

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
FEBRUARY 16, 2016 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
AMENDED AND RESTATED INTERLOCAL AGREEMENT - SALT SHED FACILITY AND FUELING ISLAND	♦ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE DIRECTOR OF PUBLIC WORKS

**SYNOPSIS**

A resolution has been prepared authorizing the execution of an Amended and Restated 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**

No changes from original Interlocal Agreement.

**RECOMMENDATION**

Approval

**BACKGROUND**

On June 16, 2015, the Cities of La Vista and Papillion entered into an Interlocal and License Agreement for the Salt Storage Facility and Fueling Island (the "Original Agreement"). Under that Original Agreement Papillion granted La Vista a license to use the new salt storage and fueling island facilities located at the new Papillion Public Works Facility. This resolution is a request to amend and restate the Original Agreement to create a separate administrative committee relating to those infrastructure facilities and to include provisions and benchmarks relating to the long-term development of cooperative efforts between the Parties with regard to such facilities. This is outlined on Page 2; Section 4 of the Amended and Restated Agreement.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN AMENDED AND RESTATED 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 constructed a Public Works Facility across the street from the La Vista Public Works Facility, and;

WHEREAS, in June 2015 the City of Papillion and the City of La Vista entered into an Interlocal and License Agreement for the salt storage facility and fueling island, and;

WHEREAS, the agreement is being amended and restated to create a separate administrative committee relating to those infrastructure facilities and to include provisions and benchmarks relating to the long-term development of cooperative efforts between the Parties with regard to such facilities

WHEREAS, the participants agree that this amended and restated Interlocal Cooperation Agreement in no manner expands or restricts the authority otherwise granted to them by law; and

WHEREAS, such an amended and restated 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 Amended and Restated 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 FEBRUARY, 2016.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

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

This Amended and Restated Interlocal and License Agreement for the Salt Storage Facility and Fueling Island ("Amended and Restated Agreement") is entered into this 5th day of January, 2016 ("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 and La Vista are both political subdivisions duly authorized and existing under the laws of the State of Nebraska; and

WHEREAS, in order to promote the health, safety, and welfare of the public and pursuant to the authority granted to the Parties under the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 to 13-827, the Parties wish to permit their local government units to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of government organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of such public agencies; and

WHEREAS, the Parties previously entered into an Interlocal and License Agreement for the Salt Storage Facility and Fueling Island (the "Original Agreement"), setting forth certain conditions and terms to grant La Vista a license for the use of certain portions of Papillion's Public Works Facility, located at 9909 Portal Road, Papillion, including the fueling of La Vista's city vehicles at Papillion's Fueling Island, and storage, drop off, and pick up of salt for winter conditions at Papillion's Salt Storage Facility, which was approved by the Papillion City Council on June 16, 2015 by Resolution No. R15-0111 and by the La Vista City Council on June 16, 2015 by Resolution No. 15-078; and

WHEREAS, Papillion's Salt Storage Facility and Fueling Island, located across the street from the La Vista Public Works Facility, are now constructed and are being utilized by the Parties; and

WHEREAS, pursuant to Section 17 of the Original Agreement, Papillion and La Vista now wish to amend and restate the Original Agreement in order to (i) create a separate administrative committee relating to the Papillion Public Works Salt Storage Facility and Fueling Island public infrastructure project, and (ii) include provisions, including benchmarks, relating to the long-term development of such public infrastructure project between the Parties; and

WHEREAS, the Parties find that this Amended and Restated Agreement is in their best interests, respectively, and will further the Parties' cooperation in providing services and facilities to the citizens of Papillion and La Vista;

NOW THEREFORE, the Parties covenant and agree that in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Original Agreement is hereby amended and restated (hereinafter referred to as "this Agreement") to read, 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 shall 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. Administrative Committee. The Parties shall form an Administrative Committee ("Committee"). The Committee, working with the Papillion Public Works Director shall be responsible for gathering feedback related to the operations of the Salt Storage Facility and Fueling Island, and making recommendations to Papillion or the Papillion Public Works Director related to such operations. The Committee shall also be responsible for acting in an advisory capacity to the Papillion Public Works Director and Papillion in matters of administration and oversight of this Agreement and the cooperative undertaking set forth herein. Meetings of the Committee shall be held at least biannually, unless otherwise agreed by its members. Each Party shall designate two (2) representatives to serve on the Committee. Each Party also shall designate an alternate representative to temporarily serve as needed. All representatives and alternate representatives shall serve at the pleasure of the appointing Party, and the appointing Party shall fill any vacancies in its appointments. Each of the City Administrators of La Vista and Papillion or his or her designee shall serve as an ex officio, nonvoting member of the Committee. The Papillion City Administrator, unless otherwise specified by the Committee, will serve as the Committee's Chairperson. The Papillion Public Works Director or his or her designee shall also serve on the Committee as an ex officio, nonvoting member for the purpose of providing information and recommendations regarding the Salt Storage Facility and Fueling Island operations budget and shall attend the scheduled meetings of the Committee. At least four (4) committee members, including at least one (1) Committee member representing each Party to this Agreement, must be present at a meeting to constitute a quorum of the Committee to transact business. The affirmative votes of a majority of those present at a meeting at which a quorum is present, and including the affirmative vote of at least one Committee member representing each Party to this Agreement, shall be required for the Committee to act.

The Committee, for the purposes of Neb. Rev. Stat. § 77-27,142(3), shall be a separate administrative entity relating to public infrastructure projects, as defined in Neb. Rev. Stat. § 77-27,142(2), including without limitation the joint use and acquisition of buildings and capital or other

equipment used in the operation of municipal government or to provide municipal services and specifically public works operations and services. Said Committee shall be created and come into existence effective January 6, 2016 or on such other date as agreed by the chief administrative officials of the Parties. The Committee shall be responsible for assessing and making recommendations for long term development of unified governance of said public infrastructure projects with respect to the Parties, and at least every five years after this Agreement is entered the Committee shall review performance of such projects, including without limitation capital, operating and service delivery costs, effectiveness and efficiencies, with comparable public works Salt Storage Facilities and Fueling Island projects, in addition to any other benchmarks periodically established by the Committee or Nebraska Legislature.

5. 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.

6. 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 the Original 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.

7. 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.

8. 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.

9. 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 this subsection 9A 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 the Original 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 and the Committee 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

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

16. 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.

17. 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.

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

[END OF AGREEMENT]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Amended and Restated Agreement as of the date first written above.

CITY OF LA VISTA,  
A Municipal Corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Douglas Kindig, Mayor

Attest:

\_\_\_\_\_  
Pamela A. Buethe, City Clerk

SEAL

CITY OF PAPILLION,  
A Municipal Corporation

Date: 1/5/16

By: \_\_\_\_\_  
David P. Black, Mayor

Attest:

\_\_\_\_\_  
Elizabeth Butler, City Clerk

SEAL

