

FILE NO. 202
 RECORDED 1 DAY OF August
 1977 at 8:35 A.M.

K. NORTH AMMUNITION MILLS CO. RECORDER
 Fee: \$None--County Business



State of Iowa

Secretary of State

Des Moines

MELVIN D. SYNHORST
 SECRETARY OF STATE

J. HERMAN SCHWEIKER
 DEPUTY SECRETARY OF STATE

July 26, 1977

Mills County Board of Supervisors
 Court House
 Glenwood, Iowa 51534

Gentlemen:

As requested in our telephone conversation with your County Attorney, Mr. H. Walter Green, we are enclosing a xerox copy of the Intergovernment Agreement Creating the Mills County Landfill Association filed August 24, 1973 and an Amendment to that Agreement filed July 21, 1977. The two documents consist of 16 pages and our fee for xeroxing is 10 cents per page. Please send remittance of \$1.60 as soon as possible.

If we can be of further service at any time, please notify our office.

Very sincerely,

Karol Larsen

Karol Larsen
 Secretary of State's Office

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 Enclosures

INTERGOVERNMENTAL AGREEMENT CREATING
THE MILLS COUNTY LANDFILL ASSOCIATION

CLERK OF STATE
IOWA

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FILED

This agreement is made and entered into by, between and among the City of Glenwood, Iowa, The Town of Malvern, Iowa, the Town of Hastings, Iowa, the Town of Emerson, Iowa, the Town of Pacific Junction, Iowa, the Town of Silver City, Iowa, the Town of Henderson, Iowa, the Town of Tabor, Iowa, the County of Mills, Iowa, (all parties being hereinafter called the "municipalities"):

W I T N E S S E T H:

ARTICLE I.

CREATION OF THE MILLS COUNTY LANDFILL ASSOCIATION

Pursuant to the provisions of Chapter 28E, Code of Iowa, 1971, the Municipalities hereby form and create, as a public body corporate and politic and separate legal entity, the Mills County Landfill Association (hereinafter called the "Association").

ARTICLE II.

PURPOSES

1. The purposes of the Association are as follows:
 - (a) To provide for the economic disposal, or collection and disposal, of all solid waste produced or generated within each member city, town, and rural areas of Mills County lying outside the member cities and towns.
 - (b) To cooperate with local, state and federal public health agencies in preventing the contamination and pollution of the land, water and air resources of the area, through the control, collection and disposal of solid waste.
 - (c) To engage such employees and provide offices, equipment, machinery, buildings and grounds as are necessary to adequately perform the functions of the Association.
 - (d) To contract with member cities, towns and county, with public or private persons, firms or corporations for the disposal,

-2-

or collection and disposal, of solid waste, and collect payment for such services, and to receive and expend state, federal and private grants and other moneys which may be made available, to the extent permissible under applicable state and federal laws, and under the rules hereinafter set forth.

(e) To do all things necessary and consistent with the powers given political subdivisions under Chapters 28F and 394, Code of Iowa, and related chapters.

ARTICLE III.

ORGANIZATION

(a) The governing body of the Association shall be designated as the Association Board (hereinafter called the "Board"), whose membership shall consist of a representative of the governing body of each participating Municipality, or his designated substitute, which substitute shall be approved by the body he represents. Only members of the Board may vote. Each member of the Board shall have one vote for each five hundred population or fraction thereof, residing in the governmental jurisdiction he represents. Such population shall be ascertained from the most recent federal census or special federal census, whichever is latest, for that jurisdiction. Where the governmental jurisdiction is a county, such population shall be that of the unincorporated portion of the county.

(b) There shall be one class of membership in the Association Board, which shall be a full membership and each member Municipality shall designate by resolution of its governing body its membership within the Board.

(c) A quorum of the Board shall consist of a majority of the entire Board membership, regardless of the number of votes held by each member present and also of a majority of the total number of votes of all members whether or not present.

(d) A majority vote of the Board or of the members of the Board or any specified fractional vote of the Board or of the members of the Board when required by this Agreement as authorization for or as a

-3-

prerequisite to any certain Board action shall mean such a majority or such a fraction of the total votes represented by the representatives constituting the quorum of the Board at the meeting at which such action is considered.

(e) The Chairman and the Vice-Chairman of the Board shall be elected by the majority of Board membership and shall serve for a term of one year, or until their respective successors in office are chosen. The incumbent in each said office may succeed himself; and annual elections shall be held.

