

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
NOVEMBER 5, 2019 AGENDA**

Subject:	Type:	Submitted By:
REVISED INTERLOCAL AGREEMENT – OPPD PAYMENTS IN LIEU OF TAXES	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE DIRECTOR OF PUBLIC WORKS

SYNOPSIS

A resolution has been prepared authorizing the Mayor to sign the Revised Interlocal Agreement for the Contribution and Allocation of Omaha Public Power District Payments In Lieu of Taxes (PILOT).

FISCAL IMPACT

The Revised Interlocal Agreement does not impact the City of La Vista’s allocation of OPPD Payment In Lieu of Taxes.

RECOMMENDATION

Approval.

BACKGROUND

On September 19, 2017, Sarpy County and the Cities of Papillion, Bellevue, Springfield, La Vista and Gretna entered into an Interlocal Agreement creating the Sarpy County and Cities Wastewater Agency. The Agency Board consists of one representative from each of the six participating entities.

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. City Council approved the Agency’s jurisdiction and adopted the Agency’s Growth Management Plan through Resolution No. 19-102 on July 16, 2019.

The Agency’s Board approved an iteration of the OPPD Interlocal Agreement at their September 25th Board Meeting; however, several member entities had concerns about the language in the Agreement. The Revised OPPD Interlocal Agreement was drafted to address these concerns, and the Agency will consider approving the Revised OPPD Interlocal Agreement at its November 6, 2019 Board Meeting.

The attached resolution would also authorize the Mayor to sign an Alternate Revised OPPD Interlocal Agreement should the City of Gretna choose not to participate. The Alternate Revised OPPD Interlocal would remove Gretna from the Agreement, and the amount of Gretna’s PILOT Contribution Threshold would be moved from the overall obligation. The threshold obligations of the remaining members would not change. Should Gretna choose not to participate, any future connection by Gretna would have to be negotiated at a later time.

RESOLUTION NO.

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AND AUTHORIZING THE EXECUTION OF THE REVISED 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; and

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

WHEREAS, the City of La Vista is a Member of the Agency; and

WHEREAS, pursuant to Neb. Rev. Stat. 70-651.03, on or before April 1 of each year, the Omaha Public Power District ("OPPD") is required to pay to the County treasurer a sum equal to five percent (5%) of the gross revenues derived by OPPD during the preceding calendar year from retail sales of electricity within the incorporated cities and villages located within the County (the "Annual OPPD Payment"); and

WHEREAS, pursuant to Neb. Rev. Stat. 70-651.04, each Annual OPPD Payment is subsequently divided and distributed by the County treasurer to the Cities, the County, school districts, and any learning community located in the Cities in the proportion that their respective property tax levies in the preceding year bore to the total of such levies ("Annual OPPD Distribution"); and

WHEREAS, the Agency's operating budget can, in part, be funded by the agreement of each Member having jurisdiction over certain areas in Sarpy County to pledge and contribute to the Agency a portion of the Annual OPPD Distribution otherwise paid and made available to them pursuant to Neb. Rev. Stat. 70-651.04; and

WHEREAS, pursuant to Agency Resolution 2019-014, the Agency approved and authorized the Agency Board Chair to execute the Interlocal Agreement for the Contribution and Allocation of Omaha Public Power District Payments in Lieu of Taxes ("OPPD Interlocal"), which was not adopted by the Members' individual governing bodies and was not put into effect; and

WHEREAS, it was found to be beneficial to the Agency and Members to revise the OPPOD Interlocal, ("Revised OPPD Interlocal"); and

WHEREAS, the Governing Body of the City of La Vista discussed the proposed Revised OPPD Interlocal for the City of La Vista's payment to the Agency of a portion of

the its Annual OPPD Distributions for retail electricity services attributable to customers located within the PILOT Allocation Area (as defined in the Revised OPPD Interlocal) that is in the City of La Vista's jurisdiction for the 2019 calendar year and for years thereafter; and

WHEREAS, after discussion the Governing Body of the City of La Vista has deemed it appropriate, necessary, convenient and advisable to approve the Revised OPPD Interlocal and to authorize its execution by the City Council;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of La Vista, Nebraska that, pending approval of Sarpy County and the Cities of Bellevue, Springfield, Papillion, and Gretna, the Revised OPPD Interlocal, a copy of which is attached hereto as Exhibit A, is hereby approved; and

BE IT ALERNATELY RESOLVED that, should any of the above listed County or Cities not approve the Revised OPPD Interlocal, the Mayor and City Council of the City of La Vista instead approves the Alternate Revised OPPD Interlocal, a copy of which is attached hereto as Exhibit B; and

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Mayor and City Council of the City of La Vista, Nebraska, that the Mayor is hereby authorized to execute on behalf of the City of La Vista the Revised OPPD Interlocal or the Alternate Revised OPPD Interlocal, as approved by the Sarpy County and Cities Wastewater Agency at its November 6, 2019, Agency Board Meeting; and further that the Recitals above are incorporated into the Resolutions by reference.

PASSED AND APPROVED THIS 5TH DAY OF NOVEMBER, 2019.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

Exhibit A
Revised OPPD Interlocal

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

THIS REVISED INTERLOCAL AGREEMENT FOR THE CONTRIBUTION AND ALLOCATION OF OMAHA PUBLIC POWER DISTRICT PAYMENTS IN LIEU OF TAXES (“Agreement”) is made by and between the Sarpy County and Cities Wastewater Agency (the “Agency”), and the County of Sarpy, Nebraska (the “County”) and the following cities (collectively, the “Cities”): the City of Papillion, Nebraska (“Papillion”), the City of Bellevue, Nebraska (“Bellevue”), the City of Springfield, Nebraska (“Springfield”), the City of La Vista, Nebraska (“La Vista”), and the City of Gretna, Nebraska (“Gretna”). Capitalized terms used herein shall have the same meaning as defined in the Formation Interlocal (as defined below), unless otherwise specified herein.

