

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL
APRIL 18, 2023 AGENDA**

Subject:	Type:	Submitted By:
AGREEMENT – PAYMENTS IN LIEU OF TAXES	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAM BUETHE CITY CLERK

SYNOPSIS

A resolution has been prepared to approve a proposed Agreement between the City and Sarpy County (“Agreement”) to resolve certain issues regarding allocation of payments in lieu of taxes (“PILOT”) within the County.

FISCAL IMPACT

The City’s share of approximately \$156,000. will be offset against PILOT distributions otherwise payable to the City in equal annual installments over five years beginning in 2023

RECOMMENDATION

Approval

BACKGROUND

The Nebraska Auditor of Public Accounts (“State Auditor”) in a 2021 Attestation Report of the Sarpy County Treasurer (the “Attestation”) concluded that the Treasurer’s allocation of 5% Payments in Lieu of Taxes (“PILOT”) in 2018, 2019 and 2020 were incorrect; specifically that the County, first class cities in the County, and Bellevue and Papillion La Vista Public Schools allegedly were overpaid, and that Gretna, Springfield, Millard and Omaha public school districts were underpaid, during those years by a total of \$6.5 million, with La Vista’s share being a purported overpayment of approximately \$373k. The State Auditor recommended correction.

The Treasurer and County, desiring to remedy such issues, advise that beginning in 2021, necessary adjustments to calculate and distribute PILOT in accordance with the Attestation and applicable law were made. In addition, the County Board of Commissioners recently approved an agreement to pay underpaid school districts additional PILOT totaling approximately \$2.7 million (“Total Corrective Payments”) over five years beginning in 2023 to settle and resolve alleged underpayments of PILOT in 2018-2020.

The City’s share of Total Corrective Payments is approximately \$156k (“City Share”). The Agreement presented with this agenda item, among other things, provides for the City Share to be offset against PILOT distributions otherwise payable to the City, in equal annual installments over five years beginning in 2023, and further provides certain releases of the City, County and Treasurer in connection with PILOT.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN AGREEMENT BETWEEN THE CITY AND SARPY COUNTY REGARDING COUNTY ALLOCATION OF POWER DISTRICT PAYMENTS IN LIEU OF TAXES

WHEREAS, The State Auditor of Public Accounts ("State Auditor") concluded in a 2021 Attestation Report of the Sarpy County Treasurer ("Treasurer") that the Treasurer's allocations of 5% Payments in Lieu of Taxes ("PILOT") in 2018, 2019 and 2020 Papillion La Vista Public Schools allegedly were overpaid, and that Gretna, Springfield, Millard and Omaha public school districts were underpaid, during those years by a total of \$6.5 million, with La Vista's share being a purported overpayment of approximately \$373k. The State Auditor recommended correction.

WHEREAS, The Treasurer and County desire to remedy issues noted in the Attestation in connection with PILOT, and advise that beginning in 2021, necessary adjustments to calculate and distribute PILOT in accordance with the Attestation and applicable law were made. In addition, the County Board of Commissioners recently approved an agreement to pay underpaid school districts additional PILOT totaling approximately \$2.7 million ("Total Corrective Payments") over five years beginning in 2023 to settle and resolve alleged underpayments of PILOT in 2018-2020.

WHEREAS, The City's share of Total Corrective Payments is approximately \$156k ("City Share"). An Agreement between the City and County is presented with this agenda item that, among other things, provides for the City Share to be offset against PILOT distributions otherwise payable to the City, in equal annual installments over five years beginning in 2023, and further provides certain releases of the City, County and Treasurer in connection with PILOT.

NOW THEREFORE, BE IT RESOLVED, that the Agreement between the City and County as presented with this agenda item ("Agreement") is deemed to be in the public interest and in furtherance of the purposes and interests of the City, and is hereby approved, subject to any additions, subtractions or modifications as the Mayor or City Administrator, or his or her designee, determines necessary or appropriate.

BE IT FURTHER RESOLVED, that the recitals above are incorporated by reference, the Mayor is authorized to execute this Agreement, and the Mayor or City Administrator, or his or her designee, shall be authorized to take all steps or actions on behalf of the City as he or she determines necessary or appropriate to carry out the Agreement or actions approved in this Resolution.

