

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
APRIL 7, 2020 AGENDA**

Subject:	Type:	Submitted By:
MUTUAL AID AGREEMENT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA GUNN CITY ADMINISTRATOR

SYNOPSIS

A resolution has been prepared to approve a Mutual Aid Agreement by, between, and among Sarpy County and the cities of La Vista, Papillion, Gretna, Bellevue, Springfield to coordinate response activities and share resources in times of emergencies.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval.

BACKGROUND

It has long been recognized that mutual aid between agencies sharing similar demands is highly desirable. It is recognized that, oftentimes, delivery of services during emergency situations can be done most cost-effectively and with enhanced flexibility when forces are combined. The Federal Government through the Department of Homeland Security and Federal Emergency Management Agency (FEMA) strongly encourages the formation of mutual aid agreements between local jurisdictions for reciprocal disaster response and recovery assistance.

With this in mind, Sarpy County and the United Cities of Sarpy County, have worked to draft and formalize a mutual aid agreement. This agreement does not replace our current agreements in place for Police and Fire services. It does, however, provide for the local entities to support each other, coordinate and share resources available, and be reimbursed for those services as appropriate.

RESOLUTION NO.

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING A MUTUAL AID AGREEMENT BETWEEN SARPY COUNTY AND THE CITIES OF LA VISTA, PAPILLION, GRETNA, BELLEVUE, AND SPRINGFIELD TO COORDINATE RESPONSE ACTIVITIES AND SHARE RESOURCES IN TIMES OF EMERGENCIES.

WHEREAS, it has long been recognized that mutual aid between agencies sharing similar demands is highly desirable; and

WHEREAS, it is recognized that, oftentimes, delivery of services during emergency situations can be done most cost-effectively and with enhanced flexibility when forces are combined; and

WHEREAS, the Federal Government, through the Department of Homeland Security and Federal Emergency Management Agency (FEMA), strongly encourages the formation of mutual aid agreements between local jurisdictions for reciprocal disaster response and recovery assistance; and

WHEREAS, Sarpy County and the United Cities of Sarpy County have worked to formalize a mutual aid agreement for the local entities to support each other, coordinate and share available resources, and be reimbursed for those services as appropriate;

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista, Nebraska, hereby authorize the Mayor to execute a Mutual Aid Agreement between Sarpy County and the cities of La Vista, Papillion, Gretna, Bellevue, and Springfield to coordinate response activities and share resources in times of emergencies.

PASSED AND APPROVED THIS 7TH DAY OF APRIL 2020.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Bueth, CMC
City Clerk

SARPY COUNTY AND UNITED CITIES OF SARPY COUNTY MUTUAL AID AGREEMENT

This Mutual Aid Agreement (the "Agreement") is made and entered into this ____ day of _____, 20____ by, between, and among the City of Papillion, Nebraska (hereinafter referred to as "Papillion"), the City of La Vista, Nebraska (hereinafter referred to as "La Vista"), the City of Gretna, Nebraska (hereinafter referred to as "Gretna"), the City of Bellevue, Nebraska (hereinafter referred to as "Bellevue"), the City of Springfield, Nebraska (hereinafter referred to as "Springfield"), and Sarpy County, Nebraska (hereinafter referred to as "Sarpy") (singularly "Party", and collectively "Parties").

WHEREAS, it is desirable and necessary for the protection of life, property, and the environment that each of the Parties hereto voluntarily aid and assist each other by the interchange of services and resources in the event of an emergency; and

WHEREAS, the Parties have determined that it would be in their best interests to enter into a Mutual Aid Agreement that implements a plan and sets forth procedures and responsibilities of the Parties whenever emergency services, personnel, facilities, equipment, materials, and/or other resources are provided from one Party to another; and

WHEREAS, the Federal Government, through its Federal Department of Homeland Security and Federal Emergency Management Agency ("FEMA"), has recommended and actively encourages the formation of mutual aid agreements between local jurisdictions for reciprocal disaster response and recovery assistance; and,

WHEREAS, such an Agreement is in accord with the Nebraska Emergency Management Act ("Act") set forth in Neb. Rev. Stat. §§ 81-829.36 et seq., and the Nebraska Interlocal Cooperation Act set forth in Neb. Rev. Stat. §§ 13-801 et seq.; and

WHEREAS, no Party should be in a position of depleting unreasonably its own resources or services providing such mutual aid.

