

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
SEPTEMBER 19, 2017 AGENDA**

Subject:	Type:	Submitted By:
INTERLOCAL AGREEMENT - CREATING THE SARPY COUNTY AND CITIES WASTEWATER AGENCY	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE DIRECTOR OF PUBLIC WORKS

SYNOPSIS

A resolution has been prepared to approve an Interlocal Cooperation Agreement between Sarpy County, City of Bellevue, City of Gretna, City of La Vista, City of Papillion and City of Springfield, creating the Sarpy County and Cities Wastewater Agency.

FISCAL IMPACT

Sarpy County will be providing \$250,000 as an initial budget with no request being made to cities for a contribution.

RECOMMENDATION

Approval

BACKGROUND

The Agency's primary role is designed as a mechanism for cooperation and coordination between Sarpy County and the five cities to create development and an enhanced tax base through new growth. The Agency is designed to allow each entity to maintain their own assets, autonomy and individual self-determination regarding growth. A summary report with background information is included for your information. .

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH SARPY COUNTY AND THE CITIES OF BELLEVUE, GRETNA, PAPILLION AND SPRINGFIELD CREATING THE SARPY COUNTY AND CITIES WASTEWATER AGENCY.

WHEREAS, the provisions of Nebraska State Statutes Sections 13-801, et. seq., provide authority for the City of La Vista to join with other governmental agencies on a basis of mutual advantage and in a manner that will accord best with geographic, economic, population and other factors by signing an Interlocal Cooperation Agreement; and,

WHEREAS, the Agency's primary role is designed as a mechanism for cooperation and coordination between Sarpy County and the five cities to create development and an enhanced tax base through new growth, and;

WHEREAS, the Agency is designed to allow each entity to maintain their own assets, autonomy and individual self-determination regarding growth, and;

WHEREAS, Sarpy will provide \$250,000 as an initial budget with no contribution request being made to cities; and

WHEREAS, such an agreement is in the best interests of the citizens of the City of La Vista.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of La Vista, Nebraska, hereby approves and authorizes the execution of an Interlocal Cooperation Agreement with Sarpy County and the Cities of Bellevue, Gretna, Papillion and Springfield creating the Sarpy County and Cities Wastewater Agency in form and content approved by the City Attorney.

PASSED AND APPROVED THIS 19TH DAY OF SEPTEMBER, 2017.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

SUMMARY REPORT

UNIFIED SOUTH SARPY WASTEWATER SYSTEM (Unified SSWS)

BACKGROUND INFORMATION:

- Lack of sanitary sewer service south of the ridgeline is increasingly becoming an impediment to economic development and growth in Gretna, Springfield, Papillion, Bellevue in particular, and Sarpy County, and the Greater Omaha Metropolitan area, and the State of Nebraska in general.
- Sanitary sewer service in Sarpy County and the five cities is mainly provided by the City of Omaha
- Sarpy County and the five cities pay for sanitary sewer service; including the Combined Sewer Separation Charges (CSO Charges) where 100% of the CSO mandates are north of Harrison street in Omaha.
- Sarpy County encompasses roughly 159,000 acres. Almost 60% of Sarpy County lies below a hydrological ridge line where no sanitary sewer service is available
- Effectively, the City of Omaha will not accept sewer south of the ridgeline for development in southern Sarpy County
- Over the last two years (2015-2016) Sarpy County, in collaboration and cooperation with the United Cities of Sarpy County updated the original study
- The recent study concluded a cooperative regional system would provide the needed capacity, and increase the economic development and growth competitiveness of the County, metropolitan area and State of Nebraska
- The recent update of the study and the cooperation between the county and cities resulted in a change in state law (LB 253) clearing the way for Sarpy County and the five cities to create an Agency to provide sanitary sewer service to the southern portion of Sarpy County independent of the City of Omaha.
- At the core of providing a long-term regional solution to the wastewater needs in Sarpy County is the need to establish some form of a regional authority or system. A basic foundation of regionalization is that it provides an overall benefit to the regional stakeholders.
- The proposed Agency Agreement also allows for funds for sewer construction, operation and maintenance to be utilized north of the ridge line (Section V(A)(1).
- Absent a regional authority, Sarpy County and all five cities will face challenges to provide sewer service including significant water quality issues, the absence of a regional plan, and lose the economies of scale that will significantly reduce costs for current and anticipated future wastewater treatment needs.
- Additionally, a regional authority increases the likelihood of State and Federal assistance to construct a sewer system.

FISCAL IMPACT

- South of the Ridgeline growth upon full buildout is estimated to generate incremental annual revenue on the order of:
 - \$15 million per year sales tax revenue for Sarpy County cities

- \$45 million per year sales tax revenue for the State of Nebraska
- \$19 million per year property tax revenue for Sarpy County cities
- \$21 million per year property tax revenue for Sarpy County government
- \$76 million per year property tax revenue to local school districts
- The updated regional wastewater study indicates full build out over a 25-50 year period at an estimated cost of 220 million dollars

What is the plan to fund the \$220 million dollar projected cost?

