

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF BLACK HILLS
NEBRASKA GAS, LLC d/b/a BLACK
HILLS ENERGY PROVIDING
NOTICE REQUIRED BY NEB. REV.
STAT. § 66-1863, AS AMENDED,
THAT IT INTENDS TO EXTEND OR
ENLARGE ITS SERVICE AREA OR
EXTEND A GAS MAIN.

APPLICATION No. P-12.32

RECEIVED

By Deena Ackerman at 4:56 pm, May 03, 2021

Direct Testimony and Exhibits of Kevin M. Jarosz

Background, OPPD's Papillion Site, Public Interest Analysis

May 3, 2021

Kevin M. Jarosz
1731 Windhoek Drive
Lincoln, NE 68512

TABLE OF CONTENTS

I. INTRODUCTION	1
II. PURPOSE OF TESTMONY	2
III. OVERVIEW OF BLACK HILLS ENERGY	3
IV. APPLICATION NO. P-0014	4
V. PAPILLION AND SPRINGFIELD BOUNDARY DISPUTE	6
VI. OPPD’S PAPILLION SITE	7
VII. PUBLIC INTEREST ANALYSIS	9

EXHIBITS

Exhibit No. KMJ-1: Interlocal Cooperation Agreement between
the City of Papillion, the City of Springfield, and Sarpy County,
Nebraska dated October 4, 2016.

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Kevin M. Jarosz. My business address is 1731 Windhoek Drive, P.O. Box
4 83008, Lincoln, Nebraska 68501-3008.

5 **Q. WHAT IS YOUR OCCUPATION?**

6 A. I am currently the Vice President of Operations Nebraska Gas for Black Hills Nebraska
7 Gas, LLC, which does business as Black Hills Energy (hereafter "Black Hills Energy").

8 **Q. WOULD YOU PLEASE DESCRIBE YOUR RESPONSIBILITIES RELATED TO**
9 **BLACK HILLS ENERGY'S NEBRASKA NATURAL GAS OPERATIONS?**

10 A. I am responsible for the financial and operational performance of Black Hills Energy's
11 natural gas operations in the State of Nebraska. I directly oversee state operating
12 functions, including gas distribution and transmission network operations, system safety,
13 maintenance, construction, customer service, customer relations and community
14 relations. I am indirectly involved in the oversight of certain other centralized functions
15 within Black Hills Service Company, LLC ("BHSC") that provide support to BH
16 Nebraska Gas.

17 **Q. WHAT IS YOUR EDUCATIONAL, TRAINING, AND EMPLOYMENT**
18 **BACKGROUND?**

19 A. I started in the utility business in 1988. I began my career working various
20 entry level operation positions. I then progressed into a Lead Operations Tech position
21 responsible for Operation & Maintenance compliance, Operator Qualification activities,
22 and all construction activities in Eastern Nebraska. I was later promoted to Supervisor,

1 with responsibilities focusing on operations and non-regulated business units (including
2 appliance repair & technical service projects).

3 I then had the opportunity and accepted the role of Network Operations Manager
4 for Southwest Iowa and Eastern Nebraska. Soon after, I was asked to lead the Omaha
5 Metro region and Eastern Nebraska as the Operations Manager. While in this position, I
6 returned my focus on education at Bellevue University, completing the Accelerated
7 Program towards a Bachelor of Science in Business Management. This was followed by a
8 promotion to Senior Operations Manager for both the Omaha Metro Region and the
9 Lincoln Region. After serving in this position for 3 years, I was promoted to Director of
10 Nebraska Gas Operations for the entire State of Nebraska. Finally, as of March 23, 2020,
11 I was promoted to Vice President Nebraska Gas Operations with responsibility for the
12 operational and financial performance of Nebraska's natural gas utility.

13 **II. PURPOSE OF TESTIMONY**

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

15 A. The purpose of my testimony is to support Black Hills Energy's application to provide
16 service to the Omaha Public Power District's ("OPPD") planned Papillion site at 168th
17 Street and Fairview Road ("OPPD's Papillion Site").

18 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

19 A. Yes. I am sponsoring the following exhibit:

20 **Exhibit No. KMJ-1** is the Interlocal Cooperation Agreement between the City of
21 Papillion, the City of Springfield, and Sarpy County, Nebraska dated October 4, 2016.

22 **Q. HAVE THE TESTIMONY AND ATTACHMENTS THAT YOU ARE**
23 **SPONSORING BEEN PREPARED BY YOU OR UNDER YOUR SUPERVISION?**

1 A. Yes.

2 **III. OVERVIEW OF BLACK HILLS ENERGY**

3 **Q. PLEASE BRIEFLY DESCRIBE BLACK HILLS ENERGY’S HISTORY.**

4 A. Black Hills Energy and its predecessors-in-interest, Aquila, Inc. d/b/a Aquila Networks –
5 Nebraska, Peoples Natural Gas, a division of UtiliCorp United Inc., Minnegasco, Inc.,
6 and others, have been providing natural gas to Nebraska customers since the 1930s.

7 **Q. PLEASE GENERALLY DESCRIBE THE OPERATING AREAS OF BLACK**
8 **HILLS ENERGY AS RELEVANT TO THE APPLICATION.**

9 A. Black Hills Energy provides natural gas service in and around Papillion, Gretna, parts of
10 Bellevue, and La Vista and the surrounding areas to these communities in Sarpy County.
11 Black Hills Energy has a franchise agreement to serve Gretna, Papillion, La Vista, and
12 Bellevue.

13 **Q. WHAT IS A FRANCHISE AGREEMENT?**

14 A. A franchise agreement is an agreement/ordinance between a city and a utility that grants
15 the utility the right to occupy the public right-of-way in the city’s jurisdiction.

16 **Q. ARE YOU FAMILIAR WITH THE REBUTTABLE PRESUMPTION**
17 **PROVISIONS IN NEB. REV. STAT § 66-1861?**

18 A. Yes, generally.

19 **Q. WHAT IS YOUR UNDERSTANDING OF THE REBUTTABLE PRESUMPTION**
20 **AS IT APPLIES TO BLACK HILLS ENERGY?**

21 A. My understanding is that it allows a utility, such as Black Hills Energy, that serves a city
22 on a franchise basis to grow with the city it serves. Black Hills Energy has a rebuttable
23 presumption that extensions in the extraterritorial zoning jurisdiction of city’s it serves on

1 a franchise basis are in the public interest. This allows both the utility and the city to plan
2 for growth of infrastructure.

