

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
APRIL 20, 2021 AGENDA**

Subject:	Type:	Submitted By:
INTERLOCAL AGREEMENT – JAIL, PROSECUTORIAL AND INDIGENT DEFENSE SERVICES	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BOB LAUSTEN POLICE CHIEF

SYNOPSIS

A resolution has been prepared to approve an Interlocal Cooperation Agreement between the Cities of La Vista, Bellevue, Papillion, Gretna and Sarpy County for jail, prosecutorial and indigent defense services.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval

BACKGROUND

Sarpy County conducted an analysis of the interlocal agreements the County has in place in order to potentially have the cost of the service computed outside of the lid and levy calculations.

Three functions (jail, county attorney and public defender) were identified to qualify as an exempted interlocal. (This information was confirmed by the State Auditor.)

Currently, (and historically) Sarpy County provides these services to local cities/police departments when offenders are arrested and prosecuted/defended on State violations at no cost. Which is how the interlocal agreement is drafted.

La Vista would be responsible for costs if the City decides to adopt our own city ordinances for jailable offenses and have our City Attorney prosecute those offenses, resulting in the defendant being sentenced to jail for that city code violation.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITIES OF LA VISTA, BELLEVUE, GRETNA, PAPILLION AND SARPY COUNTY, NEBRASKA TO PROVIDE JAIL, PROSECUTORIAL AND INDIGENT DEFENSE SERVICES.

WHEREAS, Sarpy County owns and maintains a jail facility, provides prosecutorial functions through the County Attorney's Office, and provides indigent defense services through the Office of the Public Defender; and,

WHEREAS, Sarpy County and the Cities are agreeable to housing persons cited or arrested, or sentenced in connection with a citation or arrest, under lawful authority ("Offenders") within the corporate boundaries of the Cities, including those offenders cited, arrested, or sentenced solely for violating a City Municipal Code, in the County Correctional Facility; and,

WHEREAS, Sarpy County and the Cities desire to acknowledge the prosecutorial services provided by the County Attorney and the indigent defense services provided by the Office of the Public Defender; and,

WHEREAS, such an agreement is authorized by the Interlocal Cooperation Act, Neb. Rev. Stat §§ 13-801 to 13-827.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of La Vista, Nebraska, hereby authorize the Mayor to execute an Interlocal Cooperation Agreement with between the Cities of La Vista, Bellevue, Gretna, Papillion and Sarpy County, Nebraska to provide jail, prosecutorial and indigent defense services.

PASSED AND APPROVED THIS 20TH DAY OF APRIL 2021.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela Buethe, CMC
City Clerk

INTERLOCAL AGREEMENT
BETWEEN THE CITIES AND
THE COUNTY OF SARPY, NEBRASKA

This Agreement is entered into by and between the County of Sarpy, Nebraska, a political subdivision of the State of Nebraska (hereinafter referred to as "the County") and the City of Bellevue, Nebraska, a municipal corporation, the City of Gretna, Nebraska, a municipal corporation, the City of LaVista, Nebraska, a municipal corporation, and the City of Papillion, Nebraska, a municipal corporation, (hereinafter collectively referred to as "the Cities" and separately referred to as "City").

WHEREAS, the County owns and maintains a jail facility, provides prosecutorial functions through the County Attorney's Office, and provides indigent defense services through the Office of the Public Defender; and,

WHEREAS, the County and the Cities are agreeable to housing persons cited or arrested, or sentenced in connection with a citation or arrest, under lawful authority ("Offenders") within the corporate boundaries of the Cities, including those offenders cited, arrested, or sentenced solely for violating a City Municipal Code, in the County Correctional Facility; and,

WHEREAS, the County and the Cities desire to acknowledge the prosecutorial services provided by the County Attorney and the indigent defense services provided by the Office of the Public Defender; and,

WHEREAS, such an agreement is authorized by the Interlocal Cooperation Act, Neb. Rev. Stat §§ 13-801 to 13-827.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Corrections Administration. The administration of the adult correctional facility within the County shall be under the jurisdiction of the Sarpy County Board of Commissioners in its capacities as the Board of Corrections. Such Correctional Facility shall be administered through the Department of Corrections. The administrative officer of the Department shall be the Director of Corrections who shall be qualified by education, training, and experience to perform the duties of such position and shall be appointed by the Board of Corrections. The Director of Corrections shall report to the Chair of the County Board of Corrections and shall be subject to dismissal by the County Board in its capacities as the Board of Corrections.