- Phase 1A study was completed to confirm key decisions and recommendations from the previous studies, build upon them to refine the solution and develop a plan and framework for regional sewer service, recognizing from the prior planning effort a regional approach is more economical
- Phase 1A proposed the following possible funding scenarios:
 - **Public/Private Partnerships** . An example of a public/private partnership may include financial contributions directly from the local development community and/ or investment from the public whom would get a reliable, consistent rate of return on their investment.
 - **10.0 million grant from the state of Nebraska** Of this grant, \$1.0 million should be placed in cash working capital reserves and the balance of \$9.0 million will be applied against Phase 1A capital projects.
 - **Capital Payments/Connection Fees** from new development
 - **Customer rate revenues**

How much will user rates go up as a result of this project?

- It is anticipated rates for user's north of the ridge line will be negotiated between the individual entities and the City of Omaha.
- The projected O&M usage rate for users within the SSWS area are \$4.60/1,000 gallons. For a customer that uses 7,500 gallons per month this produces a bill (\$34.50/month) that is roughly equal to the current average bill paid by local stakeholders. (pg. 21, Financial Assessment Technical memorandum)

What is this "Agency" and what will it do and who will pay for it?

- The Agency is being created to make efficient use of the Members' powers by enabling them to cooperate with each other and other political subdivisions on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors
- Sarpy County will be providing \$250,000 as an initial budget with no request being made to cities for a contribution.
- Future budgets of the Agency will be reviewed and approved by each individual governing body
- The initial 4-year capital investment is projected at 22 million dollars (pg. 7, Financial Assessment and Technical memorandum) to be funded through

Public/Private Partnerships, Federal and State Grants, Capital Payments and Connection Fees and Customer Rate Revenues.

- The County Board and each of the five city councils will approve an Agency budget on an annual basis
- Once the budget is approved, the Agency will have authority, within the approved budget, to build the sewer system
- The County Board chair and each Mayor (or their respective designees) will each have one vote. It will take 4 votes to pass any Agency business.
- The Agency cannot encroach upon or into any of the five cities corporate limits or zoning jurisdiction to construct sewers without a specific agreement between the Agency and the respective city.

Summary:

- The Agency's primary role is designed as a mechanism for cooperation and coordination between Sarpy County and the five cities to create development and an enhanced tax base through new growth
- The Agency is designed to allow each entity to maintain their own assets, autonomy and individual self-determination regarding growth

What's Next?

- Once the Agency is created, the Agency will develop Agency Regulations and work towards selecting an engineering firm to assist with potential funding sources and to develop an implementation plan.

**INTERLOCAL AGREEMENT
CREATING THE
SARPY COUNTY AND CITIES WASTEWATER AGENCY**

THIS INTERLOCAL AGREEMENT CREATING THE SARPY COUNTY AND CITIES WASTEWATER AGENCY (the "Agreement") is made by and between the County of Sarpy, Nebraska (the "County" or "Sarpy County") and any number, but at least one, of the following eligible cities: the City of Papillion, Nebraska, the City of Bellevue, Nebraska, the City of Springfield, Nebraska, the City of La Vista, Nebraska, and the City of Gretna, Nebraska (each a "Sarpy City" and, collectively, the "Sarpy Cities"). Each authorized party that enters into this Agreement shall be known, individually, as a "Member," and collectively as "Members."

WHEREAS, the County and Sarpy Cities are political subdivisions, duly created and validly existing under the laws of the State of Nebraska;

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 et seq. (the "Act"), authorizes cities and counties to cooperate on the basis of mutual advantage to thereby provide for services and facilities in a manner and pursuant to forms of governmental organization that will accord with the geographic, economic, population, and other factors influencing the needs and development of the local communities;

WHEREAS, the Act allows the creation of an interlocal agency by the Members for the exercise of any power or powers, privileges, or authority granted by law to a public agency (as defined in the Act) jointly with any other public agency;

WHEREAS, the Members hereto are desirous of entering into an agreement to: (a) construct a wastewater system to serve the southern portion of Sarpy County that is south of the hydrological ridgeline (the "Ridgeline"), and to accommodate other future wastewater needs elsewhere within the County in order to promote public health, safety, and welfare of the County and the Sarpy Cities and (b) finance the costs thereof, as set forth in this Agreement;

WHEREAS, as a means of constructing, equipping, operating, and maintaining a wastewater treatment facility, sewer system, and related appurtenances south of the Ridgeline ("Unified South Sarpy Wastewater System" or "Unified SSWS"), the Members desire to create a new interlocal agency pursuant to the Act, specifically the Sarpy County and Cities Wastewater Agency (the "Agency"), and enter into service and management agreements with such Agency to the extent allowed by law and authorized by the individual governing body of each Member;

WHEREAS, the Members desire that the Agency shall also have the authority to construct, equip, operate, and maintain any other separate and distinct wastewater treatment facilities, sewer systems, and related appurtenances owned by the individual Members elsewhere within Sarpy County (collectively, the "Other Wastewater Systems" or "OWS"), subject to the terms of an applicable service and management agreement between the Agency and any such individual Member, to the extent allowed by law and authorized by the individual governing body of such Member; and

WHEREAS, the Members desire to set forth in this Agreement their respective understandings and agreements with regard to the creation, rights, duties, and obligations of the Agency.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION I.