NOW, THEREFORE, IN CONSIDERATION OF THE CONDITIONS AND COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

I. PURPOSE

Recognizing that emergencies may require aid or assistance in the form of emergency services, personnel, facilities, equipment, materials, and/or other resources from outside the area of impact, the signatory Parties hereby enter into a Sarpy County and United Cities of Sarpy County Mutual Aid Agreement. Through the Agreement, Parties coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for this Sarpy County and United Cities of Sarpy County Mutual Aid Agreement.

II. DEFINITIONS

A. AREA OF OPERATION – A geographic area in which emergency Sarpy County or United Cities of Sarpy County operations are conducted.

- B. ASSISTANCE – Services, personnel, facilities, equipment, materials, and/or other resources to address an Emergency, except for mutual aid provided by police, fire, or sheriff’s department personnel and related costs.
- C. AUTHORIZED REPRESENTATIVE(S) – An official or designated employee of a Party authorized by that Party to request or offer assistance under the terms of the Agreement.
- D. EMERGENCY – A natural or human caused event or circumstance causing, or imminently threatening to cause, loss of life, injury to person or property, human suffering, or financial loss, and includes, but is not limited to, fire, explosion, flood, storm, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, intentional acts, sabotage, and war that is, or could reasonably be, beyond the capability of the resources of a Party to fully manage and mitigate internally.
- E. INCIDENT COMMANDER – The person responsible for all aspects of an emergency response, including quickly developing incident objectives, managing all incident operations, application of resources as well as responsibility for all persons involved.
- F. NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) – A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.
- G. PERIOD OF ASSISTANCE – A specified period of time when a Providing Party assists a Requesting Party. The period commences when resources depart from Providing Party’s facility and ends when the resources return to their facility (portal to portal). All protections identified in the Agreement apply during this period. The specified Period of Assistance may occur during response to, or recovery from, an emergency as previously defined.
- H. PROVIDING PARTY – A Party that provides Assistance to a Requesting Party.
- I. REQUESTING PARTY – A Party that requests Assistance from other Parties.
- J. SARPY COUNTY LOCAL EMERGENCY OPERATIONS PLAN (“LEOP”) – The plan approved by the governing bodies of Sarpy County and the United Cities of Sarpy County to establish policies, plans, guidelines, and procedures with respect to Emergencies, consistent with applicable requirements including NIMS, which plan, as adopted or amended from time to time, is incorporated into this Agreement by reference.

III. **APPLICABILITY**

This Agreement is available and applicable to all Parties upon signing of the Agreement. This Agreement shall not apply to mutual aid provided by police, fire, or sheriff’s departments and related costs.

IV. **PROCEDURES**

In the event that a particular Party becomes a Requesting Party, the following procedures shall be followed:

- A. A Party shall not be held liable for failing to serve as a Providing Party.
- B. Each Providing Party may respond, when practicable, to requests for Assistance by providing such resources as are reasonably available to the Providing Party. The Providing Party shall have the sole discretion of determining which resources are reasonably available.
- C. The execution of this Agreement shall not create any duty to respond on the part of any Party.
- D. The Requesting Party may contact participating Parties that may be able to provide the requested resources.
- E. Necessary information in accordance with the procedures defined in this Agreement shall be shared between Requesting and Providing Parties.
- F. When contacted by a Requesting Party, the Authorized Representative of a Party shall assess if it is capable of providing assistance. If the Authorized Representative determines that the Party is capable and willing to provide assistance, the Authorized Representative shall notify the Requesting Party and provide the Requesting Party with the information as required.
- G. The Requesting Party shall designate an Incident Commander to manage all aspects of the response to the Emergency under this Agreement. The Providing Party shall designate an Authorized Representative to address issues regarding its provision of Assistance under this Agreement. The Incident Commander shall exercise operational control of all Assistance provided by all sources, including that provided by any Providing Party, to respond to the emergency. The Incident Commander shall provide work assignments for provided personnel and shall schedule and arrange for the use of provided materials or other resources. The Incident Commander shall supervise the safety of personnel and resources provided by a Providing Party, and regularly report work progress to the Authorized Representative of the Providing Party. Notwithstanding the authority granted the Incident Commander under this Agreement, the Authorized Representative of a Providing Party shall have the power to prohibit or limit any proposed use of its Assistance, upon notice to the Incident Commander. The designated Authorized Representative of the Providing Party shall maintain daily personnel time records and a log of equipment hours (including breakdowns or damage, if any).
- H. When possible, the Requesting Party shall supply reasonable food and shelter for the Providing Party personnel. If the Requesting Party does not provide food and shelter for the Providing Party, the Providing Party's Authorized Representative is authorized to secure, at the expense of the Requesting Party, the resources reasonably necessary to meet the needs of its personnel in coordination with the Requesting Party's procedures. The cost for such resources shall not exceed the state per diem rate for that area, unless

the Providing Party documents and demonstrates that the additional costs were reasonable and necessary under the circumstances.