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

WHEREAS, the Agency was created as a separate body corporate and politic by the County and the Cities pursuant to that certain Interlocal Agreement Creating the Sarpy County and Cities Wastewater Agency dated September 19, 2017 (as amended the “Formation Interlocal”), by the authority granted under the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. 13-801, *et seq.* (the “Act”). The Formation Interlocal is incorporated herein by this reference;

WHEREAS, the County and the Cities are Members of the Agency;

WHEREAS, pursuant to Neb. Rev. Stat. 70-651.03, on or before April 1 of each year, the Omaha Public Power District (“OPPD”) is required to pay to the County treasurer, in lieu of taxes, a sum equal to five percent (5%) of the gross revenues collected by OPPD during the preceding calendar year from retail sales of electricity within the incorporated cities and villages located within the County (the “Annual OPPD PILOT”);

WHEREAS, pursuant to Neb. Rev. Stat. 70-651.04, each Annual OPPD PILOT is subsequently divided and distributed by the County treasurer to the Cities, County, school districts, and any learning community located in the Cities in the proportion that their respective property tax levies in the preceding year bore to the total of all such levies (“Annual PILOT Distribution”);

WHEREAS, the Members currently receive, and expect to receive in the future, Annual PILOT Distributions;

WHEREAS, subject to the terms of this Agreement, in order to fund a portion of the Agency’s financial obligations related to the construction, operation, maintenance and financing of the Unified SSWS, the Members having jurisdiction over certain areas in Sarpy County desire to pledge and contribute to the Agency a portion of the Annual PILOT Distribution that would otherwise be paid and made available to each of them pursuant to Neb. Rev. Stat. 70-651.04; and

WHEREAS, the parties hereto have determined that it is in their respective best interests to enter into this Agreement.

IT IS THEREFORE AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. **Contribution to the Agency of Annual PILOT Distributions.** Effective upon the County treasurer's receipt of the Annual OPPD PILOT for the retail sale of electricity to OPPD customers and users located in the Members' respective jurisdictions within the "PILOT Allocation Area" shown on the map attached hereto as **Exhibit A** and incorporated herein by this reference during the 2019 calendar year (which is payable by OPPD in 2020), and for each calendar year thereafter as hereinafter set forth in this Agreement, the Members hereby agree to pledge, contribute, and otherwise pay to the Agency its Member PILOT Contribution (as defined herein).
 - a) Except as set forth in Section 1(b) below, the "Member PILOT Contribution" shall be an amount equal to (i) the total Annual PILOT Distributions actually received by each Member that are, as determined by OPPD, directly attributable to retail electricity services to all OPPD customers and users located in the PILOT Allocation Area *less* (ii) the applicable "Baseline PILOT Distribution" set forth on **Exhibit D** attached hereto and incorporated herein by reference, which represents the Annual PILOT Distributions actually received by each Member for the 2018 calendar year (which were distributed to the Members in 2019) that are directly attributable to such customers and users.
 - b) Effective as of the date the Agency receives a combined cumulative total of Member PILOT Contributions in excess of Twenty-Two Million and No/100 Dollars (\$22,000,000.00), when any Member's total Member PILOT Contribution equals or exceeds the Member's applicable PILOT Contribution Threshold (as defined in Section 2(a) below) said Member's PILOT Contribution shall be adjusted to be equal to fifty percent (50%) of the Member PILOT Contribution otherwise payable by such Member pursuant to Section 1(a) above ("Adjusted Member PILOT Contribution").
 - c) Effective as of the date the Agency receives a combined cumulative total of Member PILOT Contributions/Adjusted Member PILOT Contributions equal to or in excess of Thirty Million and No/100 Dollars (\$30,000,000.00), no further Member PILOT Contributions/Adjusted Member PILOT Contributions shall be required from any Member.
 - d) The parties acknowledge and agree that the Member PILOT Contribution and Adjusted Member PILOT Contribution shall not include any Annual OPPD PILOT, Annual PILOT Distribution, or other fees or payments attributable to the retail sale of electricity to OPPD customers and users located outside of the PILOT Allocation Area. Each Member shall pay to the Agency its Member PILOT Contribution (or Adjusted Member PILOT Contribution, as applicable) within 30 days after such Member's receipt of its Annual PILOT Distribution from the County.
2. **PILOT Contribution Threshold and Reimbursements.**

- a) For purposes of this Agreement, each Member's applicable "PILOT Contribution Threshold" is set forth on **Exhibit B** attached hereto and incorporated herein by reference.
- b) The Members acknowledge and agree that the PILOT Contribution Thresholds are generally allocated in proportion to the areas of developable land in their respective jurisdictions as shown on the map attached hereto as **Exhibit C** and incorporated herein by reference.
- c) Each Member that has made Member PILOT Contributions (or Adjusted Member PILOT Contributions, as applicable) during the term of this Agreement shall be reimbursed by the Agency for such amount; provided, however, that the Agency's reimbursement of any Member PILOT Contributions/Adjusted Member PILOT Contributions shall be subject to the satisfaction of the following conditions:
 - i. No Member can be reimbursed for its Member PILOT Contributions/Adjusted Member PILOT Contributions until the earlier of (A) the date the Agency receives a combined cumulative total of Member PILOT Contributions and Adjusted Member PILOT Contributions of Thirty Million and No/100 Dollars (\$30,000,000.00), or (B) such time as the Agency Board, in its sole and absolute discretion, determines it has sufficient funds to make such reimbursements;
 - ii. The Agency's obligation to reimburse the Members for their respective Member PILOT Contributions/Adjusted Member PILOT Contributions shall be subject to the Agency's prior payment and/or satisfaction of any other Agency financial obligations, including, but not limited to, any SRF loan obligations, and any waterfall, availability payment, concessionaire fees and other fees and charges payable to the operator, concessionaire, lessee or developer of the Unified SSWS (collectively, the "Developer");
 - iii. The Agency's reimbursement of any Member's PILOT Contributions/Adjusted Member PILOT Contributions may be made after the Agency demonstrates cash reserves for 12 months of projected payments to the Developer above any reserve the Agency is required to maintain as part of its contract(s) with the Developer; and
 - iv. Any amount by which a Member's cumulative Member PILOT Contributions/Adjusted Member PILOT Contributions exceeds its applicable PILOT Contribution Threshold shall be hereinafter referred to as the "Excess PILOT Contribution." Members which have contributed Excess PILOT Contributions shall be given priority in the reimbursement of the amount contributed in excess of the Member PILOT Contribution Threshold. The Agency's reimbursement of Excess PILOT Contributions shall be made proportionally based on the total amount of excess contributions made by each Member. Once all Excess PILOT Contributions, with applicable interest accruing as of the date the applicable

Excess PILOT Contributions are made and calculated as simple interest at a rate of 1.5 percent per annum, have been reimbursed, the Agency shall begin reimbursement of the Member PILOT Contributions under this Section 2(c), and said reimbursements shall be paid to the applicable Members in proportion to the total amount paid by each Member of the cumulative PILOT Contributions.