**CREATION OF THE SARPY COUNTY
AND CITIES WASTEWATER AGENCY**

Pursuant to the Act, the governing body of each Member shall approve this Agreement by resolution. The Agency shall be created immediately upon the execution of this Agreement by the governing body of Sarpy County and the governing body of at least one Sarpy City on the 19th day of September, 2017, at which time this Agreement shall be deemed fully executed and effective ("Effective Date"). The Agency shall constitute a separate body corporate and politic under the provisions of the Act. The Agency shall be subject to the control of the Members in accordance with the terms of this Agreement. A certified copy of each approving resolution shall be kept on file at the Agency's office, the location of which shall be determined by the governing board of the Agency (the "Agency Board").

SECTION II.

PURPOSES OF THE AGENCY

A. The purposes of the Agency are as follows:

1. To make efficient use of the Members' powers by enabling them to cooperate with each other and other political subdivisions on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of the local communities;
2. To conduct feasibility studies to determine the most appropriate steps to take in designing, constructing, managing, financing, and operating the Unified SSWS;
3. To engage the Nebraska Legislature and lobbying authorities to amend the state statutes and regulations, as needed, to maximize the Members' resources and to address the regional need for the Unified SSWS;
4. To provide or contract for the acquisition, financing, and construction of the Unified SSWS, and to accommodate other future wastewater needs of the OWS;
5. To manage, operate, or contract for such management or operation services for the Unified SSWS, and to provide sewerage services as determined by the Agency; and

6. To perform all other actions to complete and operate the Unified SSWS, and to accommodate other future wastewater needs within the County, as deemed necessary or appropriate by the Agency Board.

SECTION III.

ORGANIZATION

- A. Agency Board. The Agency shall be governed by the Agency Board, which shall be comprised of one voting representative from each Member (each an "Agency Board Member"). Upon this Agreement's execution, the initial Agency Board Members shall automatically consist of the following: the Chair of the Sarpy County Board and the Mayor of every Sarpy City that enters into this Agreement. Each such initial Agency Board Member shall serve on the Agency Board until he or she appoints a successor or, alternatively, a successor is appointed by his or her respective Member's individual governing body. Such successor representatives shall each serve at the pleasure of the respective Member he or she represents and shall serve on the Agency Board until a subsequent successor is appointed.
- B. Designees. In the event of an Agency Board Member's absence or inability to perform his or her role as an Agency Board Member, said Agency Board Member, or his or her respective Member's individual governing board, may designate, in writing, a representative ("Designee") to fulfill all the functions of the Agency Board Member, except any Agency Board Officer functions said Agency Board Member might have, during the Agency Board Member's absence. Upon request of any Agency Board Member, a Designee shall immediately produce the written designation statement which purports to designate the Designee. Failure to produce such written designation statement upon the request of an Agency Board Member shall result in the purported Designee not being allowed to fulfill the functions of the Agency Board Member during such Agency Board Member's absence. There shall be no regulations regarding the formality of the written designation statement except that it shall be reduced to writing and clearly articulate that its intended purpose is to designate a Designee. Written designation statements may be prepared well in advance of any Agency Board business and may endure on an as-needed basis unless clearly terminated per the terms of the written designation statement.
- C. Voting. Each Agency Board Member shall have one vote on all matters before the Agency Board. Unless additional approval is otherwise required by this Agreement, by law, or by any agreement to which the Agency is a party, all actions of the Agency shall require a majority of all Agency Board Members to pass, regardless of the number of Agency Board Members present and capable of voting at a particular Agency Board meeting. In the absence of a quorum, Agency Board Members present shall not transact any business and the meeting shall be immediately adjourned. In the event a particular Agency Board Member recuses himself or herself, he or she will not be considered capable of voting.
- D. Quorum. A majority of all Agency Board Members shall constitute a quorum for the transaction of any Agency business.

E. Agency Board Officers and Related Terms. The following terms shall apply with respect to the officers of the Agency Board ("Agency Board Officers") identified below. The election process and term limits for the Agency Board Officers identified below shall be specified in the Agency Regulations.

1. Agency Board Officers. The Agency Board shall have the following Agency Board Officers:
 - a. Chair. The Sarpy County Board Chair shall serve as the initial Agency Board Chair. Thereafter, the Agency Board Chair shall be elected from among the Agency Board Members, in accordance with the Agency Regulations. The Agency Board Chair shall be responsible for calling Agency Board meetings to order and presiding over such meetings.
 - b. Secretary. The Agency Board Secretary, who may or may not be an Agency Board Member, shall be appointed by the Agency Board. If the Agency Board Secretary is not an Agency Board Member, he or she shall have no voting privileges. The Agency Board Secretary shall attend every Agency Board meeting and keep a record of the proceedings thereof.
 - c. Treasurer. The Agency Board Treasurer, who may or may not be an Agency Board member, shall be appointed by the Agency Board. If the Agency Board Treasurer is not an Agency Board Member, he or she shall have no voting privileges. The Agency Board Treasurer shall be the custodian of the annual budget, set forth in Section IX, and shall be the custodian of and receive all monies belonging to the Agency.
 - d. Additional Officers. The Agency Board may create such other additional Agency Board Officer positions as may be deemed appropriate by the Agency Board.
2. Agency Board Officer Duties. The Agency Board may establish such other Agency Board Officer duties beyond those specifically established herein or by applicable law, regulation, or agreement as may be deemed appropriate by the Agency Board.
3. Agency Board Officer Terms. The Agency Board may set term limits for the Agency Board Officer positions as may be deemed appropriate by the Agency Board.
4. Agency Board Officer Designees. In the event of an Agency Board Officer's absence or inability to perform his or her role as an Agency Board Officer, the Agency Board may designate an Agency Board Officer designee ("Agency Board Officer Designee") as may be deemed appropriate by the Agency Board to fulfill the functions of the Agency Board Officer during the Agency Board Officer's absence. An Agency Board Officer Designee serving in the role of Agency Board Chair must be designated from among the Agency

