

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
SEPTEMBER 19, 2017 AGENDA

Subject:	Type:	Submitted By:
UNITED CITIES OF SARPY COUNTY— LOBBYING AGREEMENT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

A resolution has been prepared to jointly authorize a lobbying agreement with Kissel, Kohout, ES Associates L.L.C. for lobbying services on behalf of the United Cities of Sarpy County along with the cities of Bellevue, Gretna, La Vista, Papillion and Springfield.

FISCAL IMPACT

The cost for La Vista's participation will be:

- FY18 — \$8,735 (*\$1,840 reduction from FY17 due to additional city*)
- FY19 — \$9,018.80
- FY20 — \$9,312
- FY21 — \$9,614.60

RECOMMENDATION

Approval.

BACKGROUND

As a participant in the United Cities of Sarpy County, the City's approved budget includes funding for a lobbyist. Our collaboration with the other cities has been successful as it has allowed us to pursue issues of common interest and stay informed during the session regarding any emerging initiatives or issues that could impact our municipalities.

The Mayors of the United Cities have determined that much of the success has been related to our lobbyist and as a result, they are recommending a new four year contract with Joe Kohout from Kissel, Kohout, ES Associates L.L.C. to continue to represent the cities. The contract for year one is \$43,675, which is a 3.25% increase for from FY17. The proposal also includes subsequent increases of 3.25% for years two, three and four of the agreement. With the addition of Bellevue, La Vista's overall cost has decreased.

The need to be informed and proactive on legislative issues remains a priority of the Mayor and Council and is included in the City's Strategic Plan.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE MAYOR TO EXECUTE A LOBBYING AGREEMENT BETWEEN THE UNITED CITIES OF SARPY COUNTY AND KISSEL, KOHOUT, ES ASSOCIATES L.L.C. FOR LOBBYING SERVICES BEFORE THE NEBRASKA STATE LEGISLATURE AND GOVERNOR.

WHEREAS, the cities of Bellevue, Gretna, La Vista, Papillion and Springfield (UNITED CITIES OF SARPY COUNTY) desire to promote the common legislative interest of the five cities which make up the "United Cities of Sarpy County" and.

WHEREAS, the cities have agreed that it is in their best interest to hire a joint lobbyist to lobby the Nebraska legislative and executive branches with regard to Nebraska legislation; and

WHEREAS, the Mayor and City Council have identified the need for a lobbyist as a strategic initiative and did appropriate funds in the FY17-18 biennial municipal budget for the hiring of a lobbyist; and

WHEREAS, the mayors of the United Cities of Sarpy County have recommended Joe Kohout with Kissel, Kohout, ES Associates L.L.C. to continue serve as their joint lobbyist.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of La Vista, Nebraska, that the Mayor is hereby authorized to execute a lobbying agreement between the United Cities of Sarpy County and Kissel, Kohout, ES Associates L.L.C. for lobbying services before the Nebraska State Legislature and Governor.

PASSED AND APPROVED THIS 19TH DAY OF SEPTEMBER, 2017.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

LOBBYING AGREEMENT

THIS AGREEMENT is entered into by and between,

THE City of Bellevue, City of Gretna, City of La Vista, City of Papillion and City of Springfield ("UNITED CITIES OF SARPY COUNTY"), pursuant to, an Interlocal Agreement dated _____ and entered into under the Interlocal Corporation Act of the State of Nebraska, (together hereinafter "Client")

and

KISSEL, KOHOUT, ES ASSOCIATES L.L.C. (hereinafter "Firm" or "lobbyist").

WHEREAS, the Client is interested in securing the professional services of the Firm, specifically including the services of JOSEPH D. KOHOUT ("Principal Lobbyist"), to provide lobbying services before the Nebraska State Legislature and Governor, in order that the Client's interests and concerns can be best attended, represented and advanced before the Legislature and Governor, and in legislation that is proposed and/or adopted; and,

WHEREAS, it is the purpose of this Agreement to delineate the terms and conditions, including compensation, related to the retention of the services of the Firm in that capacity.

NOW, THEREFORE, in consideration of these premises, it is agreed by and between the parties as follows:

1. Duties: The Firm shall be responsible for monitoring, proposing and advocating on behalf of Client with respect to legislative activity during this Agreement, as such activity may impact or otherwise affect, directly or indirectly, the interests of the Client. In that regard, the Firm shall be responsible for familiarizing itself with the operations and circumstances of the Client to the extent necessary, including legal and political factors and considerations; provided, however, that the Client shall fully cooperate with the Firm in that endeavor. For purposes of this section, proposing shall mean working with the Client and in conjunction with a member of the Legislature for the purposes of introducing legislation during either a regular or special session of the Nebraska Legislature.

Except for additional services specified herein, lobbying services shall include those services ordinarily provided by a professional lobbyist representing the legislative interests of a coalition of cities and shall specifically include but not be limited to regular reports (and special reports advisable under the circumstances) to a person designated by the Client on all matters affected hereunder.

The Firm shall appoint a place or person of contact by which the Firm may be contacted at all times when the Legislature is in session.

