RESOLUTION APPROVING AND AUTHORIZING THE CHAIR TO SIGN THE INTERLOCAL AGREEMENT BETWEEN THE SARPY COUNTY AND CITIES WASTEWATER AGENCY AND SARPY COUNTY FOR CONTRIBUTION REIMBURSEMENT

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103, the powers of the County as a body are exercised by the County Board; and,

WHEREAS, pursuant to Resolution 2017-337, Sarpy County is a party to an agreement (the “Agreement”) entered into pursuant to the Interlocal Cooperation Act, set out at Neb. Rev. Stat. § 13-801 et seq., (hereinafter the “Act”), by and between Sarpy County and the Cities of Papillion, Bellevue, Springfield, La Vista and Gretna (the “Members”), which formed the interlocal agency called the Sarpy County and Cities Wastewater Agency (hereinafter the “Agency”); and,

WHEREAS, at Resolution 2018-156, the County Board of Commissioners approved an amendment to the Agreement; and,

WHEREAS, on June 26, 2018, the Agency approved the annual budget for the fiscal year commencing July 1, 2018 and ending June 30, 2019 (“FY2018-FY2019”); and,

WHEREAS, Sarpy County offered to make a contribution to the Agency for the FY2018-2019 to cover the Agency’s anticipated expenses with the understanding that three hundred and sixty-five thousand and three hundred and seventeen dollars ($365,317.00) (“Contribution Funds”) will be reimbursed to Sarpy County by the Agency; and,

WHEREAS, the Agency’s Board approved the FY2018-2019 annual budget based upon Sarpy County’s willingness to contribute the Contribution Funds, among other funds, during the FY2018-2019 with the condition that the Agency reimburses Sarpy County the full amount of the Contribution Funds in accordance with a separate written interlocal agreement; and,

WHEREAS, pursuant to Section V(A)(4) of the Agreement, the Agency is authorized to enter into a separate interlocal agreement with Sarpy County for the purpose of reimbursing Sarpy County for the Contribution Funds; and,

WHEREAS, the Agency Board approved the proposed interlocal agreement for the reimbursement to Sarpy County for the Contributions Funds, a copy of which is attached hereto as Exhibit A (hereinafter the “Contribution Agreement”).

WHEREAS, the Sarpy County Board of Commissioners deems it appropriate and advisable to enter into the Contribution Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD of COMMISSIONERS that this Contribution Agreement is hereby approved.
BE IT FURTHER RESOLVED THAT the Chairman of this Board is hereby authorized to sign on behalf of the County, the Contribution Agreement, and any other related documents, the same being approved by this Board.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 31st day of July, 2018.

ATTEST:

Sarpy County Board Chairman

Sarpy County Clerk
MEMO

To: Sarpy County Board

From: Dan Hoins

Re: Interlocal Agreement with Sarpy County and Cities Wastewater Agency for Contribution Reimbursement

On July 31, 2018 the County Board will be asked to approve and authorize the Chair to sign the attached Interlocal Agreement for the contribution reimbursement of County funds. Sarpy County offered to make a contribution to the Sarpy County and Cities Wastewater Agency for the FY 2018/2019 budget to help cover the Agency’s anticipated expenses with the understanding that $365,317.00 will be reimbursed by the Agency. This Agreement explains how the County will contribute the funds and how/when the County will be reimbursed.

Do not hesitate to contact Dan Hoins at 593-2347 if you have comments or questions.

July 27, 2018

Dan Hoins
Sarpy County Administrator

cc: Dan Hoins
   Brian Hanson
   Scott Bovick
   Deb Houghtaling
Exhibit A

Contribution Agreement
This INTERLOCAL AGREEMENT ("Agreement") is made by and between the Sarpy County and Cities Wastewater Agency (the "Agency") and the County of Sarpy, Nebraska (the "County") (collectively, the "Parties");

WHEREAS, the County is a political subdivision, duly created and validly existing under the laws of the State of Nebraska; and,

WHEREAS, the Agency was created as a separate body corporate and politic by the County and five cities located in Sarpy County, Nebraska pursuant to that certain Interlocal Agreement Creating the Sarpy County and Cities Wastewater Agency dated September 19, 2017, ("Formation Agreement") by the authority granted under the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. 13-801, et seq.; and,

