

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MARCH 21, 2017 AGENDA

Subject:	Type:	Submitted By:
INTERLOCAL COOPERATION AGREEMENT — NEBRASKA MULTISPORT AGENCY	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

A resolution has been prepared to approve an Interlocal Cooperation Agreement with Sarpy County to jointly establish the Nebraska Multisport Agency.

FISCAL IMPACT

There are substantial public benefits to be realized by the City and its residents from the proposed development of a multisport complex, including new construction, permanent jobs, availability of new recreational facilities for residents and potential for additional hotel, dining, retail, entertainment and other development, and related tax revenues.

RECOMMENDATION

Approval.

BACKGROUND

On November 3, 2015, the City Council approved a Statement of Intent (SOI) describing proposed development of a state of the art championship athletic complex designed to host local, regional and national championship competitions in the areas of swimming, diving, soccer, and tennis, and provide facilities for public use, including recreational swimming. Formation of the Nebraska Multisport Agency by the City and County is recommended to construct and equip the recreational facilities. The Agency will issue revenue bonds to finance project costs and shall repay such bonds from revenues generated by or for the project and other available sources. Bonds issued by the Agency would not be a debt of either the City or County and will not constitute a general obligation of the Agency. The Agency will be responsible for repayment of Bonds and the use, operation and maintenance of the project. The City by separate action intends to construct public streets, parking, and other infrastructure up to \$10 million in accordance with a prudent phasing schedule and maintain such streets, parking, and infrastructure.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH SARPY COUNTY TO ESTABLISH THE NEBRASKA MULTISPORT AGENCY.

WHEREAS, Article XV, Section 18 of the Constitution of the State of Nebraska and the Interlocal Cooperation Act (Chapter 13, Article 8, Reissue Revised Statutes of Nebraska, as amended, the "Interlocal Act") authorize any two or more public agencies to exercise jointly any power or powers, privileges or authority exercised or capable of exercise by any of the participating public agencies, and to enter into agreements with one another for such purposes.

WHEREAS, Each of the City and the County (each a "Party" and, collectively, the "Parties") is a "public agency" as defined in the Interlocal Act and is authorized to acquire, operate and maintain real and personal property for the purpose of providing recreational facilities.

WHEREAS, Each Party deems it necessary, desirable, advisable and in its best interest to construct, equip, furnish, operate and maintain joint recreational facilities to be known as the "Nebraska Multisport Complex" (the "Project") and to enter into an Interlocal Cooperation Agreement for such purposes in the form presented with this resolution (the "Agreement").

WHEREAS, Each Party desires to enter into the Agreement to jointly establish, plan, construct, equip, furnish, operate and maintain the Project as provided in the Interlocal Act and the Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the City shall enter into an Interlocal Cooperation Agreement creating the Nebraska Multisport Agency with the County, and the Mayor and City Clerk be and they are hereby authorized to execute on behalf of the City said Agreement in substantially the form presented but with any changes as such officers shall deem appropriate for and on behalf of the City; and that the Mayor or his designee and City Administrator or her designee are hereby appointed to serve as the initial representatives of the City (each referred to as a "Board Member") to serve on the Board of Directors of the Agency formed pursuant to the Agreement. Each such Board Member shall be authorized to designate one or more alternates to act on his or her behalf as Board Member, unless and until the Council names one or more alternates to serve in such capacities.

This resolution shall be in full force and take effect from and after adoption as provided by law.

PASSED AND APPROVED THIS _____ DAY OF _____, 2017.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Mandy Garrod, CMC
Deputy City Clerk

INTERLOCAL COOPERATION AGREEMENT
ESTABLISHING THE
NEBRASKA MULTISPORT AGENCY

This **INTERLOCAL COOPERATION AGREEMENT**, dated _____, 2017 (the “**Agreement**”), is between the **CITY OF LA VISTA, NEBRASKA**, (the “**City**”) and **THE COUNTY OF SARPY, IN THE STATE OF NEBRASKA** (the “**County**”).