2. Services to be Provided by the County to the Cities. The County shall provide:

(a) Prosecutorial Services: The County shall provide prosecutorial services in regard to persons cited and/or arrested for criminal state statute violations within the corporate

boundaries of the Cities pursuant to the County Attorney's lawful authority, duties, and responsibilities under Nebraska state law. The County Attorney shall have sole and absolute authority and discretion, including but not limited to any decisions regarding charging, bonds, dismissals, trial preparation and strategy, plea bargaining, or sentencing recommendations, over all prosecutorial services rendered for Offenders cited and/or arrested for criminal state statute violations. The City Attorneys of the respective Cities shall provide prosecutorial services in regard to persons cited and/or arrested for violations of the City's Municipal Code. The City Attorneys shall have sole and absolute authority and discretion over all prosecutorial services rendered for Offenders cited and/or arrested for City Municipal Code violations.

- (b) Indigent Defense Services: The Office of the Public Defender of Sarpy County ("Public Defender") provides legal representation to indigent persons prosecuted for criminal state statute violations within the corporate boundaries of the Cities upon court appointment pursuant to its statutory responsibilities under Nebraska state law. Additionally, the Public Defender shall provide legal representation to indigent defendants that have been charged by a City Attorney with offenses arising under City Municipal Code, and have been appointed legal counsel by the Sarpy County Court, except in such instances where such representation would be a violation of the Rules of Professional Conduct for Attorneys. The Public Defender shall have sole and absolute authority and discretion over all indigent defense services rendered by its office. Nothing in this Agreement shall infringe upon the Public Defender's authority with regard to the execution of its responsibilities, including but not limited to any decisions regarding the representation of its clients, trial preparation and strategy, or plea bargaining.
- (c) Correctional Facility Services: The County shall provide the following services related to the care of Offenders held in the Correctional Facility solely for a City Municipal Code violation:
 - i. Assume the safekeeping, care, and sustenance, including necessary medical treatment, of Offenders held in the Correctional Facility pursuant to the City's lawful authority.
 - ii. Transport Offenders to all areas outside the secure Correctional Facility, including transfer to all court appearances, emergency and routine medical, optical, and dental treatment, and other authorized facilities.
 - iii. Manage the Correctional Facility in accordance with such rules as may be adopted from time to time by the Nebraska Jail Standards and the District Court of Sarpy County, Nebraska, in accordance with Neb. Rev. Stat. § 47-101 and § 47-201; and be responsible for the administration of the Correctional Facility so as to keep Offenders under proper discipline and control.

- iv. Maintain its Correctional Facility in a clean and sanitary condition. Offenders shall be provided with adequate and wholesome food. Juveniles shall be segregated from adults, and males and females shall be properly housed. Offenders of City Municipal Codes shall not be allowed special privileges or improper liberties, nor will they be subject to corporal punishment, cruel or inhumane treatment, or abuse. Offenders of the City Municipal Codes who violate the rules of the Correctional Facility may be disciplined as appropriate, in the same manner and to the same extent as other Offenders. No Offenders shall be discriminated against because of race, color, disability, religion, sex, age, or national origin, in any manner relating to his or her custody.
- v. Ensure that mail privileges will be the same for all Offenders.
- vi. Protect and accurately account for all personal effects and belongings of all Offenders.
- vii. Employ or utilize Offenders of City Municipal Codes to the same extent and in the same manner as other offenders.
- viii. Permit proper City law enforcement officials to see all offenders in custody.

The Director of Corrections may make such further rules and regulations as will assist in carrying out the terms of this Agreement, provided that no such rules or regulation violates the terms of this Agreement or any laws of the State of Nebraska.

Additionally, the County at its cost shall house, manage and provide services for the care and safekeeping of individuals cited or arrested, or sentenced in connection with a citation or arrest, within the corporate boundaries of the Cities for criminal state statute violations by any law enforcement officer with jurisdiction to lawfully make such arrest. Such housing, management and services shall be provided in accordance with applicable laws and regulations, including without limitation such rules as may be adopted from time to time by the Nebraska Jail Standards Board or the District Court of Sarpy County, Nebraska, in accordance with Chapter 47 of the Nebraska Revised Statutes, and the Correctional Facility shall be administered so as to keep such Offenders under proper discipline and control.