- I. The Requesting Party's Incident Commander shall provide a communications plan to the Authorized Representative of the Providing Party prior to arrival.
- J. The command structure established during the Emergency shall comply with the requirements of the National Incident Management System (NIMS).
- K. The Incident Commander shall, as soon as reasonably possible, release the resources of the Providing Party from the Emergency. The resources of the Providing Party shall, if practical, be released before the resources of the Requesting Party are released.
- L. To the extent permitted by law, Providing Party personnel who hold valid licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.
- M. Resources of the Providing Party shall be released from the Emergency when it is determined by the Incident Commander that the services provided by the Providing Party are no longer required or when the Authorized Representative of the Providing Party informs the Incident Commander that the resources provided by the Providing Party are otherwise needed by the Providing Party.
- N. Each Party shall provide its own credentialing for identification purposes.

V. REIMBURSABLE EXPENSES

The Requesting Party shall reimburse the Providing Party for each of the following categories of costs incurred during the specified Period of Assistance. This Agreement, and the duty to reimburse, shall apply to all emergencies or disasters involving any mutual aid assistance, except for mutual aid among police, fire, or sheriff's departments. This Agreement, and the duty to reimburse, shall not be contingent upon any declaration or reimbursement decision of FEMA or similar State agencies. The Parties shall enter into a memorandum of understanding or other agreement as needed for reimbursement of costs not subject to common practice billing.

- A. Personnel – The Providing Party shall be reimbursed by the Requesting Party for personnel costs incurred for work performed during the specified Period of Assistance. Providing Party personnel costs shall be calculated according to the terms provided in their employment contracts or other conditions of employment. Providing Party's Authorized Representative must keep accurate records of work performed by personnel during the specified Period of Assistance. Requesting Party reimbursement to the Providing Party could consider all personnel costs, including salaries or hourly wages, overtime, costs for fringe benefits, and indirect costs.

- B. Equipment – The Requesting Party shall reimburse the Providing Party for the use of equipment during the specified Period of Assistance, including, but not limited to, reasonable rental rates, all fuel, lubrication, maintenance, transportation, and loading/unloading of loaned equipment. All equipment shall be returned to the Providing Party in good working order in accordance with applicable requirements including, without limitation, NIMS, as soon as is practicable and reasonable under the circumstances. As a minimum, rates for equipment use must be based on the FEMA Schedule of Equipment Rates. If the Providing Party wishes to use rates different from those in the FEMA Schedule of Equipment Rates, the Providing Party must first provide such rates orally or in writing to the Requesting Party prior to supplying the equipment, and also obtain the Requesting Party’s written consent, all prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs. If the Providing Party must lease a piece of equipment while its equipment is being repaired, the Requesting Party shall reimburse the Providing Party for such rental costs.
- C. Materials and Supplies – The Requesting Party must reimburse the Providing Party in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. The Providing Party must not charge direct fees or rental charges to the Requesting Party for other supplies and reusable items that are returned to the Providing Party in a clean, damage-free condition. Reusable supplies that are returned to the Providing Party with damage must be treated as expendable supplies for purposes of cost reimbursement.
- D. Payment Period – The Providing Party must provide an itemized bill to the Requesting Party for all expenses incurred by the Providing Party while providing assistance under this Agreement. The Providing Party must send the itemized bill not later than ninety (90) days following the end of the Period of Assistance. The Providing Party may request additional periods of time within which to submit the itemized bill, and the Requesting Party shall not unreasonably withhold consent to such request. The Requesting Party must pay the bill in full on or before the sixtieth (60th) day following the billing date. The Requesting Party may request additional periods of time within which to pay the itemized bill, and Providing Party shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one year after the date a final itemized bill is submitted to the Requesting Party.
- E. Records – Each Party shall document and maintain records of costs and other matters in connection with this Agreement in accordance with applicable requirements, including, without limitation, NIMS. Each Providing Party and their duly authorized representatives shall have access to a Requesting Party’s books, documents, notes, reports, papers, and records that are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance, or regulatory audit. Each Requesting Party and their duly authorized representatives shall have access to the Providing Party’s books, documents, notes, reports, papers, and records that are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance, or regulatory audit. Such records shall be maintained for at least five (5) years or longer where required by law.