RECITALS

1. Article XV, Section 18 of the Constitution of the State of Nebraska and the Interlocal Cooperation Act (Chapter 13, Article 8, Reissue Revised Statutes of Nebraska, as amended, the “**Interlocal Act**”) authorize any two or more public agencies to exercise jointly any power or powers, privileges or authority exercised or capable of exercise by any of the participating public agencies, and to enter into agreements with one another for such purposes.

2. Each of the City and the County (each a “**Party**” and, collectively, the “**Parties**”) is a “public agency” as defined in the Interlocal Act and is authorized to acquire, operate and maintain real and personal property for the purpose of providing recreational facilities.

3. Each Party deems it necessary, desirable, advisable and in its best interest to construct, equip, furnish, operate and maintain joint recreational facilities to be known as the “Nebraska Multisport Complex” and to enter into this Agreement for such purposes.

4. Each Party desires to enter into this Agreement to jointly establish, plan, construct, equip, furnish, operate and maintain the Project as provided in the Interlocal Act and this Agreement.

Now, for and in consideration of the terms and provisions of this Agreement and the mutual obligations and undertaking of the Parties contained in this Agreement, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

The following terms when used in this Agreement have the following meanings:

“Agency” means the “Nebraska Multisport Agency”, a separate legal entity and a public body corporate and politic of the State organized and existing pursuant to the provisions of the Interlocal Act and this Agreement.

“Agreement” means this Interlocal Cooperation Agreement dated as of the date first written above as it may be amended and supplemented from time to time.

“Board” means the Board of Directors of the Agency established pursuant to **Article IV** hereof.

“Bonds” means bonds, notes or other evidences of indebtedness issued by the Agency pursuant to the provisions of the Interlocal Act to finance or refinance all or any part of the costs of the Project.

“City” means the City of La Vista, Nebraska, a body corporate and political subdivision of the State.

“Construction Costs” means all reasonable or necessary costs and expenses to be paid with respect to the construction of the Project, including the total of all reasonable or necessary expenses incidental to the acquisition and construction of the Project, including without limitation the following:

- (a) the expenses of studies and surveys, land title and mortgage title policies, architectural and engineering services and the cost of legal, organization or marketing services;
- (b) financial and underwriting fees and expenses;
- (c) the cost of acquiring or demolishing existing structures, if any, developing the site of and constructing and equipping a new building constituting a part of the Project;
- (d) rehabilitating, reconstructing, repairing or remodeling existing buildings constituting a part of the Project; and
- (e) all other necessary and incidental expenses, including interest during construction on Bonds issued to finance the Project to a date subsequent to the estimated date of completion thereof, and any other costs permitted under this Agreement.

“County” means The County of Sarpy, in the State of Nebraska, a body corporate and political subdivision of the State.

“Director” means an individual appointed by the governing body of the County or City to serve on the Board.

“Effective Date” means the date on which this Agreement shall be fully effective, which shall be the date this Agreement has been executed by the City and County.

“Expenses” means all reasonable and necessary expenses of operation, maintenance and repair of the Project and keeping the Project in good repair and working order, determined in accordance with generally accepted accounting principles, including without limiting the generality of the foregoing, current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, costs of materials and supplies, annual audits, properly allocated share of charges for insurance, the cost of purchased water, gas and power, if any, and all other expenses incident to the operation of the Project, but shall exclude all general administrative expenses of the Parties not related to the operation of the Project.

“Fiscal Year” means July 1 through June 30.

“Improvement Costs” means all reasonable and necessary cost and expenses to be paid with respect to the Project for the alteration, improvement and/or extension of the Project, including the physical buildings or infrastructure of the building.

“Interlocal Act” means the Interlocal Cooperation Act (Chapter 13, Article 8, Reissue Revised Statutes of Nebraska, as amended.