3 This orderly growth also avoids redundant pipelines, multiple municipal
4 franchises, reduces customer confusion as to who the natural gas service provider is
5 within the community, provides for easier coordination of community leaders when
6 addressing right-of-way concerns, promotes greater pipeline safety, and provides an
7 opportunity for efficiencies as the community grows and develops.

8 My understanding of growth and development of one-city and one gas utility
9 under the Nebraska statute in Sarpy County is the same concept that M.U.D. applies in
10 Douglas County, Nebraska when M.U.D. exercises its eminent domain rights over Black
11 Hills Energy gas system serving areas within the City limits of Omaha. As Omaha
12 grows, M.U.D. does not hesitate to threaten the exercise of eminent domain over Black
13 Hills Energy. Although Black Hills Energy can't condemn M.U.D.'s facilities in Sarpy
14 County, Nebraska law supports the concept that the number of utilities within a
15 community should be singular. However, if more than one utility exists, then the overlap
16 should be minimized. This understanding is actually consistent with the boundary areas
17 of the map attached in Commission Application No. P-0014, which is discussed in more
18 detail below.

19 **IV. APPLICATION NO. P-0014**

20 **Q. ARE YOU FAMILIAR WITH APPLICATION NO. P-0014 JOINTLY FILED BY**
21 **BLACK HILLS ENERGY AND THE METROPOLITAN UTILITIES DISTRICT?**

22 **A.** I am.

1 **Q. WERE YOU PART OF DISCUSSIONS LEADING UP TO THE FILING OF**
2 **APPLICATION NO. P-0014?**

3 A. I was a part of various discussions.

4 **Q. PLEASE DESCRIBE THE DISCUSSIONS WITH M.U.D. THAT LED UP TO THE**
5 **FILING.**

6 A. As the Omaha metropolitan area grew, Black Hills Energy and M.U.D. both sought to
7 expand their natural gas systems and plan for future growth. At times, both Black Hills
8 Energy and M.U.D. sought to expand into the same area and competed for the same
9 natural gas customers. In the early-to-mid 2000s, Black Hills Energy and M.U.D. filed
10 eleven separate applications to the Public Service Commission seeking a determination of
11 whether the expansion of service by either Black Hills Energy or M.U.D. was in the
12 public interest under Nebraska law.

13 In 2006, Black Hills Energy and M.U.D. cooperated in passing legislation to
14 require pre-approval from the Commission before expanding service. This change
15 facilitated greater certainty and more orderly growth.

16 In 2010, Black Hills Energy and M.U.D. negotiated a widespread understanding
17 and joint proposal on allocation of anticipated service areas in the Omaha metropolitan
18 area, including Sarpy County. Generally, the understanding between Black Hills Energy
19 and M.U.D. that resulted in Application No. P-0014 was that M.U.D. would continue to
20 serve Springfield and its future growth and Black Hills Energy would serve the remainder
21 of Sarpy County, apart from those areas where M.U.D. had already laid natural gas main
22 and had existing natural gas distribution facilities. In those areas, orderly development of
23 natural gas infrastructure as a whole was sometimes best met with service by M.U.D.

1 **Q. DID BLACK HILLS ENERGY AND M.U.D. ANTICIPATE THAT CHANGES**
2 **MAY BE NEEDED TO THE APPLICATION NO. P-0014 BOUNDARIES FROM**
3 **TIME TO TIME?**

4 A. Yes. Black Hills Energy and M.U.D. knew that circumstances may change over time and
5 that the utility that served an area depicted on the map may need to change. Black Hills
6 Energy and M.U.D. have generally cooperated to reach agreement regarding the
7 appropriate utility to serve in areas where the boundaries that were contemplated in 2010
8 no longer made sense under the current circumstances and the public interest factors set
9 out in Nebraska law. In fact, had OPPD selected a location for its Sarpy County site that
10 was within the established corporate boundaries of Springfield, Nebraska, Black Hills
11 Energy would not have proposed an extension to OPPD, nor would it object to M.U.D.'s
12 service under that scenario. Thus, as OPPD has selected a site within the jurisdictional
13 limits of Papillion, Nebraska for the location of its proposed natural gas power plant, it is
14 now more reasonable, appropriate, and consistent with the Nebraska statutes for Black
15 Hills Energy to extend its gas system to provide service to OPPD's Papillion Site. Thus,
16 M.U.D.'s objection to the extension and service to OPPD within Papillion is inconsistent
17 with my understanding of the intended application of the map boundaries agreed to
18 between M.U.D. and Black Hills Energy in 2010 and applied over the past decade.

19 **V. PAPILLION AND SPRINGFIELD BOUNDARY DISPUTE**

20 **Q. ARE YOU AWARE OF A DISPUTE BETWEEN PAPILLION AND SPRINGFIELD**
21 **RELATING TO THE BOUNDARIES BETWEEN THE COMMUNITIES?**

22 A. I am generally aware that there was a dispute and a lawsuit. Because we have a franchise
23 to serve Papillion, we pay attention to matters affecting Papillion's boundaries.

1 **Q. TO THE BEST OF YOUR UNDERSTANDING, WHAT WAS THE DISPUTE?**

2 A. Generally, Papillion was growing and annexed an area Springfield had identified as an
3 area of future growth and development.

4 **Q. HOW WAS THE DISPUTE RESOLVED?**

5 A. In 2016, Papillion and Springfield reached an agreement regarding what the boundary
6 between their two communities should be. The Interlocal Cooperation Agreement signed
7 by the City of Papillion, the City of Springfield, and Sarpy County is a public record and
8 is attached as Ex. KMJ-1. Page 9 of the exhibit depicts the agreed boundaries between
9 Papillion and Springfield.