- d) Except for a failure to pay as provided in Section 3, if a Member has not contributed the entirety of its PILOT Contribution Threshold at such time as said Member desires to connect to the Unified SSWS, such deficiency will not be included or accounted for as part of any connection fees which must be paid by said Member, nor will the Member be required to contribute the entirety of its PILOT Contribution Threshold before being allowed to connect to the Unified SSWS. Nothing herein will relieve said Member from continuing to make PILOT Contribution payments as required under the terms of this Agreement until such time as the Agency has received a cumulative total of Member PILOT Contributions equal to or in excess of \$30,000,000.00.
 - e) In the event the Agency dissolves in accordance with the Formation Interlocal or pursuant to applicable Nebraska law, all Member PILOT Contributions, Adjusted Member PILOT Contributions and other sums actually contributed or otherwise paid to and held by the Agency pursuant to this Agreement as of the effective date of such dissolution may be paid back to each Member in proportion that its individual contributions bears to the Members' aggregate contributions pursuant to this Agreement; provided, however, that no sums may be paid back to the Members under this section until such time as all other outstanding Agency debts, liabilities and obligations are paid, retired and otherwise satisfied.
3. **Failure to Pay.** In the event any Member fails to pay its applicable Member PILOT Contribution or Adjusted Member PILOT Contribution in accordance with Section 1 above, and such failure continues after 30 days' prior written notice from the Agency, then the Agency may either (a) increase any connection and/or user fees to such Member's jurisdiction so that such increased amount is equal to the Member PILOT Contribution (or Adjusted Member PILOT Contribution, as applicable) payable by such Member, or (b) refuse to allow developments within such Member's jurisdiction to connect to the Unified SSWS until such accrued Member PILOT Contribution (or Adjusted Member PILOT Contribution, as applicable) then due and owing is paid by such Member.
4. **Periodic Review.** At any time subsequent to the completion of construction of Phase 1A of the Unified SSWS (but no more than once per Agency fiscal year), the Agency Board shall, upon the written request of any Member, periodically review the terms and conditions of this Agreement including, but not limited to, the Member PILOT Contributions, the Adjusted Member PILOT Contributions, and the PILOT Contribution Threshold to determine whether any amendments to such terms are necessary and reasonable based on the then actual revenues, operating surplus (or deficit), and/or available cashflow balance generated from the Unified SSWS to reduce the Member's obligations pursuant to this Agreement. Subject to the limitations set forth in Section 5(e) below, the Agency may

thereafter amend such terms pursuant to an amendment to this Agreement executed by the Agency and all Members' respective governing bodies.

5. **Interlocal Cooperation Act.** This Agreement is entered into between the parties pursuant to the Act. The parties agree:
- a) This Agreement does not establish any separate legal or administrative entity.
 - b) Commencing on the Effective Date (as defined in Section 7 below), this Agreement shall continue in full force and effect until the earlier of (i) the date on which all Members receive a full reimbursement of their respective Member PILOT Contributions paid to the Agency pursuant to Section 2(c) above, or (ii) the date all the parties hereto agree in writing to terminate this Agreement, subject to approvals required pursuant to any future agreement(s) with the Developer and/or any lender or financier for the construction, operation, maintenance and financing of the Unified SSWS.
 - c) The purpose hereof is to fund the Agency's payment obligations pursuant to any financial obligations related to the construction, operation, maintenance and financing of the Unified SSWS.
 - d) No separate financing is necessary for the implementation of this Agreement.
 - e) Termination of this Agreement other than as herein expressly provided for and any modification of the terms hereof shall require the agreement of all the Members as evidenced by formal resolution of their respective governing bodies or by written agreement of their respective designees as appointed by formal resolution.
 - f) Any cooperative effort that is needed will be administered by the respective designees of each Member to the Agency Board pursuant to the Formation Interlocal. Except as otherwise provided herein, there will be no need for the parties to jointly acquire, hold, and dispose of any real or personal property pursuant to this Agreement.
 - g) Notwithstanding anything in this Agreement to the contrary, if a Member withdraws from the Agency in accordance with the Formation Interlocal, the Member's participation under this Agreement automatically shall terminate without further action or obligation required of the Member.
6. **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 Agreement, and the parties hereto shall further perform the applicable provisions of this Agreement 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.
7. **Effective Date.** This Agreement shall be subject to approval of the governing bodies of all the parties, and each party shall each furnish to the other parties a certified copy of the

resolution of its respective governing body. This Agreement shall be in full force and effect as of the date of execution hereof by the last of the parties hereto (the “Effective Date”).

8. **Miscellaneous.** This Agreement may be modified only by written amendment, approved by the governing bodies of all parties and duly executed by authorized representatives of the parties. Every amendment shall specify the date on which its provisions shall be effective, and if an effective date is not specified, the amendment shall be effective on the last date that the amendment is executed by a party. This Agreement contains the entire agreement of the parties. 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 Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect. All covenants, stipulations and agreements in this Agreement 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 Agreement and all Exhibits or other documents referenced in this Agreement shall be incorporated herein by this reference.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

Signed by the Sarpy County and Cities Wastewater Agency this _____ day of _____, 2019.

SARPY COUNTY AND CITIES
WASTEWATER AGENCY,
A Political Subdivision

By _____
Chairperson, Agency Board

ATTEST:

Secretary, Agency Board

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

Signed by Sarpy County this _____ day of _____, 2019.

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 Agreement upon the day and year hereinafter indicated.

Signed by the City of Bellevue this _____ day of _____, 2019.

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 Agreement upon the day and year hereinafter indicated.

Signed by the City of Papillion this _____ day of _____, 2019.

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 Agreement upon the day and year hereinafter indicated.

Signed by the City of La Vista this _____ day of _____, 2019.

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 Agreement upon the day and year hereinafter indicated.

Signed by the City of Gretna this _____ day of _____, 2019.

ATTEST:

CITY OF GRETNA, a Nebraska
Municipal Corporation

Tammy L. Tisdall, City Clerk

James W. Timmerman, Mayor

CITY SEAL

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

Signed by the City of Springfield this _____ day of _____, 2019.

