

**CITY OF PAPILLION
MAYOR AND CITY COUNCIL REPORT
MAY 16, 2023 AGENDA**

Subject:	Type:	Submitted By:
Approval to Execute the First Amendment to the Interlocal Agreement for the Contribution and Allocation of Omaha Public Power District Payments in Lieu of Taxes	Resolution R23-0086	Amber Powers, City Administrator

SYNOPSIS

This resolution, if approved, will be the first amendment to the Interlocal Agreement for the Contribution and Allocation of Omaha Public Power District Payments in Lieu of Taxes (“PILOT contributions”). By approving this resolution, it will amend and clarify how and from what sources the Members are obligated to pay to the Agency their respective member PILOT contributions (as defined in the PILOT agreement).

This amendment would clarify that entities would not remit PILOT monies collected for restricted funds. The City is of the opinion that monies collected in each fund need to be used in those funds; therefore, CIP Fund PILOT and Bond Fund PILOT cannot be loaned to the Sewer Agency. This amendment would amend the PILOT calculation formula to exclude those two fund levy amounts from the formula so that the entities are not required to loan the PILOT collected in those two funds to the Sewer Agency. The amendment would also re-calculate the municipal baselines taking into account the new PILOT calculation formulas.

FISCAL IMPACT

The baseline number would be lowered due to a new PILOT calculation formula; however, the restricted City levies (CIP Fund Levy and Bond Fund Levy) would be excluded from the annual PILOT contribution calculations when determining what amount of City’s received PILOT monies from OPPD need to be loaned to the Sewer Agency. Only the General Fund Levy would be used in the calculation to determine the amount due.

	Papillion 2021 PILOT Prior to Amendment	Papillion 2021 PILOT Post Amendment
*Papillion’s 2021 PILOT Collected:	\$379,326.99	\$379,326.99
Papillion’s Baseline Amount:	-\$24,058.54	-\$4,277.01
Papillion’s PILOT Less Baseline:	\$355,268.45	\$375,049.98
Portion of 2021 PILOT Owed:	100.00% (All Levies)	48.65% (Gen. Levy Only)
Amount Due to Sewer Agency:	\$355,268.45	\$182,464.89
Difference (in amount due/loaned to Agency):		-\$172,803.56

**“Papillion’s 2021 PILOT Collected” reflects only the amount of PILOT the City of Papillion received within the PILOT boundary, which primarily includes parcels within the Sewer Agency’s current boundaries. The amount does not reflect the total amount of PILOT received by the City of Papillion.*

RECOMMENDATION

Approval.

BACKGROUND

On September 19, 2017, City Council approved Resolution R17-0171, a resolution that approved the Interlocal agreement creating the agency and approved the City of Papillion's participation in it. The Agency consists of Sarpy County and the following cities: Papillion, Bellevue, Gretna, LaVista, and Springfield.

On June 26, 2019, the Agency's Board voted unanimously to approve the resolution establishing the Agency's jurisdiction and adopting the Growth Management Plan. The City Council approved the Agency's jurisdiction on July 16, 2019, through adoption of Resolution No. R19-0144. City Council approved amending the City's Comprehensive Plan to add the Agency's Growth Management Plan to it on August 20, 2019, through adoption of Resolution No. R19-0158.

On November 5, 2019, Papillion City Council approved Resolution R19-0228, which approved new boundaries for the Revised Interlocal Agreement for the Contribution and Allocation of Omaha Public Power District Payments in Lieu of Taxes. The original PILOT Agreement was approved in October of 2019 and was replaced with R19-0228.