10
11 **VI. OPPD'S PAPILLION SITE**

12 **Q. ARE YOU FAMILIAR WITH OPPD'S PLANS FOR A NEW NATURAL GAS**
13 **GENERATION FACILITY AT 168TH STREET AND FAIRVIEW ROAD?**

14 A. Yes, I am generally familiar with their planned facility and its location.

15 **Q. PLEASE GENERALLY DESCRIBE THE PROJECT.**

16 A. OPPD intends to build a new natural gas generation facility to support growth in the
17 region while ensuring high reliability of electric generation, particularly at times of peak
18 demand. OPPD's Papillion Site is anticipated to require a significant volume of natural
19 gas, thus requiring the installation of new main connecting to a transportation main.

20 **Q. HOW WAS THE GROWTH OF THE SPRINGFIELD AREA CONTEMPLATED**
21 **TO BE SERVED BY M.U.D. AS PART OF APPLICATION P-0014?**

22 A. In 2010, Black Hills Energy and M.U.D. considered where they thought Papillion and
23 Springfield were most likely to grow and squared off boundaries. At that time, we

1 thought Springfield's growth would encompass 168th Street and Fairview Road. Because
2 M.U.D. already served Springfield, the area of Springfield's anticipated future growth
3 was anticipated to be served by M.U.D.

4 **Q. IS OPPD'S PAPILLION SITE PRESENTLY WITHIN THE BOUNDARY OF ANY**
5 **CITY?**

6 A. As Papillion has grown and annexed new land, its extraterritorial zoning jurisdiction has
7 shifted. OPPD's Papillion Site is now entirely within the extra-territorial zoning
8 jurisdiction of the City of Papillion.

9 **Q. YOU TESTIFIED THAT BLACK HILLS ENERGY HAS A FRANCHISE**
10 **AGREEMENT TO SERVE PAPILLION. CAN ANYONE ELSE PROVIDE**
11 **NATURAL GAS SERVICE IN PAPILLION?**

12 A. No. Black Hills Energy is the only natural gas utility provider who possesses a valid
13 municipal natural gas franchise with the City of Papillion. We have served Papillion for
14 decades. M.U.D. does not provide natural gas within the city limits of Papillion,
15 Nebraska.

16 In addition, in accordance with Nebraska Statute section 66-1868, it is my
17 understanding that whenever any city is furnished natural gas pursuant to a franchise
18 agreement with a jurisdictional utility (i.e., Black Hills Energy), M.U.D. shall not solicit
19 such city to enter into a franchise agreement or promote discontinuance of natural gas
20 service with the utility unless a specific invitation to submit a proposal on such a
21 franchise has been formally presented to the board of directors of M.U.D. My
22 understanding is that a specific invitation to submit a proposal means a resolution

1 adopted the City Council of Papillion. To my knowledge, the City of Papillion has not
2 solicited M.U.D. to provide service within its city limits.

3 Therefore, it makes more sense to me that Black Hills Energy should extend its
4 existing natural gas systems within the Papillion, Nebraska corporate limits than to have
5 two utilities (M.U.D. and Black Hills Energy) with overlapping service lines within this
6 community. Black Hills Energy has a long-standing relationship with Papillion
7 community leaders and the community in general related to natural gas services
8 provided within Papillion and its extra-territorial jurisdiction. In fact, the Black Hills
9 Energy metro-Omaha operations (i.e., service) center is located within Papillion,
10 Nebraska. To my knowledge, M.U.D. does not have an operations or service center
11 within Papillion.

12 13 **VII. PUBLIC INTEREST ANALYSIS**

14 **Q. DOES BLACK HILLS ENERGY HAVE A SIGNED AGREEMENT WITH OPPD
15 TO PROVIDE SERVICE TO OPPD'S PAPILLION SITE?**

16 **A.** Not at this time. OPPD has intervened in this case as an interested third party and has not
17 signed a contract for service to OPPD's Papillion Site with anyone, to our knowledge.
18 Once the Commission approves Black Hills Energy's application, Black Hills Energy's
19 expectation is that OPPD and Black Hills Energy will move forward with a signed
20 agreement to provide OPPD with the transportation pipeline needed for OPPD's Papillion
21 Site. In addition, in the future OPPD and Black Hills Energy may also agree to extend
22 Black Hills Energy's Sarpy County landfill gas line to provide OPPD with Renewable
23 Natural Gas.

1 **Q. WHAT IS BLACK HILLS ENERGY'S PROPOSED ROUTE TO PROVIDE**
2 **SERVICE TO OPPD'S PAPILLION SITE?**

3 A. If OPPD chooses Northern Natural Gas as its interstate pipeline transporter, Black Hills
4 Energy's preferred, most direct, efficient, and least disruptive route extends
5 approximately one mile of 10 inch main along Fairview Road from the Northern Natural
6 Gas Company's interstate pipeline to OPPD's Papillion Site. This route is almost entirely
7 within the extraterritorial zoning jurisdiction of the City of Papillion. A map depicting
8 the proposed route is attached to the testimony of Steven C. Coleman as Ex. SCC-1.

9 **Q. ARE YOU FAMILIAR WITH THE FIVE PUBLIC INTEREST FACTORS TO BE**
10 **CONSIDERED IN CONNECTION WITH EXTENSIONS OF MAIN OR SERVICE**
11 **AREAS?**

12 A. I am.

13 **Q. WHICH FACTORS WILL YOU DISCUSS?**

14 A. I will be discussing the impact on existing and future ratepayers, orderly development of
15 natural gas infrastructure, and non-discrimination.

16 **Q. PLEASE DESCRIBE BLACK HILLS ENERGY'S ANALYSIS REGARDING THE**
17 **IMPACT OF THE BLACK HILLS ENERGY'S PROPOSED MAIN TO OPPD'S**
18 **PAPILLION SITE ON EXISTING AND FUTURE RATEPAYERS.**

19 A. Because the cost of the proposed main will be borne by OPPD, there is no direct cost to
20 other customers of Black Hills Energy for the extension of the proposed main. OPPD's
21 volume requirements will be subject to contract negotiations because OPPD's
22 transportation service will qualify OPPD as a High Volume customer under Neb. Rev.
23 Stat. §§ 66-1802(9) and 66-1810(1). The significant level of service anticipated to be

1 used by OPPD will ultimately benefit all other existing regulated customers of Black
2 Hills Energy as costs are allocated fairly between customers at the next rate proceeding.
3 Revenues from OPPD will strengthen the overall financial profile of Black Hills Energy,
4 contribute to fixed costs of the entire system, and lower overall costs for Black Hills
5 Energy residential and commercial customers over time.