PASSED AND APPROVED THIS 18TH DAY OF APRIL 2023.

CITY OF LA VISTA

Kim J. Thomas, Acting Mayor

ATTEST:

Pamela A. Buethe, MMC
City Clerk

AGREEMENT

This Agreement (the "Agreement"), effective as of the date of its execution, is made and agreed to by and between City of La Vista (the "Overpaid Entity"), Sarpy County ("Sarpy County" or "County"), and Trace Jones, in his official capacity as Sarpy County Treasurer, (the "Treasurer") as set forth below, to settle, resolve and dispose of issues arising out of or resulting from calculation and payment of PILOT within the County, including without limitation matters related to the Attestation (defined below) and mandamus action pending in the District Court of Sarpy County Nebraska, Case No. 21-2688 (the "PILOT Litigation").

RECITALS

WHEREAS, on March 9, 2021, the Nebraska Auditor of Public Accounts ("State Auditor") issued an Attestation Report of the Sarpy County Treasurer (the "Attestation"), concluding in part that distributions of 5% Gross In-Lieu taxes ("Gross In-Lieu" or "PILOT") paid by the Treasurer pursuant to applicable law, including without limitation Neb. Rev. Stat. § 70-651.04, were made in error for amounts received in 2018, 2019 and 2020 (specifically that Sarpy County, Bellevue Public Schools, Papillion La Vista Public Schools, and the Cities of Bellevue, Gretna, La Vista and Papillion were overpaid ("Overpaid Entities"), and that school districts identified as Underpaid School Districts below were underpaid), and recommending that the County Treasurer correct the erroneous distributions;

WHEREAS, the Treasurer and County, in response to the Attestation, represent that necessary adjustments to calculate and distribute PILOT ("Revised Allocation Method" or "Method") in accordance with the State Auditor's direction, the Attestation and applicable law (together "Applicable Requirements") have been made, and that distributions of 5% Gross In-Lieu taxes commencing in 2021 are being calculated and distributed in accordance with the Revised Allocation Method and shall continue to be calculated and distributed in accordance with such Method unless governing provisions of Applicable Requirements materially change, but declined to make retroactive adjustments to prior years' PILOT distributions;

WHEREAS, Douglas County School District 0001 a/k/a Omaha Public Schools, Douglas County School District 0017 a/k/a Millard Public Schools, Sarpy County School District 0037 a/k/a Gretna Public Schools, and Sarpy County School District 0046 a/k/a Springfield Platteview Community Schools (collectively, the "Underpaid School Districts") filed the PILOT Litigation seeking an order directing the Treasurer to correct the erroneous distributions of PILOT funds to the Underpaid School Districts for the years 2018, 2019, and 2020;

WHEREAS, the Treasurer and County represent to Overpaid Entity that the Underpaid School Districts, Sarpy County, and the Treasurer contemporaneously with this Agreement have reached and will enter a separate settlement agreement ("Settlement Agreement") to resolve the PILOT Litigation which will require the Treasurer to pay additional amounts for 2018, 2019 and 2020 totaling approximately \$2.7 million ("Total Corrective Payments") to the Underpaid School Districts when it makes its customary annual distribution of Gross In-Lieu taxes for the next five consecutive years, commencing in 2023 and continuing annually through 2027, which Settlement Agreement will include for the benefit of Overpaid Entity a release and discharge by Underpaid School Districts of all claims, liabilities, costs or expenses arising out of or resulting from PILOT distributions received by the Overpaid Entity for 2018, 2019, or 2020;

WHEREAS, the Treasurer and Sarpy County maintain that the Attestation and applicable law provide sufficient authority for the Treasurer to unilaterally adjust PILOT

payments and recoup a pro rata share of Total Corrective Payments from each of the Overpaid Entities by withholding such share from one or more future PILOT payments;

WHEREAS, the Treasurer, County and Overpaid Entity instead desire to proceed with an agreed arrangement as described in this Agreement whereby an allocable share of Total Corrective Payments will be made gradually in equal annual installments over five years as an offset against annual PILOT payments otherwise distributable to the Overpaid Entity; and

WHEREAS, the Treasurer, County and the Overpaid Entity, in recognition of the Attestation, interests in facilitating the Settlement Agreement and collateral matters in a cooperative manner that is predictable and workable for budgetary, fiscal and other purposes of the parties, and potential time, expense, and risk of further claims or litigation, desire to agree on the terms and conditions more particularly provided in this Agreement.