The Client shall appoint a place or person of contact by which the Client may be contacted at all times when the Legislature is in session.

The Firm shall supply copies of all bills or other materials on any matters of potential interest or impact to the Client within twenty-four (24) hours following their availability.

The Firm shall provide regular written reports (and special reports advisable under the circumstances) to the Client on any bill or other matter of potential interest or impact to the Client that is introduced

before the Legislature or which may otherwise be a subject of discussion by the Legislature, including progress reports on the advancement thereof.

The Firm shall be responsible for the preparation of a legislative package for the current Legislative Session in accordance with the direction of the Client.

The Firm shall be responsible for initiating, drafting, coordinating and/or advocating the introduction and/or and passage of legislation for Client.

The Firm shall be responsive and address matters raised by the Client within specified timeframes, and provide professional counsel and advice to the Client concerning any matter recommended, proposed or actually before the Legislature that may affect the interests of the Client and such other services as are reasonably necessary to properly represent the Client's interests. It is specifically agreed that the Firm shall provide all time and effort and resources reasonably necessary in order to effectively meet the concerns and interests of the Client.

It is further understood and agreed that in performance of its responsibilities hereunder, the status of the Firm shall be that of an independent contractor. The Firm shall be free to act in accordance with its own judgment and discretion; provided, however, that the Firm shall have no authority to bind or act on behalf of the Client except as specifically approved in advance by the Client. It is specifically agreed that no person employed by the Firm for related or incidental services shall be construed to be an employee or agent of the Client. Responsibility therefor shall be that of the Firm, including responsibility for any errors, actions or omissions thereof. Performance of its responsibilities hereunder shall be in strict compliance with all applicable state, federal and local laws, rules and regulations, as well as applicable ethical requirements.

The Firm will prepare and submit in a timely manner any filings and pay any related fees or other amounts from time to time required of Firm arising out of or resulting from the services provided hereunder. The Firm also will notify Client sufficiently in advance and prepare a draft of any filings periodically required of Client during this Agreement.

2. Term: Unless terminated for cause, this Agreement shall be in full force and effect commencing October 1, 2017 through September 30, 2021 ("Term"). Client shall have the option to renew this Agreement at the end of the Term, and at the end of any subsequent term thereafter, for one or more additional twelve month terms, on the terms and conditions set forth herein, upon notice to Firm ninety days before expiration of the Term or any subsequent term; provided, however, that Firm shall have the option to reject Client's renewal of this Agreement upon written notice to Client within fifteen days after receiving Client's notice of renewal. This Agreement may be terminated before the end of the Term or any subsequent term upon mutual written Agreement of the parties; or by the Client if Client determines that there is "cause" for termination. For the purpose of the Agreement, "cause" shall include, without limitation, the Firm's or Principal Lobbyist's failure, refusal or neglect to perform any duty required hereunder, negligence or alleged criminal misconduct.

3. Compensation and Expenses: The Client agrees to pay the Firm as compensation for all services, hereunder, the sum of Forty-three Thousand, Six Hundred Seventy-five Dollars (\$43,675) during the first twelve (12) months of the term. For the twelve (12) months beginning October 1, 2018 and ending September 30, 2019, Client agrees to pay the firm as compensation for all services, hereunder, the sum of Forty-five Thousand, Ninety-four Dollars (\$45,094). For the twelve (12) months beginning October 1, 2019 and ending September 30, 2020, Client agrees to pay the firm as compensation for all services, hereunder, the sum of Forty-six Thousand, Five Hundred Sixty Dollars (\$46,560). For the twelve (12) months beginning October

1, 2020 and ending September 30, 2021, Client agrees to pay the firm as compensation for all services, hereunder, the sum of Forty-eight Thousand, Seventy-three Dollars (\$48,073).

On October 1 of each year that this agreement is in force, or as soon thereafter as is possible, Firm shall invoice Client for total compensation, and this sum shall be due and payable within thirty (30) days of receipt of said invoice. Firm shall deposit and hold the sum in a separate interest bearing client trust account and shall, on the last working day of each month, draw against the total amount on hand in said account a sum equal to Three Thousand Six Hundred Thirty-nine and 58/100ths Dollars (\$3,639.58) for professional services provided during the first twelve (12) months of the term. During the second twelve (12) months of the term, Firm shall draw against the total amount on hand in said account an amount equal to Three Thousand, Seven Hundred Fifty-seven and 83/100th Dollars (\$3,757.83) for professional services. During the third twelve (12) months of the term, Firm shall draw against the total amount on hand in said account an amount equal to Three Thousand, Eight Hundred Eighty Dollars (\$3,880.00) for professional services. During the fourth twelve (12) months of the term, Firm shall draw against the total amount on hand in said account an amount equal to Four Thousand, Six and 08/100th Dollars (\$4,006.08) for professional services. Interest earned on Client amounts held in said account will be paid to Client at the end of the Term, unless otherwise requested by Client. Any balance remaining in said account to the credit of Client upon termination of this Agreement shall be returned to Client.