“Party” or **“Parties”** has the meaning provided in the Recitals hereof.

“Project” means a multisport complex which may include (a) a natatorium (aquatic Center) including competition pools, teaching and fitness pools, (b) an outdoor recreational pool and spectator seats, a tennis center with indoor and outdoor courts and spectator seats, (c) a soccer complex and playing fields, and (d) a support center and other related and ancillary facilities.

“State” means the State of Nebraska.

ARTICLE II ESTABLISHMENT OF THE AGENCY

Pursuant to the authority contained in the Interlocal Act, the Parties hereby create and organize Nebraska Multisport Agency as a separate legal entity and a joint entity as a public body corporate and politic of the State to accomplish the Project and to provide for the joint use, operation and maintenance of the Project, all pursuant to the terms, provisions and limitations contained in this Agreement.

ARTICLE III PURPOSE

The purposes of the Agency are to exercise any power, privilege or authority determined to be necessary by the Board to construct, equip, furnish, use, operate, maintain, repair, replace, and finance the Project, or any parts thereof, in such manner as shall be necessary, desirable, advisable or in the best interests of the Parties in the manner and as provided for by the Interlocal Act and this Agreement. The Agency shall issue Bonds to pay a portion of the Project Costs and shall pay such Bonds from revenues generated by the Project, and funds provided to the Agency for purposes of such Project and pledged for the Bonds and from contracts entered into with respect to such Project, and from other available sources of the Agency. The Agency shall be responsible for the use, operation and maintenance of the Project.

ARTICLE IV ORGANIZATION

Section 401. Appointment of Directors. Concurrently with the authorization and approval of this Agreement, the City Council of the City shall appoint two Directors, and the Board of Commissioners of the County shall appoint two Directors. Each governing body shall be authorized to provide for one or more alternates who are authorized to act on behalf of a Director. Each Director shall serve at the pleasure of the governing body appointing such Director and may be removed at any time, with or without cause, by such governing body. Each Director may be, but need not be, a member of the governing body of the Party making such appointment. In the event of the death, disability or disqualification of an individual serving as a Director, the governing body appointing such Director shall promptly appoint a successor. A vacancy shall be filled for the balance of such unexpired term in the same manner as the original appointment until such term expires or the Director is removed by the Party making such appointment. No Director shall receive compensation for his or her services, but shall be entitled to actual and necessary expenses incurred in the discharge of his or her official duties.

Section 402. Term of Office. Each Director shall serve a three-year term beginning immediately upon appointment and ending on the earlier of (1) the end of the calendar year containing the three year anniversary of the Director’s appointment, (2) the expiration of the Director’s term on the governing body appointing such Director or (3) appointment of a successor. Each Director shall be

eligible for reappointment to one or more additional terms upon the expiration of his or her initial or any subsequent term.

Section 403. Voting. Unless the Board unanimously adopts different rules, each Director shall have one vote on matters before the Board. Except as may otherwise be provided herein, or in any agreement to which the Agency is a party, all actions of the Agency may be taken with the concurrence of a majority of the Directors entitled to vote.

Section 404. Rules of Governance. The Board shall adopt rules of governance that will include at a minimum, the following:

(a) ***Quorum.*** A majority of the Directors shall constitute a quorum for the transaction of any business.

(b) ***Officers.*** The Board shall elect a president, a vice president, a secretary and a treasurer from among the Directors. One Director may serve as secretary and treasurer.

Section 405. Meetings and Notice. The Board shall meet within 30 days of the Effective Date for the purpose of electing officers and addressing other organizational matters as it deems necessary or appropriate. Thereafter, the Board shall meet at least annually at such time and place as it shall designate. Special meetings of the Board may be called by the chair or any two Directors. Written notice of each meeting and the related agenda shall be provided to each Director at least two days prior to each such meeting.

The Board shall give public notice of each meeting by such method designated by the Board from time to time, and each meeting shall be conducted in accordance with the Nebraska Open Meetings Act (Chapter 84, Article 14, Reissue Revised Statutes of Nebraska, as amended).