Board Members. Any other Agency Board Officer Designee not serving in the role of Agency Board Chair does not have to be designated from among the Agency Board Members unless otherwise required by any law, rule, regulation, or agreement.

- F. Meetings and Notice. The Agency Board shall meet as needed but at least once each fiscal year, and notice of such meetings shall be provided to each Agency Board Member at his or her principal office, the address of which shall be provided by each Agency Board Member to the Agency Board Secretary who shall be responsible for maintaining all such information. The meetings will be scheduled and conducted pursuant to the Nebraska Open Meetings Act and minutes for such meetings will be recorded and provided as required by law.
- G. Legal Counsel. The Agency may be represented by special counsel appointed by the Agency Board for such matters as the Agency Board deems appropriate. The Agency Board shall establish the terms and conditions of such special counsel's services.
- H. Fiscal Year. The Agency shall maintain a fiscal year commencing on July 1st and ending on June 30th of each calendar year.

SECTION IV.

DURATION

The duration of the Agency shall be perpetual, commencing upon the Effective Date, and shall continue in effect until the Agency dissolves pursuant to Section XVI; provided, however, that the Agency shall not dissolve if any Bonds described in Section X below (including any and all refunding thereof) are outstanding under the terms of any bond resolution adopted by the Agency pursuant to the Act.

SECTION V.

POWERS

- A. The Agency shall have only such powers as are allowed herein or by the Interlocal Cooperation Act, the County Industrial Sewer Construction Act, Neb. Rev. Stat. § 23-3601 et seq., or any other applicable laws, rules, regulations, or agreements, and any amendments thereto. Such powers shall include, but shall not be limited to, the following powers to:
 - 1. Make or cause to be made such engineering, feasibility, or other studies and surveys as are necessary, useful, or convenient to carrying out the functions of the Agency within the jurisdiction of the Agency; any engineering, feasibility, or other studies and surveys as are necessary, useful, or convenient to carrying out the functions of the Agency within a Member's corporate limits, declared extraterritorial zoning jurisdiction (hereafter "ETJ"), wastewater service area designated per interlocal agreement, or areas that lie within a Member's "area of future growth and development" under maps adopted under the County

Industrial Sewer Construction Act, Neb. Rev. Stat. § 23-3601, et seq., shall require approval by the Agency and the governing body of said Member.

2. Engage the Legislature and lobbying authorities to amend the state statutes and regulations, as needed, to maximize the Members' resources and to address the regional need for the Unified SSWS;
3. Establish just and equitable rates, fees, or charges for the use of or connection to the Unified SSWS, any property or equipment associated therewith, or any services provided in connection with said system;
4. Make and execute contracts, Interlocal Cooperation Agreements, and other instruments necessary or convenient to exercise its powers, including, but not limited to, service and management agreements, if any, and contracts for the acquisition, financing, construction, and operation of the Unified SSWS and OWS, subject to any requisite approvals of the Members' individual governing bodies;
5. Make, amend, and repeal such Agency bylaws, rules, and regulations from time to time which are not inconsistent with the Act and this Agreement and which are intended to carry out and effectuate the Agency's powers and purposes;
6. Make all necessary rules and regulations governing the use, operation, and control of the Unified SSWS, related structures, equipment, and employees;
7. Purchase, plan, develop, construct, equip, maintain, and improve the Unified SSWS and maintain, improve, or repair such OWS as may be deemed appropriate by the Agency;
8. Lease or acquire real property, or such other property rights as may be necessary, by gift, grant, purchase, or condemnation, as necessary, for the construction and operation of the Unified SSWS or OWS;
9. Acquire, hold, use, and dispose of any financial reserves derived from the operation of the Unified SSWS for the purposes of the Agency;
10. Acquire, hold, use, and dispose of other personal property for the purposes of the Agency;
11. Establish, pursuant to Section VII and Agency Regulations, the area over which the Agency has sole jurisdiction to authorize, design, construct, and control the Unified SSWS to the exclusion of all other sewer systems;
12. Provide sewer services to those areas of Sarpy County that are south of the Ridgeline, and not already served by any Member, in coordination with:
 - a. The Member(s) that have jurisdiction over such areas;

b. Other applicable political subdivisions of the State of Nebraska; and

c. Any agency thereof;

