant may propose an amendment to this Agreement by filing such proposed amendment with the Chairperson of the Board of Directors, who shall immediately forward copies thereof to the Participants. Each Participant shall present the proposed Amendment to its governing body at its next regular or designated special meeting. In voting on any amendment, each Participant shall have one vote for every 1000 persons (rounded to the

nearest 1000) with no Participant having less than one vote. If two-thirds (2/3) of the weighted votes of the governing body of such Participant approve the amendment, as evidenced by resolution of the governing body of such Participant, such amendment will become effective 30 days after approval by the Board of Directors. Abstentions shall be counted as negative votes. In no event shall any amendment terminate, amend or modify this Agreement in any manner to the detriment of any holders of any outstanding obligation issued by the Agency.

8.05 No Additional Liability. In no event shall this Agreement or any contract executed in compliance herewith, be construed to extend or enlarge the responsibility of any Participant or Contracting Party to dispose of Solid Waste beyond any requirement or obligation provided by law.

8.06 Execution. Separate copies of this Agreement are executed by the Participants with the understanding that, as and when each of the Participants have executed a copy, all of the Participants shall be bound to the same extent and purpose as if all such Participants had simultaneously joined in the execution of a single master copy.

8.07 Effective Date. After this proposed Interlocal Agreement has been circulated for consideration for at least 60 days, the effective date of this Agreement shall be September 14, 1993, if and when two or more Participants shall have adopted this Agreement within said 60 days of circulation.

8.08 An executed copy of this Agreement shall be filed with the Secretary of State of the State of Nebraska.

Approved and Adopted this _____ day of November, 2014:

Mike Luebbe, Commissioner
Seward County Bd. of Comm.

President
Seward City Council

Dean Bruha, Mayor
City of Milford

Roger Foster, Mayor
City of Crete

Lyle Weber, Chairman
Village of Dorchester

Marvin Kohout, Commissioner
Saline County Bd. of Comm.

Harlan Schrock, President
Friend City Council

Chairman
Village of Beaver Crossing

Chairman
Village of Pleasant Dale

Chairman
Village of Staplehurst

Chairman
Village of Bee

Village of Goehner

Chairman
Village of Garland

BYLAWS OF
SEWARD/SALINE COUNTY SOLID WASTE
MANAGEMENT AGENCY

ARTICLE I
MEMBERSHIP

Section 1: All applications for membership in the Seward/Saline County Solid Waste Management hereinafter "Agency" shall be accepted by the Clerk/Secretary, subject to the provisions set forth in the Interlocal Solid Waste Management Agreement, as amended from time to time.

ARTICLE II
BOARD OF DIRECTORS

Section 1: The business of the Agency shall be conducted, by a Board of Directors, which shall have the powers and duties vested in it by law and the Interlocal Solid Waste Management Agreement. The Board of Directors shall be made up of one representative from each political subdivision which are parties to the Interlocal Solid Waste Management Agreement and who has been appointed by his or her County Board, City Council, or Village Board or as provided in the host agreement or as otherwise authorized by the Board of Directors. All members of the Board of Directors shall be appointed by the local subdivision of the government which they represent or which is authorized to appoint said board member. Said subdivision shall name an alternate member to act and vote in the absence of the political subdivision's named representative. Each board member shall serve at the pleasure of the subdivision of government which is responsible for the appointment.

Section 2: The Board of Directors shall elect from their membership, a chairperson, and a vice chairperson. A clerk/secretary and a treasurer shall be elected by the Board. The clerk/secretary or treasurer so selected shall be a member of the Board of Directors (if there is not already a representative from that subdivision on the board) and a member of the Agency. Such officer shall serve so long as he or she remains a member of the Board of Directors or until his or her successor in office is chosen, whichever shall occur first.

(a) Section 3: A quorum of the Board (Article IV Section 4) shall consist of a majority of the

weighted votes of all member representatives appointed to the Board.

- Section 4: An Executive Committee shall be created to be responsible for interim policy decisions, approval of reports of claims, and shall have power, authority, and duties as the Board of Directors may from time to time delegate to it. Said committee shall be comprised of the following Directors:
- a) A single Director from each county who shall represent the unincorporated population of such county.
 - b) A single Director from each of the three (3) largest municipalities.
 - c) A single Director from the largest municipality in each county if said municipality is not already one of the three (3) largest municipalities.
 - d) A single Director which shall rotate annually, for all other municipalities within each county. Said municipalities shall meet prior to the annual budget meeting of the Agency and designate which municipality shall have a Director on the Executive Committee until the next annual budget.
 - e) If a municipality other than any of those set forth above shall be the host for the solid waste disposal facility, a single Director from the host municipality shall be a permanent member of the executive committee of the Board of Directors.
 - f) The Executive Committee shall meet as set forth in Article IV, Section 6.
 - g) All actions undertaken by the executive committee shall be reported to the entire Board of Directors at the next regular or special meeting of the Board of Directors following the executive committee action.