6 **Q. HOW WOULD SERVICE BY M.U.D. TO OPPD'S PAPILLION SITE AFFECT**
7 **BLACK HILLS ENERGY RATEPAYERS?**

8 A. If M.U.D. provides service to OPPD's Papillion Site, Black Hills Energy customers who
9 are subject to Commission-approved tariffs would miss out on the growth of the
10 distribution system in Sarpy County created by OPPD. In addition, Black Hills Energy's
11 customers could bear additional costs arising out of customer confusion relating to
12 location, leaks, and other safety-related problems with a gas line in the area owned and
13 operated by a different utility.

14 **Q. ARE THERE ANY OTHER IMPACTS ON RATEPAYERS THAT WOULD**
15 **OCCUR ONCE OPPD'S PAPILLION SITE IS ANNEXED BY THE CITY OF**
16 **PAPILLION?**

17 A. Yes. When annexation of OPPD's Papillion Site happens, two natural gas providers
18 within the same city will negatively impact both Black Hills Energy and M.U.D.
19 ratepayers. For example, in addition to the customer confusion during a natural gas
20 incident or gas leak, Black Hills Energy customers also pay property taxes on its system
21 infrastructure and real estate, as well as a five (5) percent franchise fee to Papillion. The
22 City of Papillion uses these tax and franchise fee revenues to pay for day-to-day
23 operations, such as police, fire, public works, parks, recreation, library and administrative

1 services. Because M.U.D. is a governmental entity, M.U.D. is exempt from paying
2 occupational, personal, or property taxes and is statutorily restricted to compensating
3 local communities with a two (2) percent payment in lieu of taxes. This discrepancy in
4 franchise revenue could lead to Papillion increasing property taxes to subsidize for the
5 lost potential franchise revenue, resulting not only in Black Hills Energy paying greater
6 franchise fees than M.U.D. ratepayers but also in all ratepayers paying increased property
7 taxes. For these reasons, service by M.U.D. to OPPD's Papillion Site may have a
8 negative impact on all natural gas utility ratepayers in Papillion.

9 **Q. WOULD THE ABILITY FOR OPPD TO OBTAIN RENEWABLE NATURAL GAS**
10 **FROM BLACK HILLS ENERGY FROM THE SARPY COUNTY LANDFILL**
11 **PROVIDE ADDITIONAL BENEFIT?**

12 A. Yes. Black Hills Energy already has natural gas main adjacent to OPPD's Papillion Site.
13 Black Hills Energy purchases Renewable Natural Gas from the Sarpy County landfill,
14 which is directly adjacent to OPPD's Papillion Site. The existing natural gas main that
15 extends, in part, from the landfill along Fairview Road on the north side of OPPD's
16 Papillion Site and then turns north along 168th Street (the "RNG Line") supplies
17 Renewable Natural Gas to customers in several Sarpy County communities, including
18 Papillion, La Vista, Bellevue, and Gretna. Landfill gas is the byproduct of the refined gas
19 produced at a landfill and is a "green" alternative.

20 Gas utility consumption is highest in the winter when it is cold. Electric utility
21 consumption is highest in the summer when it is hot. If Black Hills Energy serves
22 OPPD's Papillion Site, Black Hills Energy can provide renewable natural gas to OPPD's
23 Papillion Site and its gas fired electric plant during the summer. Service to OPPD's

1 Papillion Site by Black Hills Energy has the additional benefit of decreasing the carbon
2 footprint and allowing the Sarpy County landfill to expand in the future. This is a benefit
3 that M.U.D. cannot offer as M.U.D. does not have any rights to renewable natural gas
4 from the Sarpy County landfill.

5 **Q. WHEN DID BLACK HILLS ENERGY INSTALL THE PIPELINE TO THE**
6 **SARPY COUNTY LANDFILL?**

7 A. The project to take gas from the Sarpy County landfill began in 2015, prior to the dispute
8 between the Cities of Papillion and Springfield and the agreement between the cities
9 regarding future boundaries. The pipeline was put in service in 2017.

10 **Q. DID YOU COMMUNICATE WITH M.U.D. REGARDING THE SARPY COUNTY**
11 **LANDFILL PROJECT PRIOR TO INSTALLING THE PIPELINE?**

12 A. Black Hills Energy did notify M.U.D. of its Landfill line. In 2015, Black Hills Energy
13 understood that the Sarpy County landfill was in an area of future growth for Springfield
14 and the area was anticipated to ultimately be served by M.U.D. M.U.D. did not object to
15 our project to take gas from the Sarpy County landfill and to transport it north to our
16 existing system.

17 **Q. WHAT DO YOU UNDERSTAND THE ORDERLY DEVELOPMENT**
18 **REQUIREMENT TO MEAN?**

19 A. I understand the requirement to be that we consider how Black Hills Energy's proposed
20 main will contribute to the orderly development of natural gas infrastructure as a whole,
21 not just Black Hills Energy's system.

1 **Q. HOW DOES BLACK HILLS ENERGY'S MAIN CONTRIBUTE TO THE**
2 **ORDERLY DEVELOPMENT OF NATURAL GAS INFRASTRUCTURE AS A**
3 **WHOLE?**

4 A. OPPD'S Papillion Site is entirely within Papillion's extraterritorial zoning jurisdiction.
5 Black Hills Energy provides natural gas services to Papillion and its extraterritorial
6 zoning jurisdiction under a franchise with Papillion. As Papillion grows, Black Hills
7 Energy will expand its services to provide service to customers in the area.

8 As the territory around the RNG Line is developed, Black Hills Energy can use
9 the RNG Line to provide Renewable Natural Gas to additional customers in the
10 surrounding area.

11 In addition, OPPD has inquired about Black Hills Energy providing Renewable
12 Natural Gas to OPPD's Papillion Site, in addition to the natural gas supplied from an
13 interstate pipeline transporter. M.U.D. cannot provide Renewable Natural Gas from the
14 Sarpy County landfill, so if M.U.D. were to provide service to OPPD's Papillion Site,
15 OPPD would either not be able to obtain Renewable Natural Gas sourced from an
16 existing natural gas main and an immediately adjacent landfill or would have to obtain
17 natural gas from two separate utilities at the same location.