WHEREAS, the County is a Member of the Agency; and,

WHEREAS, the Agency is required by its Formation Agreement and Nebraska law to approve an annual budget for the upcoming fiscal year commencing July 1, 2018 and ending June 30, 2019 ("FY2018-FY2019"); and,

WHEREAS, the County has offered to make a contribution to the Agency for the FY2018-2019 to cover the Agency’s anticipated expenses with the understanding that three hundred and sixty-five thousand and three hundred and seventeen dollars ($365,317.00) ("Contribution Funds") will be reimbursed to the County by the Agency; and,

WHEREAS, the Agency’s Board has approved the FY2018-2019 annual budget based upon the County’s willingness to contribute the Contribution Funds, among other funds, during the FY2018-2019 with the condition that the Agency reimburses the County the full amount of the Contribution Funds.

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

1. **Payment of Contribution Funds.** The County shall pay to the Agency during the FY2018-FY2019 the Contribution Funds. The County shall have sole discretion as to when the payment of Contribution Funds will be made during the FY2018-FY2019. The County shall have sole discretion on whether the payment of Contribution Funds shall be made in one lump sum payment or in installments during the FY2018-FY2019. The County recognizes the benefits of the Agency’s purposes as set forth in the Formation Agreement as good and valuable consideration for paying the Contribution Funds.

2. **Reimbursement of Contribution Funds.** The Agency shall reimburse the County the total amount of the Contribution Funds. The Agency’s obligation to reimburse the County the Contribution Funds will commence when the following two conditions have occurred: (1) the Agency receives unrestricted funds or generates unrestricted revenue exceeding seven hundred and fifty thousand dollars ($750,000.00); and (2) the County submits a written request for reimbursement of the Contribution Funds to the Chair of the Agency’s Board. Upon receiving the written request from the County and determining the Agency funds exceed seven hundred
and fifty thousand dollars ($750,000.00), the Agency shall place the reimbursement to the County within the Agency’s Monthly Claims Report for approval at the next available Agency Board Meeting.

3. **Interlocal Cooperation Act.** This Agreement is entered into between the Parties pursuant to the Act. The Parties agree:

   a. This Agreement does not establish a separate legal or administrative entity.

   b. Once this Agreement becomes effective, the provisions of this Agreement shall continue in full force and effect until the terms and obligations of this Agreement are satisfied or the Parties hereto agree otherwise in writing.

   c. The purpose hereof is to provide temporary financial support to the Agency so that the Agency may fulfill its purposes as set forth in the Formation Agreement.

   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 mutual agreement of the parties 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 party. There will be no need for the parties to jointly acquire, hold, and dispose of any real or personal property pursuant to this Agreement.

4. **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 party. The parties shall refrain from taking any action that is inconsistent with the terms hereof.

5. **Effective Date.** This Agreement shall be not be effective before the occurrence of the latter of the separate approving actions of the governing bodies of the Parties are taken, which approvals shall include all actions of either party prior to such date taken in reliance upon and in accordance with the terms of this Agreement, and the Parties shall each furnish to the other a copy of the resolution of its respective governing body.

6. **Modifications.** This Agreement may be modified only by written amendment, duly executed by the governing bodies of the Parties. No alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Every amendment shall specify the date on which its provisions shall be effective.

7. **Entire Agreement.** This Agreement contains the entire agreement of the Parties. No representations were made or relied upon by either party other than those that are expressly set forth herein.
8. **Assignment.** This Agreement, or any benefit, interest, obligation, or responsibility of any party under this Agreement may not be assigned by any party without the express written consent of the governing bodies of the Parties.

9. **Severability.** 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.

10. **Counterparts.** This Agreement may be executed in one or more counterparts, each and all of which shall constitute an original and all of which when taken together shall constitute the same agreement.

11. **Remedies.** 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.

   [THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]
This Agreement by the parties hereto is expressed by the approval in open meeting by the Agency and the County and the following execution by their respective authorized representatives.

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 24th day of July 2018.

ATTEST

SARPY COUNTY AND CITIES
WASTEWATER AGENCY

Lisa A. Hamilton
Chairperson
Sarpy County and Cities Wastewater Agency

Approved as to Form:

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

Signed by Sarpy County this 31st day of July 2018.

Chairperson
Board of Commissioners

Approved as to Form:

Sarpy County Attorney