13. Relinquish control over an area within the Agency's Jurisdiction to a particular Member or Members, subject to approval of such Member(s) governing body or bodies. Conversely, if a Member's governing body wishes to relinquish sewer system control over an area within said Member's jurisdiction to the Agency, the Agency shall have the power to accept such control and amend the Agency Jurisdiction accordingly;
14. Contract with and compensate consultants for professional services, including, but not limited to, architects, engineers, planners, lawyers, accountants, and any others not specifically listed herein that the Agency Board finds necessary, useful, or convenient to carry out the stated purposes of the Agency;
15. Provide for a system of budgeting, accounting, auditing, and reporting of all Agency funds and transactions, for a depository, and for bonding of employees;
16. Consult with representatives of Federal, State, and local authorities and their officers and employees and to contract with such authorities for services and equipment as needed for the Unified SSWS;
17. Borrow money, issue negotiable bonds, certificates, bond anticipation notes, refunding bonds, and notes, all in accordance with the Act, and any amendments thereto, and to secure the payment of such bonds, certificates, refunding bonds, and notes, or any part thereof, by a pledge of any or all of the Agency's net revenues and any other funds or property which the Agency has a right to, or may hereafter have the right to pledge for such purposes;
18. Provide in the proceedings 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 Agency's property, such trustee and receiver to have the powers and duties provided for in the proceedings authorizing such obligations;
19. Receive payments for the use of or connection to the Unified SSWS and associated equipment and property;
20. Hire employees, fix their compensation and benefits, adopt personnel rules and regulations, and terminate their employment, as needed;
21. Employ a manager and operator which may be a political subdivision, entity, or a person and which may exercise such of the Agency's powers as shall be set forth in a contract and as determined by the Agency Board from time to time;

22. Obtain and contract for insurance coverage for the Agency, its Agency Board Members, and Agency employees as the Agency Board deems appropriate;
 23. Identify and evaluate potential grant funding from the State Site and Building Development Fund, Water Sustainability Fund, legislative action, and other potential funding sources, and take the appropriate actions to apply for and accept such funds;
 24. Borrow money and accept grants, contributions, property, or loans from, and enter into contracts, leases, or other transactions with, other political subdivisions, the State of Nebraska, the United States of America, and any agency thereof;
 25. Contract with individual Members to allow Agency funds to be used for other sewer facilities located in the OWS for the purposes of promoting public health, safety, and welfare; and
 26. Exercise such other powers as are available under applicable law.
- B. The exercise of any Agency power or action involving a financial commitment by either the Agency or any individual Member must be included in the annual budget set forth in Section IX or in any applicable Service Agreement, as provided in Section X.
- C. The exercise of any Agency power or action that would obligate or otherwise bind a particular Member in any other way shall also require the pre-approval of such Member's governing body.

SECTION VI.

PROJECTS CONSISTENT WITH THE MASTER PLAN

The Agency shall work with the Members, consultants, and other outside individuals and agencies as are necessary to plan, develop, and approve a master plan for the design of the Unified SSWS ("Master Plan"). Once approved by the Agency, the Master Plan will be incorporated into and deemed a part of this Agreement by this reference. The Master Plan shall set out a recommended list of priorities in relation to the phasing of the Master Plan. In the event a Member wishes to prioritize a particular project within said Member's corporate limits, ETJ, , areas that lie within a Member's "area of future growth and development" under maps adopted under the County Industrial Sewer Construction Act, Neb. Rev. Stat. § 23-3601, et seq., or within said Member's wastewater service area designated per interlocal agreement (hereafter "Designated Wastewater Service Area"), which project is consistent with the Master Plan, but is not able to secure the Agency's approval of such prioritization, said Member shall be allowed to independently secure funding for and construct said project. Subject to Agency engineering review and approval, conformity with all applicable rules and regulations including the Master Plan, payment of all applicable

connection fees, and an approved wastewater service and connection agreement with the Agency, said project shall be permitted to connect to and receive service from the Unified SSWS without incurring a penalty above and beyond the applicable connection fees.

SECTION VII.

THE AGENCY'S JURISDICTION

- A. The Agency's Jurisdiction shall be established upon the approval of both the Agency Board and each Member's individual governing body that possess corporate limits, ETJ, Designated Wastewater Service Area, or areas that lie within a Member's "area of future growth and development" under maps adopted under the County Industrial Sewer Construction Act, Neb. Rev. Stat. § 23-3601, et seq. However, in no event will the Agency have Jurisdiction over any of these areas unless the individual governing body of each Member having any such jurisdiction within said area approves of such area being within the Agency's Jurisdiction.
- B. The Agency is not limited to financing, constructing, equipping, operating, and maintaining a sewer system exclusively within the Agency's Jurisdiction. However, once the Agency's Jurisdiction is established, the Agency shall have sole jurisdiction within such area to authorize, design, and construct the Agency's sewer system to the exclusion of all other sewer systems, unless such other sewer system(s) within such area are otherwise allowed herein, pursuant to law, or by agreement of the Agency.
- C. The Agency's Jurisdiction may be amended from time to time as necessary and upon the approval of both the Agency Board and the Members' individual governing bodies, subject to the provisions of this Agreement.
- D. Any wastewater treatment facilities, sewer systems, sewer lines, or related appurtenances constructed or approved by an individual Member's governing body prior to the establishment of the Agency's Jurisdiction which subsequently fall within the area of the Agency's Jurisdiction shall not be subject to the Agency's Jurisdiction so long as no connection to the Unified SSWS is proposed. However, in the event a Member seeks to connect such wastewater treatment facilities, sewer systems, sewer lines, or related appurtenances to the Unified SSWS, such connection may be permitted subject to Agency engineering review and approval, conformity with all applicable rules and regulations including the Master Plan, payment of all applicable connection fees, and an approved wastewater service and connection agreement with the Agency.