18 **Q. WHY IS ORDERLY DEVELOPMENT OF NATURAL GAS INFRASTRUCTURE**
19 **AS A WHOLE IMPORTANT?**

20 A. The preservation of public safety is a significant factor in the development of natural gas
21 infrastructure. If more than one utility is in an area, confusion can arise in emergency
22 situations, such as when a gas leak occurs. Because Black Hills Energy has a franchise
23 agreement to serve Papillion and OPPD's Papillion Site is within Papillion's extra-

1 territorial zoning jurisdiction, Black Hills Energy is likely to be called first in the event of
2 a gas leak. If M.U.D. is permitted to serve OPPD's Papillion Site in Papillion's extra-
3 territorial zoning jurisdiction, the time frame and process for fixing the leak may be
4 lengthened because: (1) Black Hills Energy will have to ascertain that the leak is not in its
5 infrastructure; (2) if the leak is not in Black Hills Energy's pipeline, then call M.U.D.
6 personnel; and (3) wait for M.U.D. to repair the leak.

7 If Black Hills Energy determines that M.U.D.'s pipeline may be the cause of a
8 leak, Black Hills Energy does not have the authority to repair gas leaks occurring in
9 M.U.D.'s service lines or mains. Black Hills Energy also does not have any way to
10 determine through public disclosure, such as open meetings, where M.U.D. is installing
11 its service lines. Time is of the essence when a gas leak occurs. If a natural gas leak
12 occurs, there is a risk of explosion and harm to persons and property. When both M.U.D.
13 and Black Hills Energy are serving an area, confusion can arise as to who is responsible
14 for a leak, thus delaying resolution of the problem and putting the public at risk.

15 **Q. WHAT STEPS HAS BLACK HILLS ENERGY TAKEN TO EXTEND THE**
16 **PROPOSED MAIN IN A NON-DISCRIMINATORY MANNER?**

17 A. Black Hills Energy has negotiated and is negotiating with OPPD regarding the proposed
18 main to provide service to OPPD's Papillion Site in a commercially reasonable fashion.
19 Black Hills Energy is negotiating with OPPD in the same manner as it negotiates with
20 other High Volume customers, considering those factors unique to each individual
21 situation.

22 **Q. DOES THIS CONCLUDE YOUR PREPARED DIRECT TESTIMONY?**

23 A. Yes, it does.

**BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA**

**RESOLUTION APPROVING AND AUTHORIZING CHAIRMAN TO SIGN THE INTERLOCAL
COOPERATION ACT AGREEMENT BETWEEN SARPY COUNTY, CITY OF PAPILLION AND CITY OF
SPRINGFIELD FOR JURISDICTIONAL BOUNDARY AGREEMENT**

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104, 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 Neb. Rev. Stat. §13-801, *et seq.*, an Interlocal Cooperation Act Agreement has been proposed between City of Papillion, City of Springfield and Sarpy County for the agreement of present and future land use planning and zoning for the provision of services and facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of the respective communities as outlined in said Agreement; and,

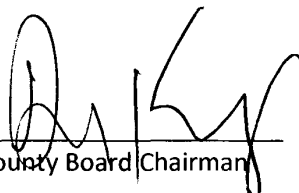
WHEREAS, it is in the best interests of the residents of Sarpy County to participate in said Interlocal Cooperation Agreement, a copy of which is attached hereto and incorporated by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that this Board hereby approves and adopts the attached Interlocal Cooperation Agreement.

BE IT FURTHER RESOLVED that the Chair and Clerk are hereby authorized to execute said Agreement on behalf of Sarpy County, Nebraska and they in addition to the County Public Works Director and the County Planning and Building Director (or their designees) are authorized to take such other actions as may be necessary under the terms of said Agreement.

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

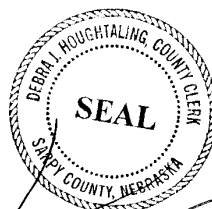
4th day of October, 2016.

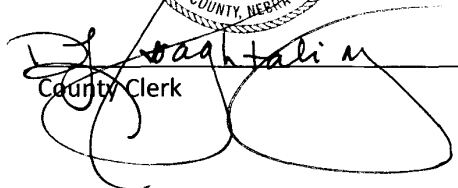


Sarpy County Board Chairman

Attest

SEAL





County Clerk



Office of the County Attorney

Hall of Justice • 1210 Golden Gate Drive • Suite 3147
Papillion, NE 68046-2889
(402) 593-2230 • FAX: (402) 593-4359

L. Kenneth Polikov
Sarpy County Attorney

MEMORANDUM

October 4, 2016

TO: Sarpy County Board of Commissioners
FROM: Nicole O'Keefe, Deputy Sarpy County Attorney
RE: Resolution 2016-360, Interlocal Boundary Agreement

Today, the City of Papillion has requested an edit to the Interlocal Boundary Agreement at Resolution 2016-360, on the October 4, 2016 County Board Agenda. They have requested the removal of language which could appear to make a statement limiting the City of Papillion's jurisdictional authority outside of this Agreement.

The City of Papillion specifically requested removal of the phrase "which reflect the agreed upon jurisdictional boundaries of Springfield and Papillion", which appeared in the 8th and 9th paragraphs of the Interlocal Boundary Agreement.

It is my opinion that the proposed edits appear to be non-substantive for the intent and purpose of this Interlocal Boundary Agreement and do not affect Sarpy County. Thus, the Interlocal Boundary Agreement before you today has been amended to the remove the language outlined above, as requested by the City of Papillion.

INTERLOCAL COOPERATION AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT made and entered into this 4th day of October, 2016, (the "Effective Date") by and between the City of Papillion, Sarpy County, Nebraska ("Papillion"), the City of Springfield, Sarpy County, Nebraska ("Springfield"), and the County of Sarpy, Nebraska ("Sarpy") (each a "Party" and, collectively, the "Parties").