ARTICLE V DURATION

This Agreement shall be in effect from its Effective Date for a term of 99 years, or such earlier date as may be mutually agreed by the Parties. Notwithstanding the foregoing, in no event shall this Agreement terminate so long as any Bonds issued by the Agency remain outstanding and unpaid.

ARTICLE VI POWERS

The Agency shall have all powers of a joint entity under the Interlocal Act, including, without limitation, the power to engage in any and all lawful acts and activities concerning the construction, equipping, furnishing, use, operation, maintenance, repair, replacement, or financing of the Project, or any parts thereof, and related functions, as and to the same extent that such power is possessed and capable of exercise by either Party under applicable law. The powers so conferred upon and delegated to the Agency shall include, without limitation of the generality of the foregoing, the power to:

(a) enter into contracts with public or private corporations, public agencies and other entities or persons for the construction, equipping, furnishing, operation, maintenance, repair, replacement, or financing of the Project, or any parts thereof, and all other contracts, agreements and transactions necessary or desirable in connection with the Project;

(b) acquire by gift, grant, purchase, or otherwise and to lease any property (real or personal), building, works or improvements necessary or convenient for the purposes provided for in this Agreement;

(c) issue Bonds, borrow money or incur indebtedness pursuant to the Interlocal Act, including Bonds as to which the principal and interest are payable exclusively from all or a portion of the revenue from the Project or other property of the Agency, from one or more revenue-producing contracts, including securities acquired from any person, or leases made by the joint entity with any person or the Parties, or from its revenue generally or which may be additionally secured by a pledge of any grant, subsidy, or contribution from any person or a pledge of any income or revenue, funds, or money of the Agency from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein;

(d) to borrow money or accept contributions, grants or other financial assistance from the State, public agencies, public or private corporations and other entities or persons, and to comply with such conditions and enter into such contracts, covenants, mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable;

(e) to contract with and compensate consultants for professional services including, but not limited to, architects, engineers, planners, lawyers, accountants, financial advisors and others found necessary or useful and convenient to the stated purposes of the Agency;

(f) sue and be sued in its own name; and

(g) take such other actions, engage in such other transactions, enter into such contracts and agreements and do all other things as may be necessary, convenient or appropriate to accomplish its purposes or carry out any of its powers.

All of the power of the Agency shall be exercised by or under the control, supervision and direction of the Board. The enumeration of powers herein shall not be construed as limitation on the powers of the Agency, and the Agency shall have the ability to exercise all other powers necessary or desirable to the accomplishment of its purposes. The delegation of powers to the Agency herein is non-exclusive and the exercise of any or all of these powers by the Agency shall not preclude any Party of contemporaneously exercising the same or similar powers.

ARTICLE VII **ALLOCATION OF COSTS; PERSONAL PROPERTY**

Section 701. Allocation of Construction Costs. The Construction Costs for the Project shall be paid from (a) the proceeds of the Bonds issued by the Agency, (b) the proceeds of grants or appropriations received for the express purposes of funding the Project, and (c) other available funds of the Agency.

Section 702. Allocation of Expenses. The Agency shall maintain complete and accurate books and records of all its costs and expenses that are properly classified as Expenses. All amounts received by the Agency for the use of the Project shall be credited and applied to the payment of Expenses, subject to any agreements entered into in connection with the issuance of Bonds. Neither Party shall be responsible for payment of Expenses from funds of such Party.

Section 703. Real and Personal Property. Title to the all real and personal property, including the Project, shall be held by the Agency during the term of this Agreement. Upon the expiration of the term of this Agreement or upon its termination, or upon other dissolution of this Agreement, title to all such property shall be distributed to the City. All conveyances of real property owned or held in the name of the Agency shall be authorized by resolution of the Board and executed by an officer of the Agency on behalf of the Agency.