(f) The Association Board shall hold at least one meeting during each six months of the year on dates and at places which shall be determined by the Board. Special meetings may be held at the call of the Chairman, Vice-Chairman or majority of the membership in the Association Board.

(g) The Board may hire a director and such other supervisor, clerical and other personnel as are necessary to carry out the functions of the Association. The Board shall fix their compensation and benefits, and shall approve all personal rules and regulations pertaining thereto. No member of the Board shall suffer personal liability as the result of his participation on the Board or as the result of suits filed against the Board as the results of its actions taken in performing the purposes of this agreement.

(h) The Secretary-Treasurer of the Association shall have the authority, duties and obligations normally associated with these offices, including but not limited to the receipt and disbursement of funds and the preparation and submission of quarterly and annual financial reports to the Board.

(i) The Board may employ legal counsel, who may be a paid employee of one of the members, and who may receive compensation set by the Board for the performance of his duties.

(j) The Board shall cause this Agreement to be filed with the Secretary of State and shall notify the Secretary of State of the name of any municipality withdrawing from or joining the Association.

ARTICLE IV.

DURATION

1. It is the intention of this Agreement that the

Association be a perpetual organization, unless terminated or dissolved as hereinafter provides. Additional municipalities may be added to the membership of the Association upon a three-fourths vote of all the members of the Board.

2. In the event an additional municipality shall apply for membership in the Association and said application is considered and approved by the then existing Board, then said municipality may be added to the membership, provided, however, that said additional municipality as a condition of membership agrees to abide by the terms of this agreement as set out herein and possess legal power and authority to do so. The Board may fix the terms under which any additional municipality may become a member.

ARTICLE V.

Powers

The Association shall be a public body corporate and politic and 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 sue and be sued. The Association Board may, upon a majority vote, elect to indemnify any member of the Board from personal liability in the event of suits filed against the Association.
- (b) To acquire, hold, sue and dispose of the reserves derived from the operation of its facilities and other moneys of the Association.
- (c) To acquire, hold, use and dispose of other personal property for the purposes of the Association.
- (d) To acquire by purchase, gift, lease or otherwise, real property and easements therein, necessary or useful and convenient for the operation of the Association, subject to all liens thereon, if any, and to hold and use the same, and to dispose of property so acquired no longer than necessary for the purposes of this Association.
- (e) To accept gifts or grants of real or personal property, money, material, labor or supplies for the purposes of the Association, 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.
- (f) To make and enforce by-laws or rules and regu-

lations for the management and operation of its business and affairs and for the use, maintenance and operation of its facilities and any other of its properties, and to annul the same.

(g) To do and perform any acts and things authorized by Chapter 28E, Code of Iowa, 1971, and by this Agreement, under, through or by means of the officers, agents and employees, or by contracts with any person.

(h) To enter into any and all contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the Association or to carry out any powers expressly given by this agreement.

(i) To cause the collection and disposal of solid waste material within each municipality, or the disposal of such material from each member Municipality, pursuant to contract or agreement between the Association and the Municipality pertinent thereto.

(j) To fix, establish and maintain such rates, tolls, fees, rentals or other charges for the services and facilities of the Association sufficient to pay at all times the cost of maintaining, repairing and operating said facilities, to pay the principal of an interest on bonds of the Association then outstanding, to provide for replacements, depreciation and necessary extensions and enlargements to provide for necessary reserves.

(k) To make or cause to be made studies and surveys necessary or useful and convenient to carrying out the functions of the Association.

(l) To contract with and compensate consultants for professional services including but not limited to architects, engineers, planners, lawyers, accountants, rate specialists, and all others found necessary or useful and convenient to the stated purposes of the Association and further, to contract with any private firm, company, or organization operating a landfill.

(m) To prepare and recommend to member Municipalities local ordinances governing refuse collection, transportation and disposal, regulation or private collection haulers, land use regulations, sanitation, burning of private or public wastes, incineration standards and such other regulations as may from time to time be required.

-6-

(n) To exercise such powers relative to the efficient collection and disposal of solid waste as are available under then existing laws to each member Municipality as is necessary or useful and convenient to carrying out the functions of the Association within such member Municipality, as such functions are defined by the service contract entered by and between that member Municipality and the Association.

