

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JUNE 16, 2015 AGENDA**

Subject:	Type:	Submitted By:
INTERLOCAL AGREEMENT - SALT SHED FACILITY AND FUELING ISLAND	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE PUBLIC WORKS DIRECTOR

SYNOPSIS

A resolution has been prepared authorizing the Mayor to execute an Interlocal Agreement with the City of Papillion granting La Vista a license to use and occupy the Salt Storage Facility and Fueling Island located at 9909 Portal Road.

FISCAL IMPACT

The FY 2014/15 Capital Improvement Plan provides funding for the proposed purchase. Future funding requirements are described below.

RECOMMENDATION

Approval

BACKGROUND

The City of Papillion is in process of constructing a new Public Works Facility located directly across the street from the La Vista Public Works Facility and approached La Vista about a joint Salt Storage Facility and Fueling Island. La Vista desperately needed additional covered storage space for salt storage and the current fueling system was insufficient for current operations and in need of major upgrades. As a result the City Council authorized funding in the FY15 budget.

The FY15 Capital Budget provides \$244,000 for La Vista's share of the projects based on the initial estimates provided by Papillion. The initial estimates did not include the paving, foundation blocks, electrical service and fixture costs and as a result, La Vista's share is now \$387,645. In FY15, La Vista will pay Papillion \$244,000. The payment will cover the entire cost of the Salt Storage Facility which is \$155,465. The remaining balance of \$83,535 will be applied to the Fuel Island, leaving a balance due of \$143,645 which will be paid over the next three fiscal years on the payment schedule shown below.

FY 2015/16	\$50,000
FY 2016/17	\$50,000
FY 2017/18	\$43,645

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH THE CITY OF PAPILLION GRANTING THE CITY OF LA VISTA A LICENSE TO USE AND OCCUPY THE SALT STORAGE FACILITY AND FUELING ISLAND LOCATED AT 9909 PORTAL ROAD.

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 City of Papillion is constructing a Public Works Facility across the street from the La Vista Public Works Facility, and;

WHEREAS, the City of Papillion has approached the City of La Vista regarding a joint purchase of the salt storage facility and fueling island, and;

WHEREAS, the City of La Vista Public works is in need of additional covered salt storage space and the current fueling system is insufficient and in need of upgrades, and;

WHEREAS, the FY15 Capital Fund Budget provides funding for the proposed purchase, and;

WHEREAS, the participants agree that this Interlocal Cooperation Agreement in no manner expands or restricts the authority otherwise granted to them by law; 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 authorize the execution of an Interlocal Cooperation Agreement with the City of Papillion granting the City of La Vista a license to use and occupy the salt storage facility and fueling island located at 9909 Portal Road in form and content approved by the City Attorney.

PASSED AND APPROVED THIS 16TH DAY OF JUNE, 2015.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

INTERLOCAL AND LICENSE AGREEMENT
for the
Salt Storage Facility and Fueling Island

This Interlocal and License Agreement for the Salt Storage Facility and Fueling Island ("Agreement") is entered into this _____ day of _____, 2015 ("Effective Date") by and between the City of La Vista, a Nebraska municipal corporation ("La Vista"), and the City of Papillion, a Nebraska municipal corporation ("Papillion") (singularly, the "Party" and collectively, the "Parties").

WHEREAS, Papillion will own, operate, and maintain a Public Works Facility, which includes a Salt Storage Facility and Fueling Island; and

WHEREAS, the Parties desire to enter into this Agreement granting La Vista a license for the use of certain portions of Papillion's Public Works Facility to provide for the fueling of La Vista's city vehicles and for the storage, drop off, and pick up of salt for winter conditions; and

WHEREAS, this Agreement sets forth the provisions for Papillion's Fueling Island and Salt Storage Facility.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

1. License. Papillion hereby grants unto La Vista for the term a license to use and occupy the following described real property:

The Salt Storage Facility and the Fueling Island located on the City of Papillion Public Works premises, more specifically located at 9909 Portal Road, Papillion, Nebraska 68046, as well as the necessary roadway to access the Salt Storage Facility and the Fueling Island ("the Premises"), solely for the uses and purposes described in this Agreement.