VI. INSURANCE

Except as otherwise provided in subsection IXA or subsection IXB below, each Party shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance and in what amounts it should carry. Nothing herein shall act or be construed as a waiver of any sovereign immunity or other exemption or limitation on liability that a Party may enjoy.

VII. INTERLOCAL COOPERATION ACT PROVISIONS

This Agreement does not create any separate legal or administrative entity. To the extent this Agreement requires administration other than as set forth herein, it shall be administered by the Authorized Representatives of the Parties, acting as a joint board.

This Agreement does not authorize the levying or collecting of any tax. Each Party shall be responsible for establishing and maintaining its own budget, for financing its own duties, and for acquiring, holding and disposing of its own property, except as specifically provided by this Agreement.

No real or personal property shall be acquired jointly by the Parties to perform the conditions of this Agreement unless such acquisition is specifically agreed to in writing by all Parties, which writing shall specify the method for disposing of such joint property upon partial or complete termination. To the extent that a Party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, it shall do so in the same manner that it deals with other property of such Party.

VIII. LAWFUL RESPONSIBILITY

This Agreement shall not relieve any Party of any obligation or responsibility imposed upon it by law or other agreement.

IX. INDEMNIFICATION AND HOLD HARMLESS

- A. The Requesting Party shall indemnify, defend, and hold harmless the Providing Party and the officers, employees, and representatives of the Providing Party, if they are acting within the course and scope of their duties, from all claims, suits, actions, damages, and costs of every kind, including but not limited to, reasonable attorney's fees and court costs, arising or resulting from the performance or provision of services and materials by the Providing Party under this Agreement except to the extent the same are proximately caused by the negligence of the Providing Party or the officers, employees, or representatives of the Providing Party. This Agreement shall not be construed to be a waiver of any rights or protections provided to any Party.
- B. Subject to the Nebraska Political Subdivisions Tort Claims Act, including liability limitations thereunder, the Providing Party shall indemnify, defend, and hold harmless the Requesting Party and the officers, employees, and representatives of the Requesting Party, if they are acting within the course and scope of their duties, from all claims, suits, actions, damages, and costs of every kind, including but not limited to, reasonable

attorney's fees and court costs, proximately caused by the negligence of the Providing Party or the officers, employees, or representatives of the Providing Party in the performance or provision of services and materials under this Agreement, except to the extent the same are proximately caused by the negligence of the Requesting Party or the officers, employees, or representatives of the Requesting Party. This Agreement shall not be construed to be a waiver of any rights or protections provided to any Party.

- C. Subject to the foregoing, nothing in this Agreement shall be construed as an agreement by a Party to indemnify, defend, or hold harmless, or in any way assume liability, if there is a determination that any personal injury, death, or property loss or damage was caused by the negligence of any other Party or person.
- D. Subject to subsection IXA and subsection IXB above, nothing herein shall be construed to waive any of the privileges and immunities associated with the provision of materials, equipment, or emergency or other services of any of the Parties. No Party waives any defenses or immunity available, nor does any Party waive any limits of liability.
- E. Subject to subsection IXA and subsection IXB above, each Party shall be solely responsible for providing workers' compensation, insurance, and benefits for its own personnel who provide Assistance under this Agreement unless the Parties otherwise agree. Each Party shall provide insurance or shall self-insure to cover the negligent acts and omissions of its own personnel rendering services under this Agreement.

X. **TERM**

This Agreement shall have an initial term of thirty (30) years commencing upon the effective date of this Agreement.

XI. **TERMINATION**

Any Party may terminate its obligations under and participation in this Agreement, with or without cause, by giving at least thirty (30) days prior written notice of the intent to terminate. The termination of this Agreement by any Party shall not affect the validity of this Agreement as to the remaining Parties. Withdrawal from this Agreement shall in no way affect a Requesting Party's duty to reimburse the Providing Party for costs incurred during a Period of Assistance that occurred during the term of this Agreement, which duty shall survive such withdrawal.

XII. **WHOLE AGREEMENT, AMENDMENTS**

This Agreement constitutes the whole agreement of the Parties, written or oral, relating to the subject matter of this Agreement. This Agreement may not be amended without the prior written approval of all Parties. Whenever used in this Agreement the term "include", "included", "including" or words of similar import shall be construed as if followed by the phrase "without limitation". This Agreement shall not supersede any preexisting agreement of any Party for mutual aid.