(o) To provide for a system of budgeting, accounting, auditing and reporting of all Association funds and transactions, for a depository, and for the bonding of employees.

(p) To appoint an executive committee from among the board members which shall have the authority to manage and oversee the day-to-day functions of the Association. Such committee shall have authority only in areas where no resolution need be passed by the Association. Such committee may serve in lieu of the appointment of a director.

(q) To consult with representatives of federal, state, and local agencies, departments and their officers and employees and to contract with such agencies and departments.

(r) To exercise such other powers as are available under then existing law to each member Municipality as is necessary or useful and convenient to carrying out the functions of the Association within such member Municipality, as such functions are defined by the service contract entered by and between that member Municipality and the Association.

(s) To borrow money, make and issue negotiable bonds, certificates, refunding bonds and notes and to secure the payment of such bonds, certificates, refunding bonds and notes of any part thereof by a pledge of any or all of the Association's net revenues and any other funds which it has a right to, or may hereafter have the right to pledge for such purposes.

(t) To provide in the proceeding authorizing such obligations for remedies upon default in the payment of principal and interest on any such obligations including but not limited to, the appointment of a trustee to represent the holders of such obligations in default and the appointment of a receiver of the Association's property, such trustee and such receiver to have the powers and duties provided for in the proceeding authorizing such obligations.

-7-

(u) To receive funds from each member Municipality as payment for providing collection or disposal of solid waste from residents therein.

(v) To hire employees, fix their compensation, benefits, personnel rules and regulations, and terminate their employment

(w) To borrow money and accept grants, contributions or loans from, and to enter into contracts, leases, or other transactions with municipal, county, state or the federal government.

(x) To exercise all powers granted political subdivisions under Chapters 28E, 28F, 394, Code of Iowa, and other related Chapters.

ARTICLE VI.

Duties of the Association.

The duties of this Association shall be to provide members with satisfactory solid waste disposal facilities and to maintain a cooperative relationship with individual governmental units. The duties shall also include adopting by-laws for the operation of the Association and providing member governments with copies of the official by-laws.

ARTICLE VII.

Technical Cooperation from Municipalities and Counties

The municipalities agree to respond to reasonable requests of its consultants or employees for the purpose of this Agreement, and to assure that engineers, architects and consultants hired by the Municipalities release materials, data and other pertinent items paid for by public funds to the Association staff to aid in the efficient and effective accomplishment of such purposes.

ARTICLE VIII.

Financing.

1. In the performance of its duties, the Board may cooperate with, contract with, and accept and expend funds from federal, state or local agencies, public or semipublic, or private individuals or corporations, and shall carry out such cooperative undertakings and contract

2. The Board may enter into contracts and make expenditures for the purchase, lease or rent of required land, facilities, equipment and supplies necessary to carry out the purpose of this agreement,

-8-

in the event such purchases, leases, or rental become necessary. The Association shall also have the power to sublet or rent any property owned or leased and the income therefrom shall accrue to the Mills County Landfill Association. The Association Board may also enter into contractual agreements with any privately owned and operated sanitary landfill companies or firms in order to carry out the purposes of this agreement.

3. The expenditures of the Association, exclusive of gifts, grants or contract receipts, shall be appropriated or provided to the Association by the member governing bodies.

4. The Board shall prepare a budget based on calendar years for the operation of the Association to be adopted in June of the year preceding the budget year.

5. The Board shall request each Municipality to provide in its budget for its share of the Association budget.

6. The Board shall annually adopt a formula for the purpose of allocating the portion of the Association budget each Municipality will provide.

7. The share of each budget from each Municipality shall be due and payable to the Treasurer of the Association in quarterly or monthly payments to be made within five (5) days before the beginning of any such quarter or month of the Associations' budget year.

8. Special appropriations shall be made by the parties hereto for funding the operation of the Association prior to the establishment of the budget cycle.

9. Any special or budgetary appropriation adopted by the Association shall be a membership requirement of each and every municipality. The failure of a Municipality to pay over the Association the allotted share of a Association budget may be considered a momentary withdrawal of that Municipality and a default of this Agreement.

ARTICLE IX.

Not For Profit.

It is expressly understood that the Association is to be operated not for profit and no profit or dividend will inure to the benefit of any person.

ARTICLE X.