ATTEST:

CITY OF SPRINGFIELD, a Nebraska
Municipal Corporation

Kathleen Gottsch,
City Administrator/City Clerk

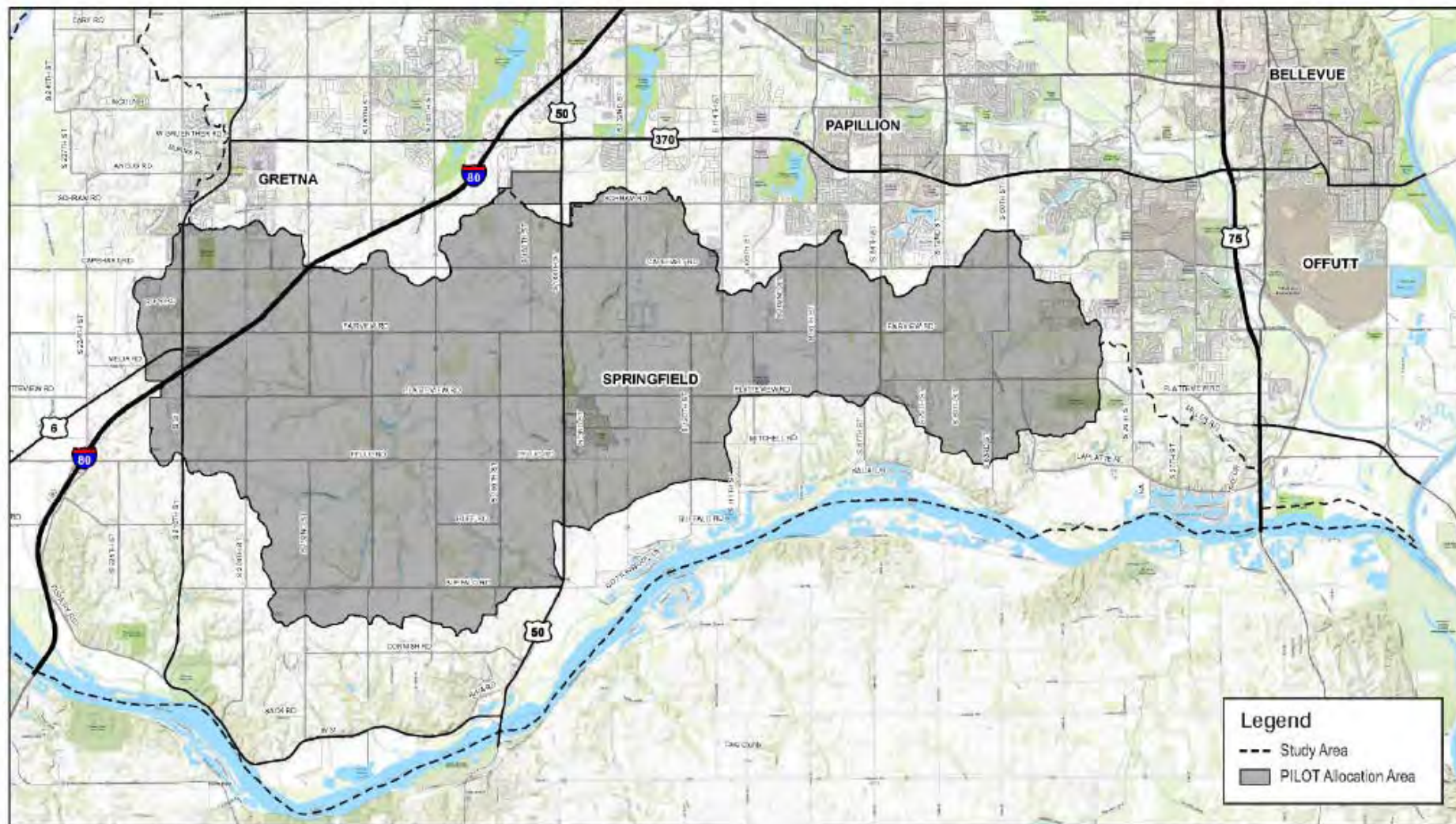
Robert Roseland, Mayor

CITY SEAL

EXHIBIT A

PILOT Allocation Area Map

[Attached]



SOUTHERN SARPY COUNTY



DATE
September 2019
FIGURE
PILOT Allocation
Area Map

EXHIBIT B**PILOT Contribution Thresholds**

Member	PILOT Contribution Threshold
Bellevue	\$4,261,560.00
Gretna	\$4,258,682.00
Papillion	\$6,160,303.00
Sarpy County	\$11,293,170.00
Springfield	\$4,026,285.00
Total	\$30,000,000.00

EXHIBIT C

Map of Jurisdictional Areas South of Sarpy County Ridgeline

[Attached]