WHEREAS, Papillion, Springfield, and Sarpy are political subdivisions duly authorized and existing under the laws of the State of Nebraska; and

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 et seq. (the "Act"), authorizes cities and counties to cooperate on the basis of mutual advantage to thereby provide for services and facilities, in a manner and pursuant to forms of governmental organization that will accord with the geographic, economic, population and other factors influencing the needs and development of the local communities; and

WHEREAS, the Parties desire to make more efficient use of their powers by cooperating to the mutual advantage of both cities and Sarpy in the elimination of duplication of public costs resulting from the overlapping exercise of planning, inspection, permits, and enforcement of all other aspects of the exercise of overlapping jurisdictional authority over the same land; and

WHEREAS, the Parties deem it to be in the best interests of both cities and Sarpy that an agreement be reached with respect to present and future land use, planning, zoning, and annexation related matters; and

WHEREAS, on January 31, 1995, pursuant to the Nebraska County Industrial Sewer Construction Act, Neb. Rev. Stat. §23-3601 et. seq., Sarpy adopted a map delineating the areas of future growth and development for Papillion and Springfield; and

WHEREAS, the Parties are parties to two lawsuits in the District Court of Sarpy County, Nebraska, the first being the City of Springfield, Nebraska v. the City of Papillion, Nebraska and Sarpy County, Nebraska, Case Number CI15-1025, and the second being the City of Springfield, Nebraska v. the City of Papillion, Nebraska and Sarpy County, Nebraska, Case Number CI16-1484, in which Springfield disputes, among other things, the boundaries of the extra-territorial zoning jurisdiction of Papillion; and

WHEREAS, as part of their cooperation and agreement on such jurisdictional matters, Papillion and Springfield are requesting that Sarpy take certain actions set forth herein; and

WHEREAS, Sarpy is agreeing to take such actions, and other actions set forth herein and agreed to by the Parties.

WHEREFORE, it is mutually agreed by and between Papillion, Springfield, and Sarpy as follows:

1. Purpose. The purpose hereof is to cooperate with each other to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of the respective communities.

2. Boundary Map. The agreed upon Papillion/Springfield boundary between the two (2) cities shall be as designated and delineated on Exhibit "A"- City of Papillion and City of Springfield Boundary Map (the "Boundary Map"), attached hereto and incorporated herein by reference.
3. Exercise of Jurisdiction. Papillion and Springfield hereby agree that neither Party shall exercise any land use, planning, and zoning jurisdiction, nor annex any real estate across the blue boundary lines designated in the Boundary Map, unless the Party wishing to exercise such jurisdiction first obtains the consent of the affected Party's governing body by formal action to exercise such jurisdiction or annexation across said dividing line.
4. Duration. This Agreement shall be effective upon approval by the governing bodies of all of the Parties. This Agreement may only be terminated by mutual agreement of Papillion and Springfield, as evidenced by a resolution adopted by their respective governing bodies.
5. Responsibilities of Parties. In consideration of entering into the Agreement, the Parties agree to the following terms:
 - a. Upon approval of this Agreement by the governing bodies of all of the Parties and proper execution of the Agreement by the appropriate officials, Springfield shall immediately dismiss its Complaints for cases CI15-1025 and CI16-1484 with prejudice, which it filed in the District Court of Sarpy County, Nebraska.
 - b. Springfield hereby supports any requests made by Papillion to Sarpy for current and future ceding and transfer of land which are within one-half mile of Springfield's extraterritorial jurisdiction and which comply with the Boundary Map. Springfield's approval of this Agreement shall be deemed to be the resolution passed in support of any such cedings to Papillion as is required pursuant to Neb. Rev. Stat. § 13-327.
 - c. Papillion hereby supports any requests made by Springfield to Sarpy for current and future ceding and transfer of land which are within one-half mile of Papillion's extraterritorial jurisdiction and which comply with the Boundary Map. Papillion's approval of this Agreement shall be deemed to be the resolution passed in support of any such cedings to Springfield as is required pursuant to Neb. Rev. Stat. § 13-327.
 - d. Papillion and Springfield mutually agree to Sarpy's amendment of the 1995 County Industrial Sewer Construction Act Future Growth and Development Area Map (the "1995 Map") as depicted and set forth in Exhibit "B" – 2016 County Industrial Sewer Act Future Growth and Development Area Map (the "2016 Map").
 - e. Sarpy shall amend the 1995 Map as depicted and set forth in the 2016 Map by separate resolution to its County Commissioners on October 4, 2016, which resolution shall be contingent upon the execution of this Agreement by all of the Parties.
 - f. Each Party shall furnish the other Parties with a certified copy of the Resolution of its governing body authorizing the execution, implementation, or reaffirmation of this Agreement.
 - g. The Parties contemplate that a simultaneous adoption of this Agreement by their

respective governing bodies will occur on October 4, 2016.

6. **Financing.** No separate financing is necessary to implement this Agreement. Each of the Parties shall separately budget and defray the cost of services rendered and facilities constructed within their own jurisdiction as hereby established, except as may otherwise be mutually agreed upon by a separate interlocal agreement by the Parties in respect to specific projects.
7. **Powers and Responsibilities.** Each of the Parties hereto shall perform their respective powers and responsibilities herein provided for through their respective governing bodies and customary procedures. The Parties anticipate that the effective administration of this cooperative effort undertaken hereby will not require an administrator or joint board.
8. **Real Property.** Each Party shall acquire, hold and dispose of real and personal property used by them in this cooperative undertaking in their separate corporate capacities and not jointly, except as may otherwise be mutually agreed by a separate interlocal agreement by the governing bodies of the Parties.
9. **Personal Interest.** The Parties hereby declare and affirm that no officer, party or employee, and no party of their governing bodies, and no other public official or parties who exercise any functions or responsibilities in the review or approval of the undertaking described in this Agreement, or the performing of either Parties' obligations pursuant to this Agreement which affects his or her personal interests, or any partnership or association which he or she directly or indirectly is interested, nor shall any employee, nor any party of their governing bodies, have any interest, direct or indirect, in this Agreement or the proceeds thereof.
10. **Miscellaneous.**
 - a. **Separate Legal Entities.** This Agreement shall not be construed to have created a spate legal or administrative entity.
 - b. **Governmental Subdivision.** Except as provided herein, each Party shall maintain its autonomy and indebtedness as a governmental subdivision. This Agreement shall not relieve any Party of any obligations or responsibility imposed upon it by law except to the extent of actual and timely performance by the Agency as provided under this Agreement, which performance may be offered in satisfaction of the obligation or responsibility.
 - c. **Modifications.** That no modification, termination or amendment of this Agreement may be made except by written agreement signed by all of the Parties; provided, however, any future modifications to this Agreement, which do not impact the actions of Sarpy, do not require Sarpy to be a party to the amendment. Copies of any such amendments shall be provided to Sarpy after the approval by the governing bodies of Papillion and Springfield.
 - d. **Notice.**
 - i. **Papillion:**