SECTION VIII.

COOPERATION FROM MEMBERS

The Members agree to cooperate, respond to reasonable requests, and make information available to the Agency for the purposes of this Agreement, subject to the protections and limitations of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09.

SECTION IX.

ANNUAL BUDGET

- A. By April 30th of each year, the Agency Board shall prepare an itemized annual budget for the upcoming fiscal year which, upon approval of the Agency Board, shall be presented to and subject to approval of the individual governing body of each Member. Such annual budget for the upcoming fiscal year shall be considered by the governing body of each Member by May 31st of each year. The exercise of any Agency powers involving financial commitments of any Member(s) must be included in the annual budget, unless otherwise approved by the governing bodies of all such Member(s) pursuant to an applicable Service Agreement. Upon the approval of the annual budget by the governing bodies of all Members, such budget shall immediately be considered adopted and effective to bind the Agency for the upcoming fiscal year.
- B. In the event the governing body of any individual Member does not approve the annual budget for an upcoming fiscal year by May 31st, the annual budget shall be revised by the Agency Board so that no new financial obligations for such non-approving Member shall be included within the revised annual Agency budget and no new Agency projects located within such non-approving Member's corporate limits, ETJ, or Designated Wastewater Service Area, shall be included within the revised annual Agency budget. Additionally, the annual budget shall be revised by the Agency Board so that no new Agency projects shall be located within such non-approving Member's "area of future growth and development" under the maps adopted under the County Industrial Sewer Construction Act, Neb. Rev. Stat. § 23-3601, et seq., but only in those instances where more than fifty percent of any such new Agency project is proposed to be located within such non-approving Member's "area of future growth and development" as determined by linear measure. In the event fifty percent or less of any new Agency project is proposed to be located within such non-approving Member's "area of future growth and development," the foregoing prohibition shall not apply and such new Agency project may be located within such non-approving Member's "area of future growth and development" without the need to obtain such non-approving Member's authorization.
- C. Any revisions that are made to an annual budget for an upcoming fiscal year pursuant to Section IX(B) shall not relieve the non-approving Member from any existing financial obligations approved as part of a previous fiscal year's budget or as part of a previous agreement to which the non-approving Member was a party, nor shall it

relieve the Agency from any existing project obligations located within the non-approving Member's corporate limits, ETJ, areas that lie within a Member's "area of future growth and development" under maps adopted under the County Industrial Sewer Construction Act, Neb. Rev. Stat. § 23-3601, et seq., or Designated Wastewater Service Area that were approved as part of a previous annual budget or by a previous agreement to which the Agency was a party. After such revisions have been prepared and approved by the Agency Board, the revised annual Agency budget shall be presented to the governing body of each Member by June 30th of that same year. A revised annual Agency budget shall be considered sufficiently adopted and effective to bind the Agency for the upcoming fiscal year so long as the Agency Board and the governing body of each Member with new financial obligations included within the revised annual budget and the governing body of each Member with Agency projects located within such Member's corporate limits, ETJ, areas that lie within a Member's "area of future growth and development" under maps adopted under the County Industrial Sewer Construction Act, Neb. Rev. Stat. § 23-3601, et seq., or Designated Wastewater Service Area, has approved the annual revised budget.

- D. Over the course of a fiscal year, the corresponding annual Agency budget may be amended from time to time as deemed necessary or appropriate by the Agency Board. An annual Agency budget amendment shall be considered sufficiently adopted and effective to bind the Agency for the remainder of the applicable fiscal year so long as the Agency Board, the governing body of each Member with new financial obligations included within the annual Agency budget, and the governing body of each Member with Agency projects located within such Member's corporate limits, ETJ, areas that lie within a Member's "area of future growth and development" under maps adopted under the County Industrial Sewer Construction Act, Neb. Rev. Stat. § 23-3601, et seq., or Designated Wastewater Service Area have approved such amendment to the annual Agency budget.
- E. The budget shall be prepared and filed as provided in the Nebraska Budget Act, Neb. Rev. Stat. § 13-501 et seq. as may be amended from time to time.
- F. Member contributions, if needed, will be determined and agreed upon between the Agency and each Member's governing body as part of the annual budget.

SECTION X.

ISSUANCE OF BONDS

The Agency may issue bonds or undertake other forms of indebtedness (hereafter "Agency Bonds"). However, in the event an Agency Bond or other form of indebtedness undertaken by the Agency also involves the resources or funds of any individual Member, no such Agency Bonds may be issued or indebtedness undertaken by the Agency unless a service agreement between the Agency and the applicable Member(s) ("Service Agreement") is executed by the Agency and each such Member that is to be responsible for such debt service, or other related responsibilities, on the applicable indebtedness that is to be created or amended, as applicable. Such Service Agreement

shall provide that additional payments shall be made by the Agency and Member, as applicable, to cover any such debt service or obligations. Such indebtedness shall also be included in the Agency's annual budget, as provided under Section IX. Such Service Agreements are not required for those Agency Bonds supported solely by the resources and funds of the Agency as determined and approved by the Agency Board and the Agency's Bond Counsel. The creation or amendment of a Service Agreement shall not be valid until presented to, and approved by, the Agency Board and the individual governing body of each Member that will be obligated on the debt service, or other related responsibilities, with respect to the Agency Bonds or other indebtedness undertaken by the Agency. No vote of each Member's individual governing body will be required for the Agency to pay down or pay off Agency Bonds when included within the Agency's annual budget unless the Agency intends to pay down or pay off Agency Bonds by issuing additional Agency Bonds.