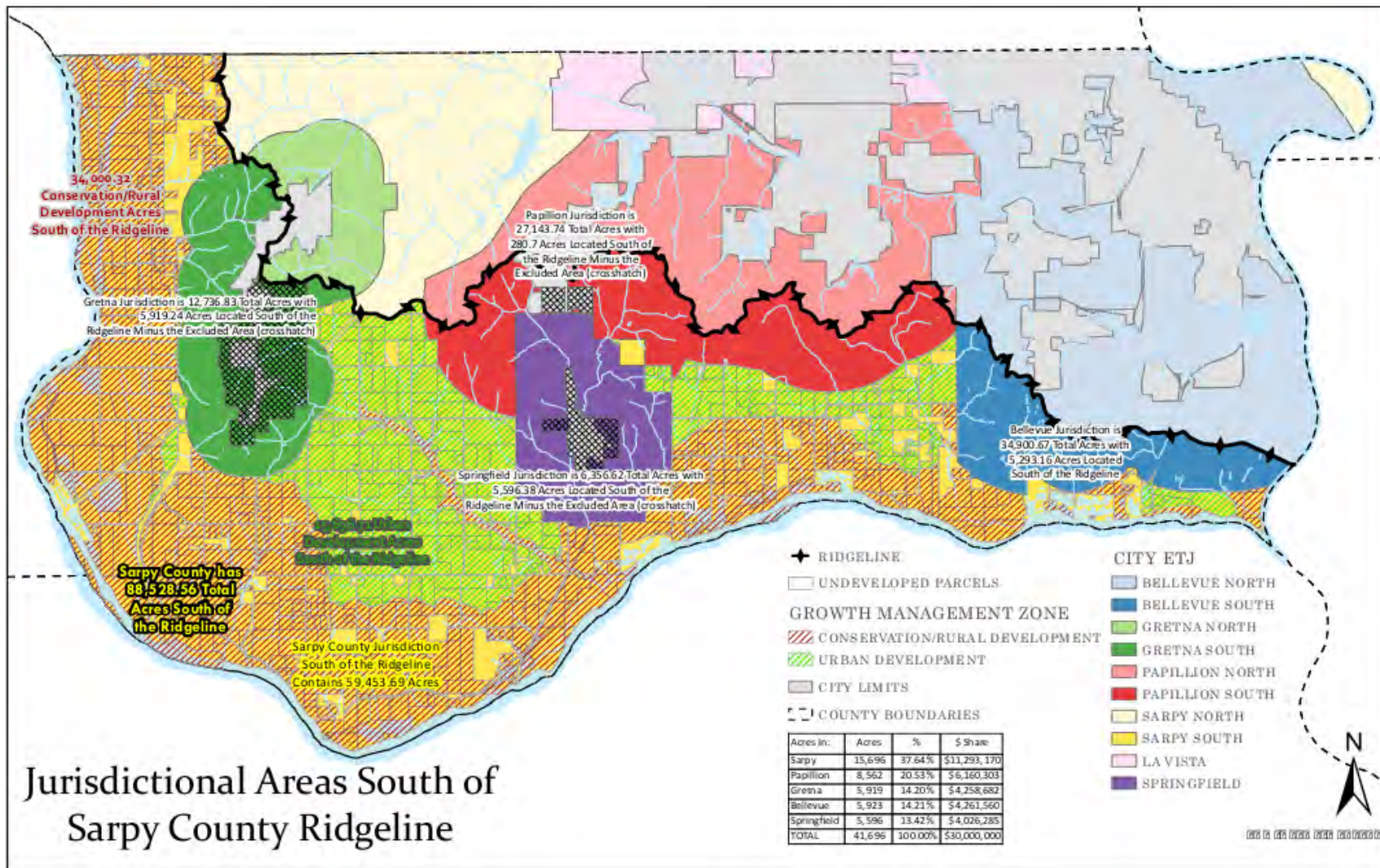


EXHIBIT D

Baseline PILOT Distributions

Member	Baseline PILOT Distribution
Bellevue	\$0.00
Gretna	\$12,624.66
Papillion	\$24,058.54
Sarpy County	\$34,782.09
Springfield	\$26,449.56
Total	\$97,914.85

Exhibit B

Alternate Revised OPPD Interlocal

REVISED INTERLOCAL AGREEMENT FOR THE CONTRIBUTION AND ALLOCATION OF OMAHA PUBLIC POWER DISTRICT PAYMENTS IN LIEU OF TAXES (ALTERNATE)

THIS INTERLOCAL AGREEMENT FOR THE CONTRIBUTION AND ALLOCATION OF OMAHA PUBLIC POWER DISTRICT PAYMENTS IN LIEU OF TAXES (“Agreement”) is made by and between the Sarpy County and Cities Wastewater Agency (the “Agency”), and the County of Sarpy, Nebraska (the “County”) and the following cities (collectively, the “Cities”): the City of Papillion, Nebraska (“Papillion”), the City of Bellevue, Nebraska (“Bellevue”), the City of Springfield, Nebraska (“Springfield”), and the City of La Vista, Nebraska (“La Vista”). Capitalized terms used herein shall have the same meaning as defined in the Formation Interlocal (as defined below), unless otherwise specified herein. For purposes of this Agreement, the term “Members” shall refer only to the Agency Members that are parties hereto.

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

WHEREAS, the Agency was created as a separate body corporate and politic by the County and the Cities pursuant to that certain Interlocal Agreement Creating the Sarpy County and Cities Wastewater Agency dated September 19, 2017 (as amended the “Formation Interlocal”), by the authority granted under the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. 13-801, *et seq.* (the “Act”). The Formation Interlocal is incorporated herein by this reference;

WHEREAS, the County and the Cities are Members of the Agency;

WHEREAS, pursuant to Neb. Rev. Stat. 70-651.03, on or before April 1 of each year, the Omaha Public Power District (“OPPD”) is required to pay to the County treasurer, in lieu of taxes, a sum equal to five percent (5%) of the gross revenues collected by OPPD during the preceding calendar year from retail sales of electricity within the incorporated cities and villages located within the County (the “Annual OPPD PILOT”);

WHEREAS, pursuant to Neb. Rev. Stat. 70-651.04, each Annual OPPD PILOT is subsequently divided and distributed by the County treasurer to the Cities, County, school districts, and any learning community located in the Cities in the proportion that their respective property tax levies in the preceding year bore to the total of all such levies (“Annual PILOT Distribution”);

WHEREAS, the Members currently receive, and expect to receive in the future, Annual PILOT Distributions;

WHEREAS, subject to the terms of this Agreement, in order to fund a portion of the Agency’s financial obligations related to the construction, operation, maintenance and financing of the Unified SSWS, the Members having jurisdiction over certain areas in Sarpy County desire to pledge and contribute to the Agency a portion of the Annual PILOT Distribution that would otherwise be paid and made available to each of them pursuant to Neb. Rev. Stat. 70-651.04; and

WHEREAS, the parties hereto have determined that it is in their respective best interests to enter into this Agreement.