City of Papillion

City Clerk
122 East Third St.
Papillion, NE 68046

ii. Springfield:

City of Springfield
City Administrator
170 N. 3rd Street
P.O. Box 189
Springfield, NE 68059

iii. Sarpy:

The County of Sarpy, Nebraska
County Clerk
1210 Golden Gate Plaza
Papillion, NE 68046


- e. 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.
- f. Forum Selection and Personal Jurisdiction. Any dispute arising from this contractual relationship shall be solely and exclusively filed in, conducted in, and decided by the courts located in Sarpy County, Nebraska. Accordingly, the Parties agree to exclusive personal jurisdiction in the courts located in Sarpy County, Nebraska.
- g. Governing Law. The Parties shall conform to all existing and applicable ordinances, resolutions, state and federal laws, and all existing and applicable rules and regulations. Any dispute arising from this contractual relationship shall be governed solely and exclusively by Nebraska law except to the extent such provisions may be superseded by applicable federal law, in which case the latter shall apply.
- h. Incorporation. The recitals are incorporated herein by this reference.
- i. Entire Agreement. This Agreement contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby. No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise have been made by either party hereto to the other unless expressly stated in this Agreement, or unless mutually agreed to in writing between the parties hereto after the date hereof, and neither party has relied upon any verbal representations, agreements or understandings not expressly set forth herein.
- j. Assignment. This Agreement, or any benefit, interest, obligation, or responsibility of any Party under this Agreement, may not be assigned by any Party without express written consent of all of the Parties.

- k. 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.
- l. 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.

[End of Agreement]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date and year first above written.

CITY OF PAPILLION, NEBRASKA
A municipal corporation,


MAYOR

ATTEST:



City Clerk (SEAL)



CITY OF SPRINGFIELD, NEBRASKA
A municipal corporation,

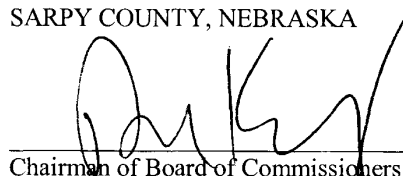

MAYOR

ATTEST:

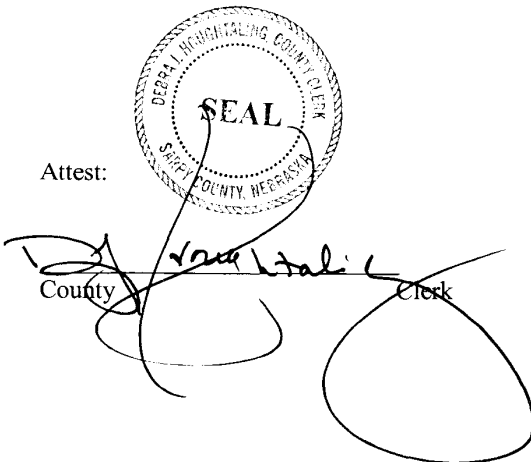

City Clerk (SEAL)



SARPY COUNTY, NEBRASKA


Chairman of Board of Commissioners 10-4-16

Attest:


County Clerk



(SEAL)