ARTICLE VIII ANNUAL BUDGET; ISSUANCE OF BONDS

Section 801. Annual Operations Budget. The Board shall prepare a budget based on the Agency's Fiscal Year for the operation of the Agency, the same to be adopted by the Board no later than the end of the immediately preceding Fiscal Year. No budget shall be required for the Agency's initial fiscal year. The annual budget of Expenses and the annual budget of Construction Costs shall be consolidated into a comprehensive budget that reflects all of the Agency's operations and the Project. The financial records of the Agency shall be audited at the end of each fiscal year by an independent certified public accountant appointed by the Board. The Agency shall make and file such financial reports and budget documents as may be required by law.

In the event the Board fails to approve a final budget by the beginning of any Fiscal Year, the Agency shall operate in accordance with the budget for the immediately preceding Fiscal Year until a budget is approved by the Board.

Section 802. Issuance of Bonds. The Agency may by resolution of the Board issue Bonds in one or more series from time to time to finance Project Costs. All such Bonds shall be special obligations of the Agency. Any bonds or debt issued will not constitute an indebtedness of County or City and will not constitute a general obligation of Agency. The Agency will comply with all applicable requirements for the issuance of bonds.

Section 803. Improvements Approval, Budget and Costs. The Board may consider the construction or installation of improvements to the Project, including any alteration, improvement and/or extension of the Project.

ARTICLE IX OPERATIONS

Section 901. Project Administration, Management and Operation. The Board shall provide for the administration, management and operation of the Agency and the Project. The Board from time to time may arrange for any Party to provide any administrative, management, professional, or other services or to perform or carry out any administrative, management or operational acts or functions on behalf of the Agency, or may contract with any other political subdivision or other entity or person for any such services, acts, or functions; and the Agency may pay or reimburse all costs and expenses for such services, acts, or functions.

Section 902 Administrative Agent. Notwithstanding anything in this Agreement to the contrary and in addition to any other persons or entities from time to time designated in any resolution, action, document or instrument of the Agency or Board, and unless otherwise determined by the Board or

City, the City shall serve as the lead agent on behalf of the Agency in carrying out all administrative, management and operating functions of the Agency (the “Administrative Agent”). In such capacity as the Administrative Agent, the City may use any and all City staff, resources, representatives and advisors as deemed appropriate, and shall follow City policies and procedures, unless otherwise specifically directed or approved by the Board. Any and all actions taken by the City and its representatives, staff or advisors pursuant to this Section 902 shall be deemed to have been properly taken on behalf of the Agency, unless otherwise specifically directed or ordered by the Board. The Agency may pay or reimburse all costs and expenses of any Party in connection with this Section 902.

ARTICLE X NOT FOR PROFIT

It is expressly understood that the Agency is a public body and is to be operated not for profit, and no profit, dividend or asset of the Agency shall inure to the benefit of any individual.

ARTICLE XI DISSOLUTION

The Agency shall not be dissolved so long as any Bonds are outstanding under the instrument pursuant to which they were issued. Upon dissolution of the Agency, all interest in real and personal property, including the Project and any related capital improvements used in the operation of the Project, shall be distributed to the City.

ARTICLE XII AMENDMENT

This Agreement may be amended in writing, signed by the Parties; provided, however, any amendment hereto must first be approved by resolution of the governing body of each Party.

ARTICLE XIII APPLICABLE LAW

This Agreement is made under and shall be subject to and construed in accordance with the laws of the State, particularly the Interlocal Act.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their respective duly authorized officers this _____ day of _____, 2017.

CITY OF LA VISTA, NEBRASKA

ATTEST:

By: _____
MAYOR

By: _____
CITY CLERK

**THE COUNTY OF SARPY, IN THE STATE OF
NEBRASKA**

ATTEST:

By: _____
CHAIR

By: _____
COUNTY CLERK

Approved as to form for the County:

Deputy Sarpy County Attorney