IT IS THEREFORE AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. **Contribution to the Agency of Annual PILOT Distributions.** Effective upon the County treasurer's receipt of the Annual OPPD PILOT for the retail sale of electricity to OPPD customers and users located in the Members' respective jurisdictions within the "PILOT Allocation Area" shown on the map attached hereto as **Exhibit A** and incorporated herein by this reference during the 2019 calendar year (which is payable by OPPD in 2020), and for each calendar year thereafter as hereinafter set forth in this Agreement, the Members hereby agree to pledge, contribute, and otherwise pay to the Agency its Member PILOT Contribution (as defined herein).
 - a) Except as set forth in Section 1(b) below, the "Member PILOT Contribution" shall be an amount equal to (i) the total Annual PILOT Distributions actually received by each Member that are, as determined by OPPD, directly attributable to retail electricity services to all OPPD customers and users located in the PILOT Allocation Area *less* (ii) the applicable "Baseline PILOT Distribution" set forth on **Exhibit D** attached hereto and incorporated herein by reference, which represents the Annual PILOT Distributions actually received by each Member for the 2018 calendar year (which were distributed to the Members in 2019) that are directly attributable to such customers and users.
 - b) Effective as of the date the Agency receives a combined cumulative total of Member PILOT Contributions in excess of Twenty-Two Million and No/100 Dollars (\$22,000,000.00), when any Member's total Member PILOT Contribution equals or exceeds the Member's applicable PILOT Contribution Threshold (as defined in Section 2(a) below) said Member's PILOT Contribution shall be adjusted to be equal to fifty percent (50%) of the Member PILOT Contribution otherwise payable by such Member pursuant to Section 1(a) above ("Adjusted Member PILOT Contribution").
 - c) Effective as of the date the Agency receives a combined cumulative total of Member PILOT Contributions/Adjusted Member PILOT Contributions equal to or in excess of Twenty Five Million Seven Hundred Forty One Thousand Three Hundred Eighteen and No/100 Dollars (\$25,741,318.00), no further Member PILOT Contributions/Adjusted Member PILOT Contributions shall be required from any Member.
 - d) The parties acknowledge and agree that the Member PILOT Contribution and Adjusted Member PILOT Contribution shall not include any Annual OPPD PILOT, Annual PILOT Distribution, or other fees or payments attributable to the retail sale of electricity to OPPD customers and users located outside of the PILOT Allocation Area. Each Member shall pay to the Agency its Member PILOT Contribution (or Adjusted Member PILOT Contribution, as applicable) within 30 days after such Member's receipt of its Annual PILOT Distribution from the County.
2. **PILOT Contribution Threshold and Reimbursements.**

- a) For purposes of this Agreement, each Member's applicable "PILOT Contribution Threshold" is set forth on **Exhibit B** attached hereto and incorporated herein by reference.
- b) The Members acknowledge and agree that the PILOT Contribution Thresholds are generally allocated in proportion to the areas of developable land in their respective jurisdictions as shown on the map attached hereto as **Exhibit C** and incorporated herein by reference.
- c) Each Member that has made Member PILOT Contributions (or Adjusted Member PILOT Contributions, as applicable) during the term of this Agreement shall be reimbursed by the Agency for such amount; provided, however, that the Agency's reimbursement of any Member PILOT Contributions/Adjusted Member PILOT Contributions shall be subject to the satisfaction of the following conditions:
 - i. No Member can be reimbursed for its Member PILOT Contributions/Adjusted Member PILOT Contributions until the earlier of (A) the date the Agency receives a combined cumulative total of Member PILOT Contributions and Adjusted Member PILOT Contributions of Twenty Five Million Seven Hundred Forty One Thousand Three Hundred Eighteen and No/100 Dollars (\$25,741,318.00), or (B) such time as the Agency Board, in its sole and absolute discretion, determines it has sufficient funds to make such reimbursements;
 - ii. The Agency's obligation to reimburse the Members for their respective Member PILOT Contributions/Adjusted Member PILOT Contributions shall be subject to the Agency's prior payment and/or satisfaction of any other Agency financial obligations, including, but not limited to, any SRF loan obligations, and any waterfall, availability payment, concessionaire fees and other fees and charges payable to the operator, concessionaire, lessee or developer of the Unified SSWS (collectively, the "Developer");
 - iii. The Agency's reimbursement of any Member's PILOT Contributions/Adjusted Member PILOT Contributions may be made after the Agency demonstrates cash reserves for 12 months of projected payments to the Developer above any reserve the Agency is required to maintain as part of its contract(s) with the Developer; and
 - iv. Any amount by which a Member's cumulative Member PILOT Contributions/Adjusted Member PILOT Contributions exceeds its applicable PILOT Contribution Threshold shall be hereinafter referred to as the "Excess PILOT Contribution." Members which have contributed Excess PILOT Contributions shall be given priority in the reimbursement of the amount contributed in excess of the Member PILOT Contribution Threshold. The Agency's reimbursement of Excess PILOT Contributions shall be made proportionally based on the total amount of excess contributions made by each Member. Once all Excess PILOT

Contributions, with applicable interest accruing as of the date the applicable Excess PILOT Contributions are made and calculated as simple interest at a rate of 1.5 percent per annum, have been reimbursed, the Agency shall begin reimbursement of the Member PILOT Contributions under this Section 2(c), and said reimbursements shall be paid to the applicable Members in proportion to the total amount paid by each Member of the cumulative PILOT Contributions.

- d) Except for a failure to pay as provided in Section 3, if a Member has not contributed the entirety of its PILOT Contribution Threshold at such time as said Member desires to connect to the Unified SSWS, such deficiency will not be included or accounted for as part of any connection fees which must be paid by said Member, nor will the Member be required to contribute the entirety of its PILOT Contribution Threshold before being allowed to connect to the Unified SSWS. Nothing herein will relieve said Member from continuing to make PILOT Contribution payments as required under the terms of this Agreement until such time as the Agency has received a cumulative total of Member PILOT Contributions equal to or in excess of \$25,741,318.00. This provision shall not apply to Agency Members that are not parties to this Agreement.
 - e) In the event the Agency dissolves in accordance with the Formation Interlocal or pursuant to applicable Nebraska law, all Member PILOT Contributions, Adjusted Member PILOT Contributions and other sums actually contributed or otherwise paid to and held by the Agency pursuant to this Agreement as of the effective date of such dissolution may be paid back to each Member in proportion that its individual contributions bears to the Members' aggregate contributions pursuant to this Agreement; provided, however, that no sums may be paid back to the Members under this section until such time as all other outstanding Agency debts, liabilities and obligations are paid, retired and otherwise satisfied.
3. **Failure to Pay.** In the event any Member fails to pay its applicable Member PILOT Contribution or Adjusted Member PILOT Contribution in accordance with Section 1 above, and such failure continues after 30 days' prior written notice from the Agency, then the Agency may either (a) increase any connection and/or user fees to such Member's jurisdiction so that such increased amount is equal to the Member PILOT Contribution (or Adjusted Member PILOT Contribution, as applicable) payable by such Member, or (b) refuse to allow developments within such Member's jurisdiction to connect to the Unified SSWS until such accrued Member PILOT Contribution (or Adjusted Member PILOT Contribution, as applicable) then due and owing is paid by such Member.
4. **Periodic Review.** At any time subsequent to the completion of construction of Phase 1A of the Unified SSWS (but no more than once per Agency fiscal year), the Agency Board shall, upon the written request of any Member, periodically review the terms and conditions of this Agreement including, but not limited to, the Member PILOT Contributions, the Adjusted Member PILOT Contributions, and the PILOT Contribution Threshold to determine whether any amendments to such terms are necessary and reasonable based on the then actual revenues, operating surplus (or deficit), and/or available cashflow balance

generated from the Unified SSWS to reduce the Member's obligations pursuant to this Agreement. Subject to the limitations set forth in Section 5(e) below, the Agency may thereafter amend such terms pursuant to an amendment to this Agreement executed by the Agency and all Members' respective governing bodies.