AGREEMENT

NOW THEREFORE, in order to consummate the intent of the parties as set forth in the foregoing Recitals, which are a contractual part of this Agreement, and in consideration of the mutual agreements, provisions, and covenants contained in this Agreement, the parties agree as follows:

1. Payments to Underpaid School District Funds. By separate agreement, the Treasurer and County have agreed to pay to the following particular Underpaid School District funds, as identified in Exhibit D of the Attestation, at the time the Treasurer makes its customary annual distribution of Gross In-Lieu taxes, the additional amounts described below in each of five consecutive years, commencing in 2023 and continuing annually through 2027:

Gretna Public Schools Building Fund - \$553.18 per year
Gretna Public Schools Bond Fund - \$36,156.77 per year

Springfield Platteview Community Schools General Fund - \$324,367.61 per year
Springfield Platteview Community Schools Building Fund - \$53,271.98 per year
Springfield Platteview Community Schools Capital Purpose Fund - \$8,607.02 per year
Springfield Platteview Community Schools Bond Fund - \$7,286.46 per year

Omaha Public Schools Bond Fund - \$38,114.86 per year
Omaha Public Schools Capital Purpose Undertaking Fund - \$3,494.59 per year
Omaha Public Schools Building Fund - \$1,297.77 per year

Millard Public Schools Building Fund - \$16,946.64 per year
Millard Public Schools Bond Fund - \$53,027.07 per year

The foregoing amounts are in addition to any other amounts the Underpaid School Districts normally would be due for Gross-In-Lieu tax distribution for each of the years.

2. Source of Payments to Underpaid School District Funds. In order to make the payments to the Underpaid School District Funds described in Paragraph 1, the Treasurer will accordingly reduce the pro rata portion of Gross-In-Lieu tax distributions to the Overpaid Entity for the next five consecutive years, commencing in 2023 and continuing annually through 2027, as shown in Exhibit 1 to this Agreement.

3. Release of the Overpaid Entity. In consideration of the Overpaid Entity's pro rata reduction of Gross-In-Lieu tax distributions as provided for in Paragraph 2 of this Agreement, Sarpy County and the Treasurer do hereby fully and completely release and forever discharge the Overpaid Entity and its' officials, officers, employees, agents, representatives, successors and assigns, and each of them, from all claims, liabilities, costs and expenses arising out of or in any way related to (i) the allegedly erroneous PILOT distributions for 2018, 2019 or 2020, or (ii) 5% Gross In-Lieu payments for 2018 or before, or for 2021, 2022, or any later year that are calculated and distributed in accordance with Applicable Requirements, so long as Applicable Requirements govern the calculation and distribution of such payments, including without limitation any claim for costs, attorney fees, court costs and any other expense, fees or costs.

4. Release of the Treasurer. In consideration of the release and other terms, conditions, and consideration provided for in this Agreement, the Overpaid Entity does hereby fully and completely release and forever discharge Sarpy County and the Treasurer and their respective officials, officers, employees, agents, representatives, successors and assigns, and each of them, from all claims liabilities, costs and expenses arising out of or in any way related to (i) the allegedly erroneous PILOT distributions for 2018, 2019 or 2020, or (ii) 5% Gross In-Lieu payments for 2018 or before, or for 2021, 2022, or any later year that are calculated and distributed in accordance with Applicable Requirements, so long as Applicable Requirements govern the calculation and distribution of such payments, including without limitation any claim for costs, attorney fees, court costs and any other expense, fees or costs, and excepting any claims or liabilities arising out of or resulting from any PILOT distributions to any Underpaid School Districts, breach of any representation in the Recitals above, or negligence of the County or Treasurer.

5. No Admission of Liability. The parties to this Agreement agree that this settlement is not an admission or concession of negligence or liability (i) by Sarpy County or the Treasurer, or any of his employees, agents, representatives, successors or assigns, or (ii) by the Overpaid Entity, or any officers, officials, employees or agents of the Overpaid Entity .