ATTACHMENTS

- 1) Resolution #R23-0086
- 2) Sewer Agency Resolution #2023-013
- 3) Exhibit A: First Amendment to the Interlocal Agreement for the Contribution and Allocation of Omaha Public Power District Payments in Lieu of Taxes

RESOLUTION NO. R23-0086

RESOLUTION APPROVING AND AUTHORIZING THE CITY OF PAPIILLION TO EXECUTE THE FIRST AMENDMENT TO INTERLOCAL AGREEMENT FOR THE CONTRIBUTION AND ALLOCATION OF OMAHA PUBLIC POWER DISTRICT PAYMENTS IN LIEU OF TAXES

WHEREAS, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801, et seq. (the “Act”), Sarpy County and the Cities of Papillion, Bellevue, Springfield, La Vista and Gretna entered into that certain Interlocal Agreement Creating the Sarpy County and Cities Wastewater Agency dated September 19, 2017 (as amended, the “Formation Interlocal”) and formed the interlocal agency called the Sarpy County and Cities Wastewater Agency (the “Agency”); and,

WHEREAS, The City of Papillion, the Agency, and the other Members (as defined in the Formation Interlocal) are parties to that certain Revised Interlocal Agreement for the Contribution and Allocation of Omaha Public Power District Payments in Lieu of Taxes with an effective date of November 6, 2019 (the “PILOT Agreement”); The PILOT Agreement is authorized under Agency Resolution No. 2019-016, and pursuant to separate approvals by the governing bodies of the each of the Members; and,

WHEREAS, the Agency and the Members desire to amend the PILOT Agreement to clarify how and from what sources the Members are obligated to pay to the Agency their respective Member PILOT Contributions (as defined in the PILOT Agreement, as revised); and,

WHEREAS, pursuant to Agency Resolution No. 2023-013, the Agency Board approved and executed the First Amendment to Interlocal Agreement for the Contribution and Allocation of Omaha Public Power District Payments in Lieu of Taxes in the form of the instrument attached hereto as **Exhibit “A”** (the “First Amendment”); and,

WHEREAS, The City of Papillion deems it appropriate and advisable to approve the First Amendment and authorize its execution on behalf of the Sarpy County and Cities Wastewater Agency.

THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Papillion, Nebraska that the attached First Amendment is hereby approved.

PASSED AND APPROVED THIS 16TH DAY OF MAY, 2023.

CITY OF PAPIILLION, NEBRASKA

David P. Black, Mayor

Attest:

Nicole Brown, City Clerk

**RESOLUTION APPROVING AND AUTHORIZING THE AGENCY BOARD CHAIR
TO EXECUTE THE FIRST AMENDMENT TO INTERLOCAL AGREEMENT FOR
THE CONTRIBUTION AND ALLOCATION OF OMAHA PUBLIC POWER DISTRICT
PAYMENTS IN LIEU OF TAXES**

WHEREAS, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801, et seq. (the “Act”), Sarpy County and the Cities of Papillion, Bellevue, Springfield, La Vista and Gretna entered into that certain Interlocal Agreement Creating the Sarpy County and Cities Wastewater Agency dated September 19, 2017 (as amended, the “Formation Interlocal”) and formed the interlocal agency called the Sarpy County and Cities Wastewater Agency (the “Agency”) (all capitalized terms not otherwise expressly defined herein shall have the same meanings as provided in the Formation Interlocal). The Formation Interlocal is incorporated herein by this reference;

WHEREAS, the Agency is a separate body corporate and politic under the Act;

WHEREAS, pursuant to the Formation Interlocal, the powers of the Agency as a body are exercised by the Agency Board;

WHEREAS, the Agency and the Members are parties to that certain Revised Interlocal Agreement for the Contribution and Allocation of Omaha Public Power District Payments in Lieu of Taxes with an effective date of November 6, 2019 (the “PILOT Agreement”); The PILOT Agreement is authorized under Agency Resolution No. 2019-016, and pursuant to separate approvals by the governing bodies of the each of the Members;

WHEREAS, the Agency and the Members desire to amend the PILOT Agreement to clarify how and from what sources the Members are obligated to pay to the Agency their respective Member PILOT Contributions (as defined in the PILOT Agreement);

WHEREAS, the Agency Board has discussed the proposed First Amendment to Interlocal Agreement for the Contribution and Allocation of Omaha Public Power District Payments in Lieu of Taxes in the form of the instrument attached hereto as **Exhibit “A”** (the “First Amendment”), and after discussion, the Agency Board has deemed it appropriate, necessary, convenient and advisable to approve the First Amendment, and authorize its execution on behalf of the Agency;

NOW, THEREFORE, BE IT RESOLVED BY THE AGENCY BOARD that the attached First Amendment is hereby approved and, to the extent not already approved prior to the date hereof, shall be presented to and subject to the approval of the individual governing body of each Member; and

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE AGENCY BOARD THAT the Agency Board Chair is hereby authorized to execute on behalf of the Agency Board the First Amendment.