SUSPENSION OF VOTING RIGHTS AND SERVICES

379

During a period of delinquency by a Municipality in the payment to the Association of its share of a budget and before such delinquency is determined a voluntary withdrawal, such Municipality shall not be entitled to the services of the Association, nor shall the Municipality be entitled to vote on matters coming before the Board, unless such delinquency shall be waived for voting purposes by a three-quarters vote of the remaining members of the Board.

ARTICLE XI.

WITHDRAWAL AND DISSOLUTION

1. The Association shall be completely dissolved and this agreement terminated only upon the affirmative three-quarters majority vote of the Board which vote shall specify the date and time such dissolution shall be effective, which date and time may be amended at or before such time but not thereafter by the same affirmative three-quarters majority vote of the Board.
2. In the event of such a vote to completely dissolve the Association, any real or personal property of the Association shall be sold prior to the date and time aforesaid and the proceeds prorated among the Municipalities at the time of dissolution on the basis of the sum of the portions of the budget for the Association provided by them for and during the period of this agreement. The current budget year shall be used as one of the years in the calculation if all Municipalities have made their proper contribution. If all members have not made their proper contribution, the balance remaining of funds collected during the current year shall be refunded to the contributors before determining the value of the assets of the Association at dissolution, and said year shall not be used in calculating the shares.
3. Anything herein to the contrary notwithstanding, Municipalities may not withdraw or in any way terminate, amend, or modify in any manner to the detriment of bondholders this agreement or any contract for the services of the Association if revenue bonds or obligations issued in anticipation of the issuance of revenue bonds have been issued and are outstanding. Any revenue bonds for the payment and discharge of which, upon maturity or upon redemption prior to maturity, provision has been made through the setting apart in a reserve fund or special trust account created pursuant to this agreement to insure the payment thereof,

-10-

of moneys sufficient for that purpose or through the irrevocable segregation for that purpose in a sinking fund or other fund or trust account of moneys sufficient therefore, shall be deemed to be no longer outstanding and unpaid within the meaning of any provision of this Agreement. Further, the board may forthwith enter into an agreement with an independent contractor for the disposal of solid wastes of the withdrawing member Municipalities. In addition to the above restrictions on withdrawal, no member may withdraw during the initial term of such agreement with the independent contractor. The initial agreement will be for a period of one (1) to five (5) years.

ARTICLE XII.

MANNER OF ACQUIRING AND HOLDING PROPERTY

1. The Board may lease, purchase or acquire by any other means, from members of any other source, such real and personal property as is required for the operation of the Association and the carrying out of the purposes of this Agreement. The Board shall maintain title to all such property in the name of the Association and shall require the Secretary to maintain an inventory. Property, materials and services shall be acquired or disposed of only upon a majority vote; provided, however, that by the same vote the Board may authorize an officer, or executive committee to expend such funds as the Board may direct for other authorized purposes of the Association. All agreements, deeds, leases or other documents shall be signed by the Chairman or Vice-Chairman and by the Secretary-Treasurer.

ARTICLE XIII.

AMENDMENT OF AGREEMENT

Amendment of the agreement shall be by the same procedures by which this agreement was approved and executed.

ARTICLE XIV.

ARBITRATION OF DISPUTES BETWEEN MEMBERS

Except as may be otherwise required by law, the Municipalities and each of them agree that any disputes which may arise between them or between them and the Association, involving interpretation of this agreement, shall be resolved whenever possible by voluntary negotiation in which any officer, or legal counsel or director may act as

mediator if Association interests do not appear to be present in the issues presented or represent the Association if the issues do not affect the Association. Such negotiation shall, however, not be obligatory and may, if commenced, be terminated at any time by withdrawal of any party to the conflict or whose interests as a member or as the Association are affected thereby may invoke the processes of arbitration hereinafter described in the following manner:

(a) Any one or more Municipalities interested in such a dispute or the Association shall serve notice in the manner of service of an original notice under the Iowa Rules of Civil Procedure upon all the adverse parties above referred to stating as simply as possible the points of difference between the parties and stating an intent to initiate such arbitration procedures and the completed service of such notice shall be deemed initiation of such procedures. Within ten (10) days thereafter, the serving parties (acting jointly if more than one), jointly and severally identified as "Party X" for purposes of this Article, and the adverse parties served (acting jointly if more than one), jointly and severally identified as "Party Y" for purposes of this Article, shall each select one arbitrator and shall notify the other in writing of the name and address of such third party arbitrator. The three arbitrators selected as aforesaid shall immediately proceed to determine the points of difference stated in such notice, and the conclusion submitted in writing to Party X and Party Y, and the determination so made shall be binding upon Party X and Party Y and shall form the basis for future guidance of the parties on the issues so resolved.