The Firm shall provide a copy of the firm's trust card or similar statement at the end of each month detailing the date on which a withdrawal occurred which is detailed in the paragraph above and the amount of Client's funds on hand in the account.

4. Captions: Captions used in this contract are for convenience and are not used in the construction of this contract.

5. Applicable Law: Except to the extent preempted by federal law, Nebraska law shall govern the terms and performance of this contract. The parties agree to submit and not object to personal jurisdiction of any state court of or located in Sarpy County, Nebraska, and that personal jurisdiction of and in any such court shall be proper, convenient and not objectionable.

6. Interest of the Lobbyist: Lobbyist covenants that he presently has no interests and shall not knowingly acquire any interest, direct or indirect that would conflict in any manner or degree with performance of services required under this contract. Lobbyist will notify the client of lobbyists's intent to represent clients relevant to the fields of interest to the client. This said notification should allow the client and lobbyist to determine potential conflicts. Client recognizes that Lobbyist is engaged in the business of lobbying for a number of clients. From time to time an issue of legislative concern may affect more than one of Lobbyist's clients. Client and Lobbyist further recognize that the legislative interests of the United Cities of Sarpy County and the other clients of Lobbyist may not always be compatible. Any conflict of interest which arises with respect to any legislative issue will be brought to the attention of all affected clients by the Lobbyist and will be resolved in the following manner: 1) An attempt will be made to resolve or compromise the conflict between clients; 2) If a client elects to withdraw the conflicting issue from its legislative program, the conflict of interest will be considered resolved; 3) If a conflict is not resolved by a client's withdrawal of the issue or mutual compromise of the conflicting points of view, Contractor shall continue to represent, on the conflicting issue, only the legislative interests of the client which has had the Contractor for the longest period of time. In this circumstance, Client agrees that it will not object in any manner to this continued representation.

Notwithstanding anything in this paragraph or elsewhere in this Agreement to the contrary, if at any time Client perceives in its sole discretion that Firm may not be able to impartially continue performing lobbying services for Client, Client shall have the option to terminate this Agreement with ten days written notice to the

Firm. In that case, Firm shall pay Client the balance of Client funds remaining in the client trust account at the time and cooperate in transitioning representation of Client to another lobbyist selected by Client. Firm agrees to maintain during and after this Agreement the confidentiality of all Client communications and information obtained pursuant to its representation of Client and to use the same for the sole benefit of Client.

7. Modifications: This contract contains the entire agreement of the parties. No representations were made or relied upon by either party, and there is no other agreement or understanding, other than as expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof unless done in a written amendment executed by each party.

8. Assignment: Personal lobbying of members of the legislative or executive branches or their offices shall be performed by the Principal Lobbyist unless otherwise agreed by the Client. Other lobbying services shall be provided under the direction and control of the Principal Lobbyist by such members or employees of the Firm as the Principal Lobbyist designates. The Firm may not assign any right under this contract without the express prior written consent of the Client.

9. Strict Compliance: All provisions of this contract and any document that shall be attached hereto by the parties and incorporated herein by specific reference shall be strictly complied with as written.

10. Authorized Representative: In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process during the term of this contract and for the period of any applicable statute of limitations thereafter, the following named individuals shall be the authorized representative of the parties:

- (1) The United Cities of Sarpy County
Brenda Sedlacek Gunn
City Administrator
La Vista City Hall
8116 Park View Boulevard
La Vista, Nebraska 68128
- (2) Kissel, Kohout, ES Associates L.L.C.
Joseph D. Kohout
301 S. 13th Street, Suite 400
Lincoln, Nebraska 68508

11. Insurance. Firm shall obtain and maintain during this Agreement such insurance in such amounts and providing such coverages as Client from time to time requires, issued by an insurer acceptable to Client that is authorized to do business in the State of Nebraska, and naming the Client (and each of the municipalities comprising Client) as an additional named insured.

12. Remedies. Any remedies specified herein for breach of this Agreement shall be cumulative and available to and exercisable by the parties along with all other remedies at law or in equity, including, but not limited to, injunction and specific performance. The municipalities comprising the Client will have the authority to jointly enforce this Agreement pursuant to the Interlocal Agreement, or to severally enforce this Agreement.

13. Client Action. Except as otherwise provided herein, Client action under this Agreement shall require such approval and be taken in the manner provided in the Interlocal Agreement.

EXECUTED this _____ day of _____, 2017.

CITY OF GRETNA, NEBRASKA

ATTEST:

By: _____
Mayor

City Clerk

CITY OF GRETNA, NEBRASKA

ATTEST:

By: _____
Mayor

City Clerk

CITY OF LA VISTA, NEBRASKA

ATTEST:

By: _____
Mayor

City Clerk

CITY OF PAPILLION, NEBRASKA

ATTEST:

By: _____
Mayor

City Clerk

CITY OF SPRINGFIELD, NEBRASKA

ATTEST:

By: _____
Mayor

City Clerk

KISSEL, KOHOUT, ES ASSOCIATES L.L.C.

By: _____
Joseph D. Kohout, Managing Partner

Witnessed by: _____