5. **Interlocal Cooperation Act.** This Agreement is entered into between the parties pursuant to the Act. The parties agree:
- a) This Agreement does not establish any separate legal or administrative entity.
 - b) Commencing on the Effective Date (as defined in Section 7 below), this Agreement shall continue in full force and effect until the earlier of (i) the date on which all Members receive a full reimbursement of their respective Member PILOT Contributions paid to the Agency pursuant to Section 2(c) above, or (ii) the date all the parties hereto agree in writing to terminate this Agreement, subject to approvals required pursuant to any future agreement(s) with the Developer and/or any lender or financier for the construction, operation, maintenance and financing of the Unified SSWS.
 - c) The purpose hereof is to fund the Agency's payment obligations pursuant to any financial obligations related to the construction, operation, maintenance and financing of the Unified SSWS.
 - d) No separate financing is necessary for the implementation of this Agreement.
 - e) Termination of this Agreement other than as herein expressly provided for and any modification of the terms hereof shall require the agreement of all the Members as evidenced by formal resolution of their respective governing bodies or by written agreement of their respective designees as appointed by formal resolution.
 - f) Any cooperative effort that is needed will be administered by the respective designees of each Member to the Agency Board pursuant to the Formation Interlocal. Except as otherwise provided herein, there will be no need for the parties to jointly acquire, hold, and dispose of any real or personal property pursuant to this Agreement.
 - g) Notwithstanding anything in this Agreement to the contrary, if a Member withdraws from the Agency in accordance with the Formation Interlocal, the Member's participation under this Agreement automatically shall terminate without further action or obligation required of the Member.
6. **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 Agreement, and the parties hereto shall further perform the applicable provisions of this Agreement 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.

7. **Effective Date.** This Agreement shall be subject to approval of the governing bodies of all the parties, and each party shall each furnish to the other parties a certified copy of the resolution of its respective governing body. This Agreement shall be in full force and effect as of the date of execution hereof by the last of the parties hereto (the “Effective Date”).
8. **Miscellaneous.** This Agreement may be modified only by written amendment, approved by the governing bodies of all parties and duly executed by authorized representatives of the parties. Every amendment shall specify the date on which its provisions shall be effective, and if an effective date is not specified, the amendment shall be effective on the last date that the amendment is executed by a party. This Agreement contains the entire agreement of the parties. 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 Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect. All covenants, stipulations and agreements in this Agreement 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 Agreement and all Exhibits or other documents referenced in this Agreement shall be incorporated herein by this reference.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

Signed by the Sarpy County and Cities Wastewater Agency this _____ day of _____, 2019.

SARPY COUNTY AND CITIES
WASTEWATER AGENCY,
A Political Subdivision

By _____
Chairperson, Agency Board

ATTEST:

Secretary, Agency Board

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

Signed by Sarpy County this _____ day of _____, 2019.

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 Agreement upon the day and year hereinafter indicated.

Signed by the City of Bellevue this _____ day of _____, 2019.

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 Agreement upon the day and year hereinafter indicated.

Signed by the City of Papillion this _____ day of _____, 2019.

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 Agreement upon the day and year hereinafter indicated.

Signed by the City of La Vista this _____ day of _____, 2019.

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 Agreement upon the day and year hereinafter indicated.

Signed by the City of Springfield this _____ day of _____, 2019.

ATTEST:

CITY OF SPRINGFIELD, a Nebraska
Municipal Corporation

Kathleen Gottsch,
City Administrator/City Clerk

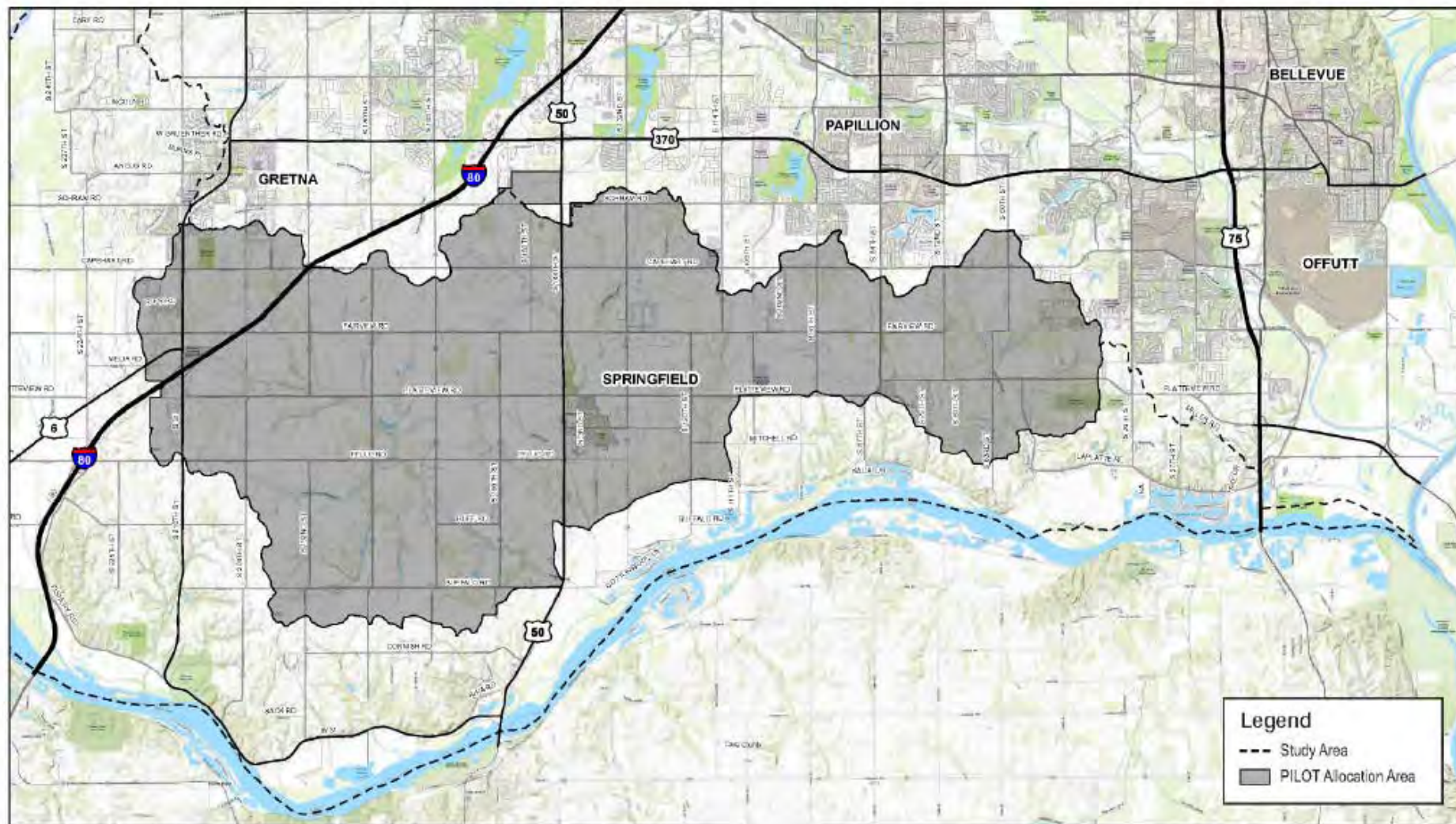
Robert Roseland, Mayor

CITY SEAL

EXHIBIT A

PILOT Allocation Area Map

[Attached]



SOUTHERN SARPY COUNTY



DATE
September 2019
FIGURE
PILOT Allocation
Area Map

EXHIBIT B**PILOT Contribution Thresholds**

Member	PILOT Contribution Threshold
Bellevue	\$4,261,560.00
Papillion	\$6,160,303.00
Sarpy County	\$11,293,170.00
Springfield	\$4,026,285.00
Total	\$25,741,318.00

EXHIBIT C

Map of Jurisdictional Areas South of Sarpy County Ridgeline

[Attached]

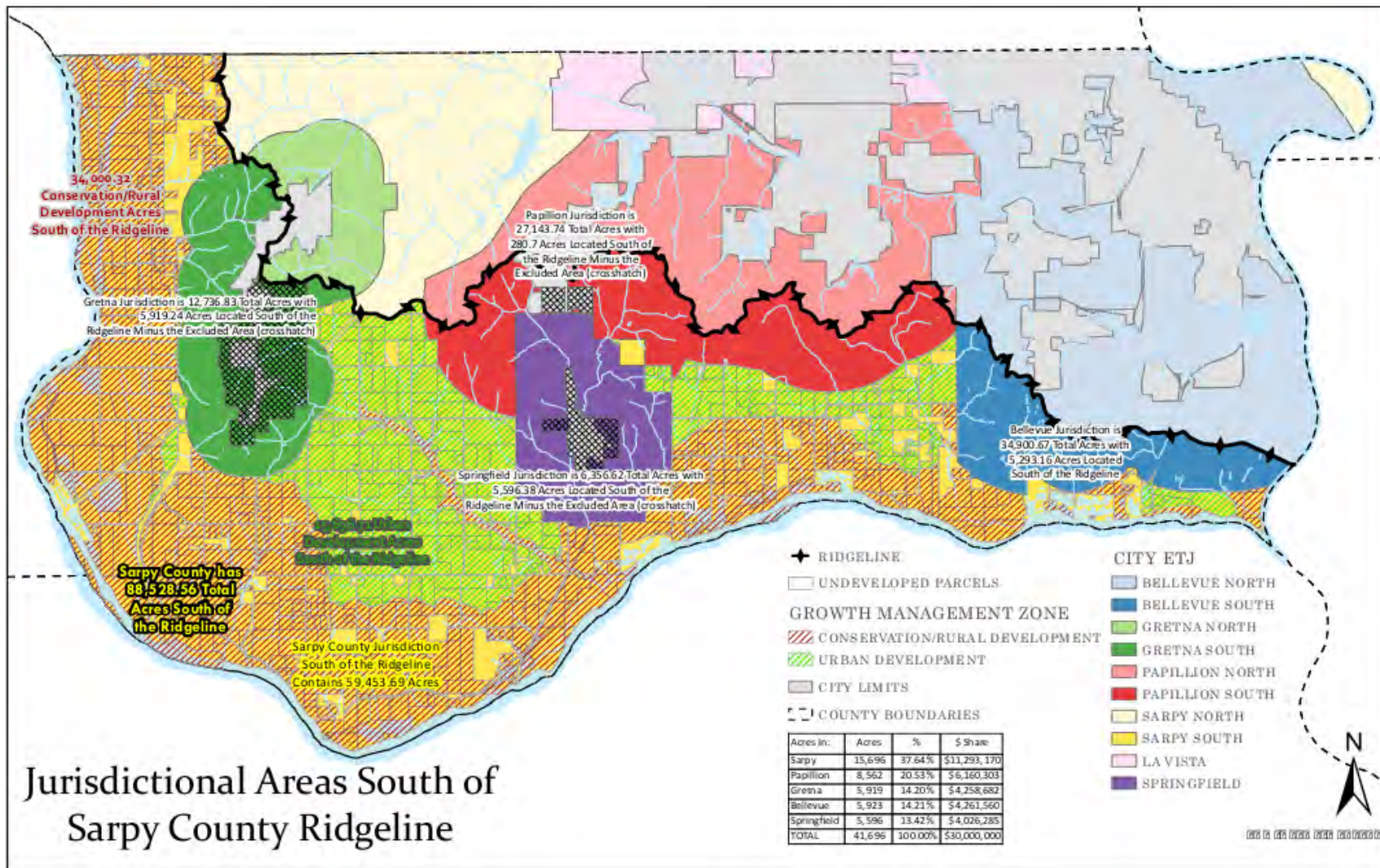


EXHIBIT D

Baseline PILOT Distributions

Member	Baseline PILOT Distribution
Bellevue	\$0.00
Papillion	\$24,058.54
Sarpy County	\$34,782.09
Springfield	\$26,449.56
Total	\$85,290.19