SECTION XI.

ASSISTANCE FUNDS

Assistance Funds from federal or state sources may be available for Agency approved projects. "Agency approved projects" are those projects that have been authorized by the Agency, subject to the provisions of this Agreement, including but not limited to Section VII(A). This Section shall not apply to Assistance Funds sought and received by a Member's governing body for purposes of non-Agency approved projects. All receipts received by or allocated for an Agency approved project to any Member from federal or state sources for the Unified SSWS or for the purposes of this Agency (collectively, the "Assistance Funds") shall be aggregated and allocated among the Members in proportion to the total allocation of expenses to each Member by agreement of the Members' governing bodies, as the same may be amended from time to time in accordance with the provisions of this Agreement. Assistance Funds allocated to an individual Member are hereinafter referred to as "[Name of Party] Assistance Funds." Each Member shall then apply its Assistance Funds, as aggregated and allocated consistent with the above provisions, first, to the payment of the principal of and interest on the Series of Bonds issued to pay its share of the costs of the Unified SSWS for so long as any Bond of such Series is outstanding and unpaid under the resolution authorizing its issuance, and, second, to the direct payment of the costs of the Unified SSWS allocation to such Member.

SECTION XII.

NOT FOR PROFIT

It is expressly understood that the Agency is a public body and is to be operated not for profit, and no profit or dividend will inure to the benefit of any individual.

SECTION XIII.

MANNER OF ACQUIRING, HOLDING, AND DISPOSING OF PROPERTY

- A. The Agency Board may lease, purchase, or acquire by any other lawful means from a Member, or from any other source, such real or personal property as is required for the operation of the Agency and for carrying out the purposes of this Agreement. The title to all such property, personal or real, shall be held in the name of the Agency; provided, however, that any property, personal or real, which is contributed by and titled to an individual Member or Members, but not purchased by the Agency, may be used by the Agency, but such property shall remain titled to the applicable Member(s), unless otherwise provided by the Agency Board and the title holding Member. The Agency Board may also dispose of such real or personal property as deemed necessary or appropriate by the Agency Board by any lawful means.
- B. In the event an annexation occurs by any Member after the creation of the Agency, which results in any sewer lines and related appurtenances built by the Agency being within the corporate limits of the annexing Member, title to such sewer lines and appurtenances may be transferred to the annexing Member upon the mutual approval of such terms and conditions of a sale or other agreement between the Agency Board and the annexing Member as may be deemed appropriate by such parties.
- C. All conveyances of real property owned or held in the name of the Agency shall be authorized by resolution of the Agency Board and executed by the Chairman on behalf of the Agency. Any such conveyance of any real or personal property held in the name of the Agency, or any interest thereon, in one or more transactions in excess of \$500,000.00 shall require prior approval of the individual governing body of each Member.

SECTION XIV.

LATE ENTRY OF ADDITIONAL MEMBER(S)

This Agreement may be amended to add additional Member(s) to the Agency upon written amendment approved by all governing bodies and executed by all Members. Any additional Member(s) seeking to join the Agency after October 31, 2017 shall be required to pay a prorated share of all of the costs, which the Members have incurred to date, as well as any additional fees, damages, or other costs as unanimously determined by the Agency Board.

SECTION XV.

WITHDRAWAL OF MEMBER(S)

The withdrawal of any Member(s) from the Agency shall require 90 days advance written notice to the Agency of such Member(s)' intention to withdraw from the Agency if such Member is not obligated on any indebtedness under a Service Agreement. No Member shall withdraw from the Agency if such Member is obligated with respect to indebtedness issued under a Service Agreement.

SECTION XVI.

DISSOLUTION

- A. The Agency shall not be dissolved so long as any Agency Bonds are outstanding under the instrument pursuant to which they were issued by the Agency.
- B. Upon dissolution of the Agency, all assets and liabilities of the Agency shall be distributed to the Members on as agreed upon by a majority of Agency members.

SECTION XVII.

AMENDMENT OF AGREEMENT

This Agreement may only be amended upon the execution of a written amendment by the governing bodies of all Members of the Agency, and the approval of resolutions adopting the terms of the written amendment by the individual governing body of each Member of this Agreement.

SECTION XVIII.