(b) If either party shall fail to select an arbitrator as aforesaid, the party who is not in default may apply to the Secretary of State of the State of Iowa, for the appointment of the second arbitrator, which application shall be upon ten (10) days' written notice to the other party, and such Secretary of State shall appoint the second arbitrator. If the two arbitrators fail within ten (10) days after their appointment to agree upon the third arbitrator, either of the parties, acting jointly if multiple in composition, or either of the arbitrators, whether appointed by the parties or by such Secretary of State, make application to such Secretary of State upon not less than three (3) days' notice in writing to each of the parties

-12-

and to the other arbitrators and upon such application such Secretary of State shall appoint the third arbitrator. The active contestants within each party shall pay the expense of its arbitrator and the expense incurred by it, and the compensation of the third arbitrator shall be divided equally as between such parties and paid by the active contestants in each as above provided. In the event that said arbitrators, or a majority of them shall fail to agree upon a determination of the issues within ten (10) days after the matter is submitted to them, said arbitrators shall be discharged and the proceedings had before them shall be abandoned; and if, for the foregoing or any other reason, any arbitration shall fail, a new arbitration shall be immediately commenced by naming new arbitrators as above provided, and the parties shall so continue until a determination shall be made by such arbitrators or a majority of them as herein provided.

(c) Any vacancy on said board of arbitrators may be filled by the party originally entitled to select such arbitrator, and if such party neglects to do so for a period of ten (10) days after written notice by the other party to select such arbitrator, then such vacancy shall be filled, on three (3) days' written notice by the party not in default, by an appointment by such Secretary of State.

(d) No arbitrator shall be appointed hereunder unless he be entirely disinterested, not related to either of the parties or to another arbitrator, and all arbitrators must be of good repute, known integrity, well informed concerning municipal corporations and the rules and regulations to which they are legally subject and must have been resident freeholders of the State of Iowa, for at least five (5) years prior to appointment.

(e) It is the intent of this agreement that recourse to arbitration as prescribed shall be a mandatory condition precedent to the invocation of a judicial remedy or judgment and that such arbitration shall be final and binding upon the parties thereto save and except only as the law requires.

(f) For the purpose of this article all the Municipalities which are parties to this agreement shall be named in either Party X or Party Y. Party Y shall consist of parties known to be adverse to Party X and all other municipalities, party to this agreement, which have not of-

-13-

fically declared their intent to join in the initiation of such arbitration proceedings upon the date of delivery of the initiating notice for service. Selection of an arbitrator by Party Y shall, however, be by the real parties in interest to the issues presented.

This agreement may be executed by one or more of the parties hereto separately in any number of counterparts, each of which when so executed and delivered shall be part of the original, and such counterparts together shall constitute one and the same instrument.

In Testimony Whereof, said Municipalities have caused this Agreement to be executed on their behalf by their duly authorized officers, and the same to be attested by their Clerks or Auditors, and the corporate seal, if any, of said Municipalities to be affixed hereto all as of the day and year written below.

ATTEST:

Nancy L. West
city clerk.

ATTEST:

Woodford B. Byington
Town Clerk

ATTEST:

James A. Buntington

ATTEST:

Florence M. Patton

ATTEST:

Norma Green

ATTEST:

M. E. Kelley, Mills C.R.
approved by
F.M.

ATTEST:

Vicky Peterson

ATTEST:

Clarence Johnson

ATTEST:

Richard Hall

THE CITY OF GLENWOOD, IOWA

BY: Cliff Peterson

THE TOWN OF MALVERN, IOWA

BY: Jan F. Kemp

THE TOWN OF HASTINGS, IOWA

BY: James A. Buntington

THE TOWN OF EMERSON, IOWA

BY: Austin Johnson

THE TOWN OF PACIFIC JUNCTION, IOWA

BY: Chas. E. Meyer

THE TOWN OF SILVER CITY, IOWA

BY: Fred D. Teckman

THE TOWN OF HENDERSON, IOWA

BY: Carroll Dwyer

THE COUNTY OF MILLS, IOWA

BY: Austin L. Bass

THE TOWN OF TABOR, IOWA

BY: Henry W. ...