The above Resolutions were approved by a vote of the Sarpy County and Cities Wastewater Agency Board at a public meeting duly held in accordance with applicable law on the 26th day of April, 2023.

Lisa A. Haine

Sarpy County and Cities
Wastewater Agency Secretary



David R. Kelly

Sarpy County and Cities Wastewater
Agency Board Chair

EXHIBIT A

First Amendment

[Attached]

FIRST AMENDMENT TO INTERLOCAL AGREEMENT FOR THE CONTRIBUTION AND ALLOCATION OF OMAHA PUBLIC POWER DISTRICT PAYMENTS IN LIEU OF TAXES

THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT FOR THE CONTRIBUTION AND ALLOCATION OF OMAHA PUBLIC POWER DISTRICT PAYMENTS IN LIEU OF TAXES (this “First Amendment”) is made by and between the County of Sarpy, Nebraska, the City of Papillion, Nebraska, the City of Bellevue, Nebraska, the City of Springfield, Nebraska, the City of LaVista, Nebraska, and the City of Gretna, Nebraska (individually, a “Member”; collectively, the “Members”), and the Sarpy County and Cities Wastewater Agency (the “Agency”). Capitalized terms used herein shall have the same meaning as defined in the PILOT Agreement (as defined below), unless otherwise specified herein.

WHEREAS, the Agency and the Members are parties to that certain Revised Interlocal Agreement for the Contribution and Allocation of Omaha Public Power District Payments in Lieu of Taxes with an effective date of November 6, 2019 (the “PILOT Agreement”);

WHEREAS, the Agency and the Members desire to amend the PILOT Agreement to clarify how and from what sources the Members are obligated to pay to the Agency their respective Member PILOT Contributions under the PILOT Agreement; and

WHEREAS, the Agency and the Members agree to amend the PILOT Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency and the Members agree as follows:

1. **Contribution to the Agency of Annual PILOT Distributions.** Effective January 1, 2022, the PILOT Agreement is hereby amended as follows:

(a) For purposes of calculating the Member PILOT Contributions due and payable to the Agency under the PILOT Agreement on and after January 1, 2022, the applicable “Baseline PILOT Distributions” shall be the corresponding amounts set forth on **Exhibit D-1** attached hereto and incorporated herein by reference. As of January 1, 2022, **Exhibit D-1** attached to this First Amendment shall replace and supersede Exhibit D attached to the PILOT Agreement.

(b) Beginning with Member PILOT Contributions due and payable by the applicable Members under the PILOT Agreement on and after January 1, 2022, the Members are not obligated to use Restricted Funds (as defined herein) toward the calculation of and the payment to the Agency of their respective Member PILOT Contributions. Annual PILOT Distributions collected by each respective Member that are allocated to Restricted Funds are exempt from the calculation and payment of the respective Member’s PILOT Contributions. For purposes of this section, the term “Restricted Funds” shall mean the applicable Member restricted funds described on **Schedule 1** attached hereto and incorporated herein by reference.

2. **Cooperation.** The parties agree to execute and deliver all documents, provide all information, and take or forebear from such action as may be necessary or appropriate to achieve the purposes of this First Amendment, and the parties hereto shall further perform the applicable provisions of this First Amendment in good faith and with due diligence and in cooperation with the other parties. The parties shall refrain from taking any action that is inconsistent with the terms hereof.

3. **Effective Date.** Except for as expressly modified by this First Amendment, the PILOT Agreement shall remain in full force and effect. This First Amendment shall not be effective until the governing body of each Member duly approves and executes this First Amendment. Such approvals shall include all actions of each Member prior to such date taken in reliance upon and in accordance with the terms of this First Amendment, and each Member shall furnish to the Agency a certified copy of the resolution of its governing body. This First Amendment shall be in full force and effect as of such effective date and shall continue until the PILOT Agreement is terminated in accordance with its terms.