6. No Other Inducements. Except as otherwise provided herein, the undersigned each acknowledge that no promises or inducements have been offered to them, and that this Agreement is executed without reliance upon any statement or representation by any party or their attorneys, concerning the nature and extent of damages or the legal liability therefore.

7. Reliance on Own Judgment and Advice of Attorney; Competency to Sign. The undersigned each acknowledges that they are relying on their own judgment, belief and knowledge, as well as on the advice of counsel in entering into a settlement of any claim related to allegedly erroneous prior distributions and/or receipt of 5% Gross In-Lieu payments and executing this Agreement. The Undersigned represents and warrants that they are of legal age, legally competent and legally authorized in all respects to execute this document and accepts full responsibility for the signing of this Agreement. The Undersigned also represents and warrants that no other person or entity has or had any interest in the claims, demands, obligations or causes of action referred to in this Agreement, and that they have the sole and exclusive authority to execute this Agreement.

8. Enforcement. The parties agree that the laws of the state of Nebraska shall apply to any enforcement efforts relating to this agreement.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10. Entire Agreement. This Agreement contains the entire agreement between the parties regarding the subject matter of this Agreement, and all prior understandings or agreements regarding such subject matter, whether written or oral, shall be deemed to have been merged into this Agreement and shall have no further independent force or effect.

11. Public Benefits. No Party is an individual or sole proprietorship. Therefore, no Party is subject to the public benefits attestation and related requirements of Neb.Rev.Stat. §§4-108 – 113.

12. Administration; Property; Funding. No separate legal or administrative entity is created, and no real or personal property shall be acquired or dedicated to joint or cooperative use, for purposes of this Agreement. This Agreement shall be administered by the Treasurer and City Administrator, or by their respective designees. Each party independently shall budget and pay for any amounts required of the party under this Agreement.

13. Incorporation by Reference. Recitals at the beginning of this Agreement ("Recitals"), the Attestation, and all exhibits referenced in the Attestation or this Agreement are incorporated into this Agreement by reference.

14. Headings. Headings in this Agreement are solely for purposes of organization and shall not have any substantive meaning or relevance or be used to determine or interpret any terms or conditions of this Agreement.

15. Survival. This Agreement and the rights and obligations of the parties hereunder shall continue in effect and shall not terminate, except as otherwise agreed in a written amendment executed by both parties.

THE UNDERSIGNED HEREBY WARRANTS THAT THEY HAVE READ THE FOREGOING AGREEMENT, DISCUSSED IT WITH COUNSEL, FULLY UNDERSTANDS ITS TERMS, AND FREELY AND VOLUNTARILY SIGNS THE SAME, AND HAS FULL ACTUAL AUTHORITY TO DO SO.

Attest:

City of La Vista

By:

Pamela A. Buethe, MMC, MPA
City Clerk

Douglas Kindig
Mayor

Date: _____

Date: _____

THE UNDERSIGNED HEREBY WARRANTS THAT THEY HAVE READ THE FOREGOING AGREEMENT, DISCUSSED IT WITH COUNSEL, FULLY UNDERSTANDS ITS TERMS, AND FREELY AND VOLUNTARILY SIGNS THE SAME, AND HAS FULL ACTUAL AUTHORITY TO DO SO.

Attest:

Trace Jones, in his official capacity as SARPY

COUNTY TREASURER

By: _____

Date: _____

Date: _____

THE UNDERSIGNED HEREBY WARRANTS THAT THEY HAVE READ THE FOREGOING AGREEMENT, DISCUSSED IT WITH COUNSEL, FULLY UNDERSTANDS ITS TERMS, AND FREELY AND VOLUNTARILY SIGNS THE SAME, AND HAS FULL ACTUAL AUTHORITY TO DO SO.

Attest:

Chairman of the SARPY COUNTY BOARD OF
COMMISSIONERS

By: _____

Date: _____

Date: _____

Approved as to form and content:

Deputy Sarpy County Attorney

Date: _____

EXHIBIT 1
(AS ATTACHED AND INCORPORATED BY THIS REFERENCE)

	2023	2024	2025	2026	2027	Total
	-31,102.74	-31,102.74	-31,102.74	-31,102.74	-31,102.73	-155,513.69
						0.00
	-31,102.74	-31,102.74	-31,102.74	-31,102.74	-31,102.73	-155,513.69