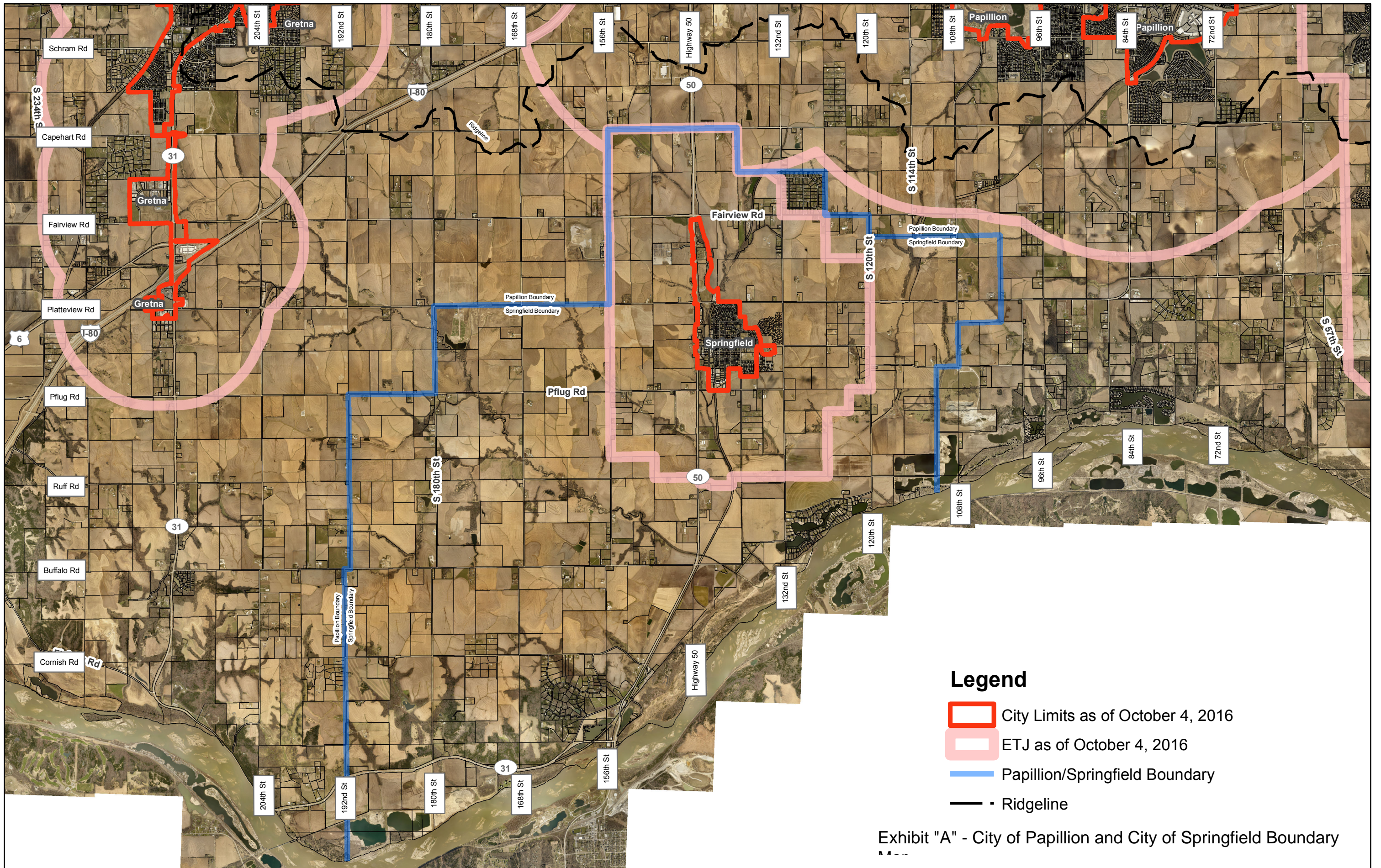
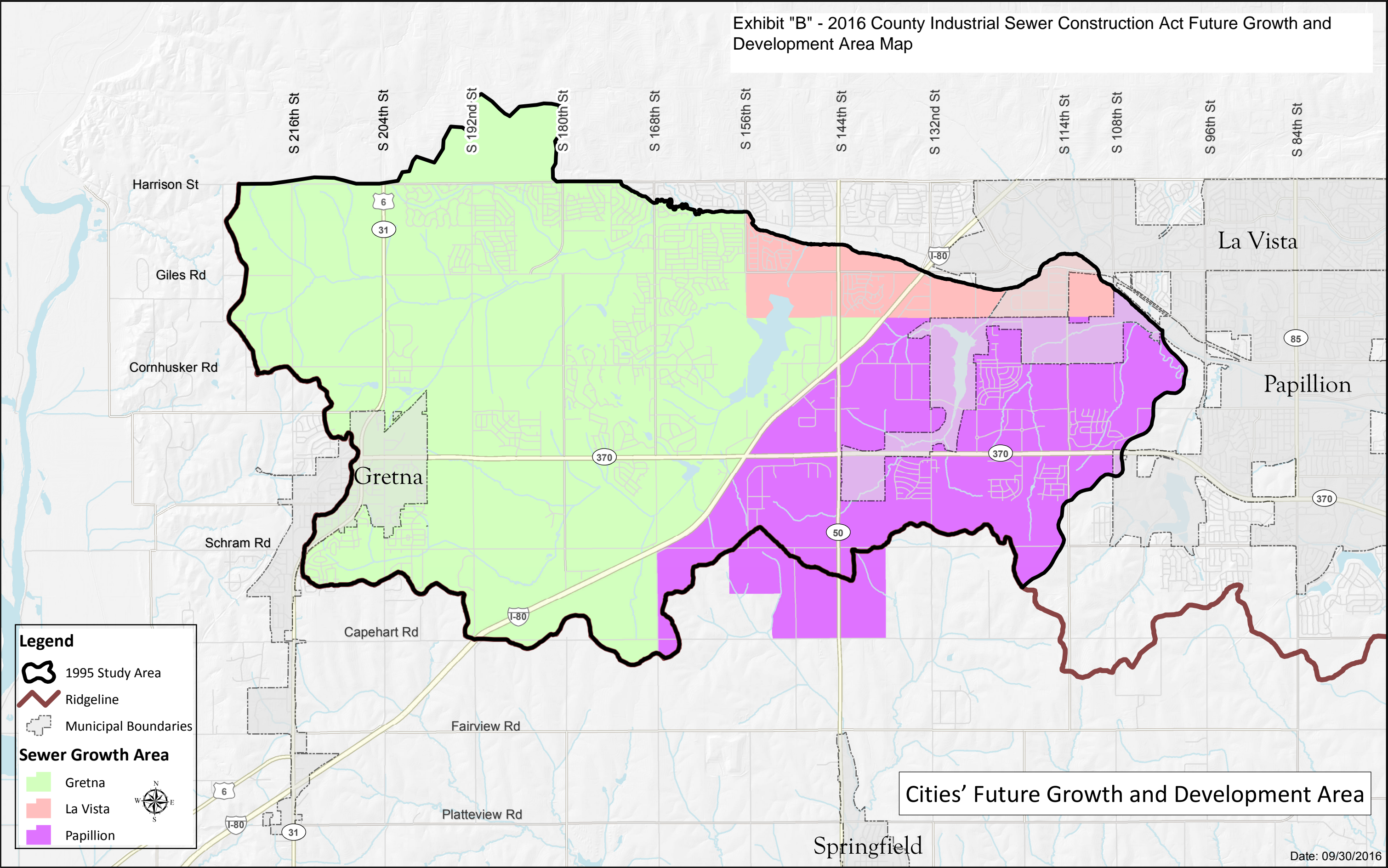
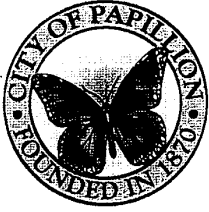


Exhibit "B" - 2016 County Industrial Sewer Construction Act Future Growth and Development Area Map





CITY OF PAPIILLION
David P. Black, Mayor
Elizabeth Butler, City Clerk
122 East Third Street
Papillion, Nebraska 68046
Phone 402-597-2021
Fax 402-339-0670
E-Mail: cityclerk@papillion.org

October 5, 2016

Chris Vance
Sarpy County
1210 Golden Gate Dr.
Papillion, NE 68046

RE: Interlocal Agreement – Sarpy County, City of Papillion and City of Springfield

Dear Chris,

Enclosed please find copies of the above referenced agreement that was passed and approved by the Papillion City Council at their October 4, 2016 meeting. Please sign your section of the agreement and mail it to Kathleen at Springfield at the address below, along with this letter. Once all of the signatures are obtained, Kathleen will distribute fully executed copies to all named parties.

Kathleen Gottsch
City Administrator/Clerk/Treasurer
City of Springfield
P.O. Box 189
170 North 3rd Street
Springfield, NE 68059

Please contact me if you have any questions.

Sincerely,

Elizabeth Butler, CMC
City Clerk