2. Purpose and Term.

The purpose of this Agreement is to specify the rights and responsibilities of the Parties hereto regarding the Premises.

The license granted herein shall commence on the Effective Date of this Agreement as stated above and continue for twenty (20) years ("term"). Such term shall automatically be renewed for one or more additional five (5) year terms if neither Party provides the other Party with a written notice of termination at least two years before the last day of said term or any renewal.

3. Use of the Premises. La Vista during the term of this Agreement is permitted to use and occupy the Premises for storing, collecting, picking up, and dropping off salt and for utilizing the fueling station to refuel city vehicles. La Vista shall also be granted the right to utilize the necessary roadways within the Papillion Public Works Facility to access the Premises.

La Vista, in its use of the Premises and the roadways, will take all reasonable precautions to prevent waste, damage, or injury to the Premises. All personal property belonging to, or in the possession of, La Vista in or located on the Premises, except for the stored salt and the fuel located on the Premises and within the sole custody of Papillion, shall be at the risk of La Vista, and La Vista shall take such measures as it determines necessary or appropriate to protect and insure said property from damage or destruction.

4. Premise Access. Papillion shall issue fobs to both the Papillion and La Vista employees who will need access to the Premises. Each fob shall be identified with an individual employee. La Vista shall be responsible for tracking and collecting all fobs of employees who leave the employment of La Vista, and promptly returning such fobs to Papillion.

5. Salt Storage Facility.

A. Construction of Salt Storage Facility. As consideration for entering into this Agreement, La Vista shall contribute forty-five percent (45%) of the total construction costs for the Salt Storage Facility, to be paid in full, as set forth in Exhibit "A," attached hereto and incorporated by reference. In the event Papillion enters into a separate Interlocal agreement with another governmental entity, except for the Papillion La Vista School District, which has already been taken into consideration under this Agreement, the Parties shall be proportionally reimbursed for the construction costs to the extent such costs are negotiated in the Interlocal agreement with such other entity.

B. Salt Orders and Deliveries.

(1) The current stock of salt residing in and having already been delivered to the Salt Storage Facility prior to the effective date of this Agreement shall remain the personal property of the Party who purchased such salt. For all future salt purchases, each Party shall be responsible for ordering and managing all deliveries of the salt located on the Premises. The Parties may use their salt as they please.

(2) La Vista shall inform the Papillion Public Works Director or his/her designee of any upcoming salt deliveries. Papillion's Public Works Director, or his/her designee, shall receive all deliveries of salt. Upon the completion of any salt delivery, Papillion shall be provided with a certified Scale Ticket for such delivery to determine and ensure the quantity of salt within the Salt Storage Facility after each delivery.

(3) In the event either Party uses more salt than it expected, such Party may make a request to use the other Party's salt. If no salt is available, the requesting Party shall be required to purchase more salt at its own cost, or as otherwise mutually agreed upon by the Parties.

C. Accounting for Removal and Return of Salt.

(1) Each of the Parties shall be responsible for weighing every truck load of salt that such Party loads from the Premises. La Vista and Papillion employees must send a Scale Ticket for each truck loading salt from the Salt Storage Facility to the Papillion Public Works Director within five days of loading salt from the Salt Storage Facility.

(2) If La Vista has any salt left over after a pickup of salt from the Salt Storage Facility, La Vista shall take the remaining salt to La Vista's facilities and may use such salt as they so desire. There shall be no reduction in the original amount of salt removed from the Salt Storage Facility for any leftover salt.

(3) During the winter month operations, the Papillion Public Works Director shall send out bi-weekly reports electronically to La Vista regarding the salt levels at the Salt Storage Facility.