Section 5: Management Advisory Committee - The Board of Directors at its discretion may create a Management Advisory Committee. Said committee shall be comprised of one staff member of each of the affiliated local subdivisions, to assist in preparation of all staff work and meetings agendas for Board meetings and Executive Committee of the Agency.

Section 6: A Finance Committee is hereby created by the Board of Directors. Said committee shall have the power to authorize or approve the payment of claims and shall have such other powers and duties as the Board of Directors may from time to time delegate to it. All payments authorized or approved by the Finance

Committee shall be ratified at the next regular or special meeting of the Board of Directors. The Finance Committee shall be made up of the Chairperson, Vice Chairperson and Treasurer of the Agency and a director from each County named by the Chairperson which directors shall serve on the Finance Committee for the duration of the term of this Chairperson.

ARTICLE III
DUTIES OF OFFICERS AND EXECUTIVE COMMITTEE

- Section 1: The Chairperson shall ordinarily preside at meetings of the Board of Directors.
- Section 2: The Chairperson may establish standing or temporary committees, assign their duties, and appoint any member of the Agency to sit on such committees. The Committees shall exist at the pleasure of and shall report as required to the chairperson.
- Section 3: The Chairperson shall carry out the policy and program of the Agency as directed by the Board of Directors.
- Section 4: The Vice Chairperson shall substitute for the chairperson in his or her absence and in such case may exercise the powers of the Chairperson with regard to calling meetings.
- Section 5: The Clerk/Secretary shall be responsible for recording the vote at meetings of the Board of Directors and preparing minutes of Board of Directors' meetings.
- Section 6: The Treasurer shall have custody of all monies belonging to the Agency. He or she shall keep complete accounts and shall present a written financial statement at each annual meeting. He or she shall be bonded. Expenditures shall be made only by the Treasurer upon specific or general authorization of the Board of Directors. The Treasurer shall have all monies belonging to the Agency either deposited in a bank depository designated by the Agency Board of invested as authorized by the Agency Board. There shall be an annual audit of the records conducted by an audit committee selected from the Board on a fiscal year basis.
- Section 7: In case of the absence of any officer or for any other reason that the Board of Directors may deem sufficient, the Board may delegate, for the time

being, the powers or duties of such officer to any other officer or to any director.

ARTICLE IV
MEETINGS

- Section 1: The annual meeting of the membership shall be held at a time to be determined by the Board of Directors.
- Section 2: All meetings of the Agency's Board of Directors shall be held at the Webermeier Building., 617 Second Street, Milford, NE., or at such other location as designated by the Board of Directors.
- Section 3: The Chairperson may call a meeting of the Board of Directors at his or her discretion. A meeting of the Board of Directors must be called by the Chairperson upon written request of 4 or more directors. Notice of every meeting, stating the time and place thereof, shall be given to each director personally, by telephone, by email or by mail at least two (2) days before the meeting.
- Section 4: The order of business at meetings of the Board of Directors shall be as follows:
- 1: Call to Order.
 - 2: Open Meeting Act.
 - 3: Recording of members present.
 - 4: Approval of minutes of last meeting.
 - 5: Approval of Financial reports of the last meeting.
 - 6: Reports of Board of Directors, Officers, and Committees.
 - 7: Unfinished business.
 - 8: New business.
 - 9: Miscellaneous business and discussions.
 - 10: Adjournment.
- Section 5: At each meeting of Agency members, every member shall be entitled to vote in person and shall have votes(s) as set forth in the Interlocal Agreement creating the Seward/Saline County Solid Waste Management Agency.
- Section 6: The Executive Committee may hold regular monthly meetings at a time and place to be determined by written policy to be adopted by such committee. Special meetings of the Executive Committee may be called by the Chairperson of the Board of Directors, if he or she is also a member of the Executive Committee, or by any two members of the Executive Committee. Notice of every meeting, stating the time

and place thereof, shall be given to each member of the Executive Committee personally, by telephone, by facsimile transmission, by email or by mail at least one (1) day before any meeting. A majority of the Executive Committee shall constitute a quorum for transacting business. All actions of the Executive Committee shall require the favorable vote of a majority in attendance at a meeting for which a quorum is present.

ARTICLE V
FISCAL YEAR

Section 1: The fiscal year of the Agency shall end on September 30.

ARTICLE VI
AMENDMENT

Section 1: The Bylaws of the Agency may be amended by resolution of the Board of Directors of the Agency.

Submitted:

Chairperson, Board of Directors

Certified Adopted on

_____, 20__

Clerk/Secretary