MISCELLANEOUS PROVISIONS

- A. Separate Legal Entities. This Agreement shall be construed to have created an interlocal agency as a separate legal entity.
- B. Indemnification. Each Member agrees to release, indemnify and hold harmless ("Indemnifying Member") each other Member ("Indemnified Member") and said Indemnified Member's officers, officials, employees, and agents, and each of them, from and against all liabilities, claims, costs and expenses whatsoever arising out of or resulting from the negligence, acts, or omissions of the Indemnifying Member, or the officers, officials, employees, agents, or contractors of the Indemnifying Member related to or arising out of the establishment, operation, or maintenance of the Unified SWSS or OWS.
- C. Governmental Subdivision. Except as provided herein, each Member shall maintain its autonomy, jurisdiction, powers, and indebtedness as a governmental subdivision. This Agreement shall not relieve any Member of any obligations or responsibility imposed upon it by law except to the extent of actual and timely performance by the Agency as provided under this Agreement, which performance may be offered in satisfaction of the obligation or responsibility.
- D. Modifications. No modification, termination, or amendment of this Agreement may be made except by written agreement signed by the governing bodies of all of the Members.

- E. Severability. In case one or more of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable for any reason in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.
- F. Governing Law. The Parties to this Agreement shall conform to all existing and applicable state and federal laws, and all existing and applicable rules and regulations. Any dispute arising from this contractual relationship shall be governed solely and exclusively by Nebraska law.
- G. Forum Selection and Personal Jurisdiction. Any lawsuit arising from this contractual relationship shall be solely and exclusively filed in, conducted in, and decided by a court of competent jurisdiction located in Nebraska. As such, the Parties also agree to exclusive personal jurisdiction in such court located in Nebraska.
- H. Incorporation. The recitals are incorporated herein by this reference.
- I. Entire Agreement. The entire understandings and agreements between the Members hereto are contained in this Agreement, and this Agreement supersedes all previous understandings and agreements, written and oral, with respect to this transaction.
- J. Assignment. This Agreement, or any benefit, interest, obligation, or responsibility of any Member under this Agreement, may not be assigned by any Member without express written consent of the governing bodies of all Members.
- K. Further Assurances. From and after the Effective Date of this Agreement, the Members agree to cooperate with each other and will use commercially reasonable efforts to implement the transactions contemplated by this Agreement. Each Member, at any time and from time to time, upon request by any other Member and without further consideration, shall take or cause to be taken such actions and execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such additional assurances as may be required and reasonably requested for confirming and accomplishing the matters and transactions hereunder. Such assurances shall be in the form and content satisfactory to the requesting and responding Members, without increasing or extending any cost, duty, or liability of the responding Member.
- L. Counterparts. This Agreement may be executed in one or more counterparts, each and all of which shall constitute an original and all of which when taken together shall constitute the same agreement.
- M. Nondiscrimination. Notwithstanding anything in this Agreement to the contrary, each Member agrees that it and any of its subcontractors shall not discriminate against any employee or applicant for employment to be employed in performance of this Agreement with respect to the employee's or applicant's hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, or national origin.

N. Remedies. All remedies under this Agreement shall be cumulative and not restrictive of other remedies. The Members agree that any Member shall have the right to exercise any remedies available to it at law or in equity, including without limitation, specific performance.

(Signatures on following pages.)

IN WITNESS WHEREOF, the Members have caused this Interlocal Act Agreement to be executed by the duly authorized officers.

Signed by Sarpy County this _____ day of _____, 20_____.

SARPY COUNTY, NEBRASKA,
A Political Subdivision

By _____
Chairperson, Board of Commissioners

Attest:

Approved as to form:

Sarpy County Clerk

Sarpy County Attorney

IN WITNESS WHEREOF, the Members have caused this Interlocal Act Agreement to be executed by the duly authorized officers.

Signed by the City of Bellevue this _____ day of _____, 20_____.

ATTEST:

CITY OF BELLEVUE, a Nebraska
Municipal Corporation

Sabrina Ohnmacht, City Clerk

By _____
Rita Sanders, Mayor

CITY SEAL

IN WITNESS WHEREOF, the Members have caused this Interlocal Act Agreement to be executed by the duly authorized officers.

Signed by the City of Papillion this _____ day of _____, 20_____.

ATTEST:

CITY OF PAPILLION, a Nebraska
Municipal Corporation

Nicole Brown, City Clerk

By _____
David P. Black, Mayor

CITY SEAL

IN WITNESS WHEREOF, the Members have caused this Interlocal Act Agreement to be executed by the duly authorized officers.

Signed by the City of La Vista this _____ day of _____, 20____.

ATTEST:

CITY OF LA VISTA, a Nebraska
Municipal Corporation

Pamela A. Buethe, City Clerk

By _____
Douglas Kindig, Mayor

CITY SEAL

IN WITNESS WHEREOF, the Members have caused this Interlocal Act Agreement to be executed by the duly authorized officers.

Signed by the City of Gretna this _____ day of _____, 20____.

ATTEST:

CITY OF GRETNA, a Nebraska
Municipal Corporation

Tammy L. Tisdall, City Clerk

By _____
James W. Timmerman, Mayor

CITY SEAL

IN WITNESS WHEREOF, the Members have caused this Interlocal Act Agreement to be executed by the duly authorized officers.

Signed by the City of Springfield this ____ day of _____, 20____.

ATTEST:

CITY OF SPRINGFIELD, a Nebraska
Municipal Corporation

Kathleen Gottsch,
City Administrator/City Clerk

By _____
Robert Roseland, Mayor

CITY SEAL