6. Fueling Station.

- A. Construction of the Fueling Station. As consideration for entering into this Agreement, La Vista shall contribute fifty percent (50%) of the total construction costs for the Fueling Station, in four (4) annual installments, as set forth in Exhibit "B," attached hereto and incorporated by reference. In the event Papillion enters into a separate Interlocal agreement with another governmental entity, the Parties shall be proportionally reimbursed for the construction costs to the extent such costs are negotiated in the Interlocal agreement with such other entity.
- B. Initial Fueling of the Station. Papillion shall be responsible for the initial fueling of the fuel station.
- C. Fuel Cost. Papillion shall be responsible for ordering all fuel for the fuel station. Fuel costs shall be allocated between the parties based on actual usage and cost of fuel used. La Vista shall be invoiced for its usage of fuel since the date of the last refueling of the fuel station.
- D. Use of the Fueling Island. Papillion and La Vista employees shall use the fob system to acquire fuel from the fueling stations. The fobs will track the details of each fueling transaction including, but not limited to, the employees obtaining fuel, the grade of fuel, and the quantity of fuel.

7. Operations and General Safety Provisions.

A. General Rules and Regulations.

All Parties shall require their employees, contractors, subcontractors and those working on their behalf to:

- (1) Be trained by the Papillion Fleet Manager on the safe and proper use of the Fueling Island and Salt Storage Facility and any other related equipment;
- (2) Cause all truck drivers delivering or loading salt or fuel to be instructed on the safe and proper delivery and loading protocols;
- (3) Ensure that all truck unloading systems, including security gates systems, are properly secured closed before leaving the Premises;
- (4) Sweep any spilled salt back into the Salt Storage Facility after the loading and unloading of salt;
- (5) Immediately report and clean up any spilled fuel to the Papillion Fleet Manager and follow cleanup protocols;
- (6) Place trash in the appropriate containers and leave the site in a good working condition; and
- (7) Immediately report all problems or concerns related to the Salt Storage Facility or the Fueling Island to the Papillion Public Works Director, or his/her designee.

8. Maintenance, Modification, and Updates to the Premises.

A. Maintenance and Repairs.

Papillion will maintain the Premises in a good and working condition and repair. La Vista will provide Papillion prompt notice of any known damage or defects in or to the Premises or any part or operations thereof, including without limitation, wiring, pipes, gas, plumbing, electrical, heating, ventilation or air conditioning apparatus, systems or equipment.

Any necessary repairs or maintenance shall be performed by Papillion. La Vista shall be responsible for forty-five percent (45%) for the Salt Storage Facility and fifty percent (50%) for the Fueling Island of all expenses for maintenance and repairs for such buildings, regardless of the amount or extent. La Vista's participation in any extraordinary repairs or maintenance will require approval from La Vista, except as otherwise provided below. Papillion shall be responsible for invoicing La Vista for such expenses. La Vista shall have the right to request all supporting documents for the invoiced items.

Each Party shall be responsible for paying for repair of all damages to the Premises caused by that Party, its officers, employees, subcontractors or others working on behalf of that Party and those it brings onto the Premises. The Papillion Public Works Director shall affect the needed repairs and the Party responsible for the damage shall be responsible for paying for such repairs in an amount up to, but not to exceed, the deductible of the property insurance policy covering the Premises. If the damage renders any of the contents ineffective or unusable, the Papillion Public Works Director shall replace such contents and the Party responsible for that loss or damage shall be responsible for paying for the replaced contents in an amount up to, but not to exceed the deductible of the property insurance policy covering the Building. If the damage to the Premises or its contents is caused by a party not subject to the terms and conditions of this Agreement and who is otherwise not an agent, contractor or subcontractor of a party to this Agreement, the Parties shall be mutually responsible for their respective share of the cost of any necessary repair or replacement in accordance with the percentages set forth in 8A above, with La Vista's participation in any extraordinary repairs or replacements subject to approval from La Vista. The Parties may seek reimbursement from any third party believed to be responsible for such damages.

B. Administrative and Operational Costs.

Papillion shall add a three percent (3%) administrative and operations fee to its invoices. Such fee shall be calculated off of the total invoice. Such fee shall cover the operational and administrative costs (i.e., billing, system monitoring, management, and utility costs) of running the Premises. This fee shall be analyzed after the first year of this Agreement and may be adjusted as needed.