4. **Miscellaneous.** No representations were made or relied upon by any party other than those that are expressly set forth herein. No agent, employee or other representative of any party is empowered to alter any of the terms hereof except as provided herein. If any provision of this First Amendment is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this First Amendment will remain in full force and effect. All covenants, stipulations and agreements in this First Amendment shall inure to the benefit of the parties hereto and extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

The recitals at the beginning of this First Amendment and all other documents referenced in this First Amendment shall be incorporated herein by this reference.

This First Amendment is authorized by the vote and approval of the Agency and each Member at public meetings duly held in accordance with applicable law, and the following execution by their respective authorized representatives.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereunto set their hands to this First Amendment upon the day and year hereinafter indicated.

Signed by the Sarpy County and Cities Wastewater Agency this 26th day of April, 2023.

SARPY COUNTY AND CITIES
WASTEWATER AGENCY,
A Political Subdivision



By David R. Kelly
Chairperson, Agency Board

ATTEST:

Lisa A. Haine
Secretary, Agency Board

IN WITNESS WHEREOF, the parties hereunto set their hands to this First Amendment upon the day and year hereinafter indicated.

Signed by Sarpy County this _____ day of _____, 2023.

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 parties hereunto set their hands to this First Amendment upon the day and year hereinafter indicated.

Signed by the City of Bellevue this _____ day of _____, 2023.

ATTEST:

CITY OF BELLEVUE, a Nebraska
Municipal Corporation

Sabrina Ohnmacht, City Clerk

Rusty Hike, Mayor

CITY SEAL

IN WITNESS WHEREOF, the parties hereunto set their hands to this First Amendment upon the day and year hereinafter indicated.

Signed by the City of Papillion this _____ day of _____, 2023.

ATTEST:

CITY OF PAPILLION, a Nebraska
Municipal Corporation

Nicole Brown, City Clerk

David P. Black, Mayor

CITY SEAL

IN WITNESS WHEREOF, the parties hereunto set their hands to this First Amendment upon the day and year hereinafter indicated.

Signed by the City of La Vista this _____ day of _____, 2023.

ATTEST:

CITY OF LA VISTA, a Nebraska
Municipal Corporation

Pamela A. Buethe, City Clerk

Douglas Kindig, Mayor

CITY SEAL

IN WITNESS WHEREOF, the parties hereunto set their hands to this First Amendment upon the day and year hereinafter indicated.

Signed by the City of Gretna this _____ day of _____, 2023.

ATTEST:

CITY OF GRETNA, a Nebraska
Municipal Corporation

Tammy L. Tisdall, City Clerk

Mike Evans, Mayor

CITY SEAL

IN WITNESS WHEREOF, the parties hereunto set their hands to this First Amendment upon the day and year hereinafter indicated.

Signed by the City of Springfield this _____ day of _____, 2023.

ATTEST:

CITY OF SPRINGFIELD, a Nebraska
Municipal Corporation

Kathleen Gottsch,
City Administrator/City Clerk

Robert Roseland, Mayor

CITY SEAL

SCHEDULE 1

Restricted Funds

<u>Agency Member</u>	<u>Restricted Fund Name</u>
Bellevue	Bellevue City Bond Fund
Gretna	Gretna City Bond Fund
Gretna	Gretna City Street Fund
Papillion	Papillion City Bond Fund
Papillion	Papillion Capital Improvement Fund
Springfield	Springfield City Bond Fund
Sarpy County	County Bond Fund
Sarpy County	County Sinking Fund

EXHIBIT D-1

Baseline PILOT Distributions

Revised effective: January 1, 2022

Member	Baseline PILOT Distribution
Bellevue	\$0.00
Gretna	\$5,168.93
Papillion	\$4,227.01
Sarpy County	\$21,171.08
Springfield	\$18,497.28
Total	\$49,064.30