XIII. **DISPUTES**

If any controversy or claim arises out of, or relates to, the execution of the Agreement, including, but not limited to, alleged breach of the Agreement, the disputing Parties may first attempt to resolve the dispute by negotiation, followed by mediation. Each Party involved in such a controversy or claim shall bear its own costs for dispute resolution.

XIV. SEVERABILITY

If any provisions of this Agreement are held to be invalid or unenforceable by a court of proper jurisdiction, the remaining provisions shall remain in full force and effect.

XV. NO THIRD PARTY BENEFICIARIES

This Agreement is not intended to benefit any party or person not named as a Party specifically herein.

XVI. EFFECTIVE DATE

This Agreement shall be effective as to a particular Party executing this Agreement upon the date of execution of this Agreement by that Party.

XVII. AUTHORIZATION

The individuals signing this Agreement on behalf of their respective Parties confirm that they are a duly Authorized Representative of the Party and are lawfully enabled to sign this Agreement on behalf of the Party.

XVIII. COUNTERPARTS

This Agreement and any amendments to it may be executed in counterparts, each of which shall be deemed an original.

XIX. GOVERNING LAW

This Agreement shall be governed by, construed, and carried out in accordance with all applicable requirements, including without limitation the applicable laws, rules, and regulations of the United States and the State of Nebraska, NIMS, and LEOP, as adopted or amended from time to time.

XX. FILING OF AGREEMENT

An executed counterpart of this Agreement shall be filed with the keeper of records of each Party. In witness whereof, each Party hereto has executed this Agreement on the respective signature page of that Party as of the date specified by its signature block.

XXI. PERSONNEL NOT AGENTS

The employees of the Parties providing services pursuant to or consistent with the terms of this Agreement are solely the officers, agents, or employees of the Party that hired them. Each Party

shall assume any and all liability for the payment of salaries, wages, or other compensation due or claimed due, including workers' compensation claims, and each Party shall hold the other harmless therefrom. Except as otherwise provided in subsection IXA and subsection IXB above, the Parties shall not be liable for compensation or indemnity to any other Party's employee for any injury or sickness arising out of his or her employment, and the Parties shall not be liable for compensation or indemnity to any other Party's employee for injury or sickness arising out of his or her employment, and each Party hereby agrees to hold the other Party harmless against any such claim.

XXII. ADDITIONAL PARTIES

Any subdivision of the State of Nebraska not specifically named herein ("Prospective Party") which shall hereafter sign this Agreement or a copy hereof shall become a Party. Any Prospective Party that becomes a newly accepted Party is entitled to all the rights and privileges and is subject to the obligations of any Party as set out herein.

XXIII. NON-DISCRIMINATION

Notwithstanding anything in this Agreement to the contrary, each Party agrees that it and any of its subcontractors shall not discriminate against any employee or applicant for employment to be employed in performance of this Agreement with respect to the employee's or applicant's hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, or national origin.

XXIV. NEW EMPLOYEE WORK ELIGIBILITY STATUS

Each Party is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing service within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

For any contract between a Party and a Contractor in furtherance of this Agreement, if the Contractor is an individual or sole proprietorship, the following applies: 1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us 2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. 3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

IN WITNESS WHEREOF, we, the contracting Parties, by our respective duly authorized agents, hereby enter into this Agreement, effective on the date of the last signature affixed hereon. Executed on the dates indicated with the signatures below.

[Signatures on Following Pages]

CITY OF PAPILLION,
A Municipal Corporation

Date: _____

By: _____
David P. Black, Mayor

Attest:

Nicole L. Brown, City Clerk

SEAL

CITY OF LA VISTA,
A Municipal Corporation

Date: _____

By: _____
Douglas Kindig, Mayor

Attest:

Pamela A. Buethe, City Clerk

SEAL

CITY OF GRETNA,
A Municipal Corporation

Date: _____

By: _____
James W. Timmerman, Mayor

Attest:

Tammy L. Tisdall, City Clerk

SEAL

CITY OF BELLEVUE,
A Municipal Corporation

Date: _____

By: _____
Rusty Hike, Mayor

Attest:

Susan Kluthe, City Clerk

SEAL

CITY OF SPRINGFIELD,
A Municipal Corporation

Date: _____

By: _____
Robert Roseland, Mayor

Attest:

Kathleen Gottsch, City Clerk

SEAL

SARPY COUNTY,
A Body Politic and Corporate

Date: _____

By: _____
Don Kelly, Chairman of the Sarpy County
Board of Commissioners

Attest:

Deb Houghtaling, County Clerk

SEAL