C. Updates to the Salt Storage Facility or Fueling Island.

In the event the Salt Storage Facility or the Fueling Island need to be updated, the Papillion Public Works Director shall meet with the La Vista Public Works Director to evaluate the desired updates. Prior to any work being performed Papillion shall receive La Vista's consent to perform the updates. La Vista shall not unreasonably withhold approval for the desired updates to the facilities. If approved, La Vista shall reimburse Papillion forty-five percent (45%) for the Salt Storage Facility and fifty percent (50%) for the Fueling Island for the costs for the updates.

D. Miscellaneous expenses.

In the event any new State or Federal regulations or administrative standards require Papillion to update its system, La Vista shall pay forty-five percent (45%) for the Salt Storage Facility and fifty percent (50%) for the Fueling Island of the costs to update the system. Papillion will update La Vista on any such expected changes and expenses that may occur. If possible, under Papillion's discretion, any costs for upgrades over \$3,000 will be delayed until the next fiscal year.

9. Billing. Papillion shall be responsible for monitoring the amount of fuel each Party is using. La Vista shall pay such invoices within thirty (30) days of the receipt of the invoice. The invoices shall also include any charges set forth in Section 8 of this Agreement. La Vista has the right to request any statements or invoices supporting the charges included in any invoice.

In the event Papillion purchases salt for La Vista the provisions above shall apply.

10. Inaccessible or Inoperable Facilities. In the event the Premises are inaccessible or inoperable, each Party shall be responsible for its individual cost and expenses to obtain fuel and/or salt from other vendors. No Party shall be liable to the other for any additional expenses caused by an inaccessible or inoperable facility.

11. Insurance.

- A. La Vista agrees to provide for property and casualty insurance satisfactory to Papillion at current replacement cost and general liability coverage of at least \$2 million per occurrence, \$5 million general aggregate and naming Papillion as an additional insured. La Vista shall also carry Workers Compensation Insurance written at Nebraska Statutory Limits and Employers Liability Insurance with limits of not less than \$500,000 each accident for Bodily Injury by Accident, \$500,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease. All insurance policies shall provide Papillion with no less than thirty (30) days advance written notification of cancellation or nonrenewal initiated by the insurance carrier. Such insurance shall be procured at the sole cost of La Vista.
- B. Papillion shall carry and maintain equal or greater insurance and name La Vista as an additional insured at all times during this Agreement for the Public Works Facility.
- C. Each Party to whom a third party is providing service shall be responsible for requiring such third party to obtain equal or greater insurance coverage and for receiving Certificates of Insurance from the third party.

12. Ownership Interests. During this Agreement, the Parties, in consultation with the legal and economic advisors of the Parties, will reasonably assess and determine the feasibility and advisability of a conveyance and unity of ownership for the Salt Storage Facility and the Fueling Island. If deemed appropriate and agreed to by the Parties, the Parties shall take the necessary steps to complete the transaction, including, but not limited to, entering into roadway use agreements.

13. Quiet Enjoyment and Mechanic's Liens. The Parties shall use all reasonable efforts to not interfere with the other Party's quiet enjoyment of the Premises and their surroundings.

Neither La Vista, nor anyone claiming through or under La Vista, shall allow any mechanic's lien or other lien of any kind upon the Premises or any part thereof, or upon the license granted herein. If a lien is

placed on the Premises or this license related to any services performed on the Premises at the request or direction of La Vista, La Vista shall take all actions necessary to have the lien removed.

14. Assignment. Neither Papillion nor La Vista shall assign this Agreement without the prior written consent of the other party.

15. Indemnification. Each Party agrees to release, indemnify and hold harmless ("Indemnifying Party") each other Party ("Indemnified Party") and said Indemnified Party'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 Party, or the officers, officials, employees, agents or contractors of the Indemnifying Party.

16. Agreement Binding on Successors and Assigns. Each and every covenant and agreement herein contained shall extend to and be binding upon the Parties and their respective successors, representatives and permitted assigns.

17. Modification. Any modification or amendment of this Agreement shall require a written agreement signed by authorized representatives of both Parties hereto.

18. Incorporation of Referenced Documents. Any other documents or instruments referenced in this Agreement shall be and hereby are incorporated into and become a part of this Agreement by this reference.

19. 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.

20. Headings. The headings herein are inserted for convenience and reference only, and in no way shall have any substantive meaning for purposes of determining the terms or conditions of this Agreement, or otherwise define, limit or describe the scope of any provisions hereof.

21. Nondiscrimination. Notwithstanding anything in this Agreement to the contrary, (i) each Party agrees that neither it nor any of its subcontractors shall 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, age, sex, disability or national origin; and (ii) one or both of the Parties is a recipient of federal funds, and as a result all required contractual provisions related to such federal funds shall be deemed incorporated into this Agreement by this reference and binding upon the Parties hereto.

22. No Waiver. No failure of either party to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy available on a breach thereof shall constitute a waiver of any such breach or of any such term or condition. No waiver of any breach shall affect or alter any term or condition of this Agreement, and each such term or condition shall continue in full force and effect with respect to any other existing or subsequent breach or default.

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

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

CITY OF LA VISTA,
A Municipal Corporation

Date: _____

By: _____
Douglas Kindig, Mayor

Attest:

Pamela A. Bueche, City Clerk

SEAL

CITY OF PAPILLION,
A Municipal Corporation

Date: _____

By: _____
David P. Black, Mayor

Attest:

Elizabeth Butler, City Clerk

SEAL

Exhibit "A"

Salt Storage Facility		
Item	Description	Cost
1	General Conditions	\$ 15,384.00
2	Forklift/Skid Loader	\$ 3,170.00
3	Earthwork-Building Pads	\$ 15,900.00
4	Foundation Blocks and Butress Blocks	\$ 55,000.00
5	Paving-Asphalt	\$ 92,480.00
6	Fabricated Structures	\$ 68,600.00
7	Electrical	\$ 16,110.00
8	Electrical-Light Fixtures	\$ 5,922.00
9	Electrical Credit for Fixture Changes	\$ (2,900.00)
10	Leick Changes Rock	\$ 8,632.00
11	Clearspan Changes Anchor Bolts and Hot Dipped Galvanizing	\$ 18,089.14
12	Heimes Changes Building Pad	\$ 5,100.00
	Subtotal	\$ 301,487.14
	Alley Poyner Fees (7%)	\$ 21,104.10
	Lueder Fees (4%)	\$ 12,059.49
	TD2 Fees (Weighted Average 3.59%)	\$ 10,827.22
	Total	\$ 345,477.94
	City of Papillion 45%	\$ 155,465.07
	City of LaVista 45%	\$ 155,465.07
	PLVS 10%	\$ 34,547.79
	Total	\$ 345,477.94

	Exhibit B	
	Fuel Island	
Item	Description	Cost
1	Equipment Allowance	\$ 5,000.00
2	Earthwork	\$ 3,500.00
3	Steel	\$ 2,385.00
4	Concrete Footings	\$ 1,680.00
5	Site Paving	\$ 73,515.00
6	Electrical	\$ 5,210.00
7	Neuman Equipment Company	\$ 349,884.34
	Subtotal	\$ 441,174.34
	Alley Poyner Fees (Excluded from GMP)	\$ -
	Lueder Fees (Excluded all but \$5,000 Equip. Allowance from GMP)	\$ -
	TD2 Fees (Weighted Average 4.38%) for Pavement/Storm Design	\$ 23,184.61
	Total	\$ 464,358.95
	City of Papillion 50%	\$ 232,179.47
	City of LaVista 50% Total	\$232,179.47
	La Vista's Installment Payment Schedule	
	City of La Vista FY14/15	\$88,534.93
	City of La Vista FY15/16	\$50,000.00
	City of La Vista FY16/17	\$50,000.00
	City of La Vista FY17/18	\$43,644.54