3. Funding; Budget Review.

- (a) In accordance with the County Attorney's statutory authority, duties, and responsibilities under Nebraska state law, the County budgets and provides for the cost of prosecutorial services in regard to Offenders violating criminal state statutes.
- (b) In accordance with the statutory requirements under Chapter 47 of the Nebraska Revised Statutes, the County budgets and provides for the cost to safekeep, care, sustain, and

transport Offenders after Offenders are lodged in the Correctional Facility. In consideration of the safekeeping, care, sustenance, and transportation provided by the County, the Cities shall pay the County reimbursement, according to Section 3(c) below, for the cost of housing an Offender who meets one or more of the following criteria:

- i. Was cited and arrested by a City Police Department (or in the case of the City of Gretna, by the Sheriff's Office) and charged solely with a violation or violations of the City Municipal Code; or,
 - ii. Was sentenced to the Corrections Department by any court to satisfy a sentence solely for a violation or violations of the City Municipal Code. This does not include circumstances where an Offender is incarcerated solely to sit out a fine or costs in lieu of payment.
- (c) Reimbursement for Department of Corrections Costs. For the term of the agreement, the rate of reimbursement to the County shall be a per diem rate of \$86.49 for each Offender meeting the criteria of Section 3(b) above. On April 1st of each subsequent year, upon receiving written notice from the County, the rate may be adjusted by the County to reflect increases in the Bureau of Labor Statistics, Consumer Price Index (CPI), for Midwest Urban, All Items, Series ID CUUR0200SA0.

Billing shall be on a full-day basis and shall start upon the Offender's arrival at the Correctional Facility and end upon the Offender's release from the Correctional Facility. The County shall bill the applicable City for the day of arrival, but not for the day the Offender was released from the Correctional Facility. If the Offender arrives and is released from the Correctional Facility on the same calendar day, the County shall bill the applicable City for one full day.

Additionally, each City agrees to be responsible for, and to reimburse the County for, the cost of any off-site medical services, including emergency medical services rendered by off-site providers, for the City's respective Offenders meeting the criteria of Section 3(b) above, unless such expenses directly arise from injuries that are caused by the acts or omissions of the County, its agents, employees, representatives, or other inmates housed at the Correctional Facility. Off-site medical services shall include but not be limited to any medical, mental health, dental or health care services, that are not provided at the Correctional Facility. Off-site expenses shall include the cost of all prescriptions prescribed by an off-site physician, physician's assistant, nurse practitioner, dentist, or other licensed prescriber.

The County agrees to be responsible for all on-site medical services. This includes medical, mental health or dental services provided at the Correctional Facility, including but not limited to any services provided by a physician, physician's assistant, nurse, practitioner, licensed practical nurse, psychiatrist, licensed mental health practitioner, registered nurse, and/or dentist who is employed by or contracted with the County to

provide such services on-site, at the Correctional Facility. The County also agrees to provide at its cost all prescriptions prescribed by its contracted physician, physician's assistant, nurse practitioner, dentist, or other licensed prescriber. The community standard of health care will be provided to all inmates housed in the Correctional Facility.

The Cities shall pay all costs invoiced by the County under this Section 3(c) within 45 days from the date on which the statement is received.

- (d) In accordance with the Public Defender's statutory duties and responsibilities under Nebraska state law, the County budgets and provides for the cost of indigent defense services rendered by the office and by contract alternate public defenders for conflict cases. In consideration for the legal representation services provided for violations of City Municipal Code, the County may bill the Cities at the standard hourly rates set by the County Court of Sarpy County, Nebraska for court-appointed attorneys in misdemeanor cases, for the cost of legal representation to indigent defendants that (1) have been charged by a City Attorney with offenses arising under City Municipal Code, and (2) have been appointed legal counsel by the Sarpy County Court except for circumstances where the Court appoints legal counsel because of another pending jailable criminal state statute case. The Cities shall pay all costs invoiced by the County under his Section 3(d) within 45 days from the date on which the statement is received.

4. Personal Property Acquired. Personal property for the operation of the Department of Corrections shall be supplied as needed from the current Corrections Department of the County.

5. Liability. The County shall indemnify, save and hold harmless each City, and all officials, officers, employees, and agents of each City, from and against all liabilities, losses, claims, expenses, and damages arising out of and proximately caused by the negligent acts or omissions of the County, or any official, officer, agent or employee of the County, in the performance of this Agreement. Each City shall indemnify, save and hold harmless the County, and all officials, officers, employees, and agents of the County, from and against all liabilities, losses, claims, expenses, and damages arising out of and proximately caused by the negligent acts or omissions of such City, or any official, officer, agent or employee of such City, in the performance of this Agreement. It is understood and agreed, however, that liability resulting from a violation of the civil rights of Offenders, as defined by 42 U.S.C. §1983, by an individual, shall be the responsibility of that individual, and when provided by law, the party by which the individual is employed.

Each party's liability is, and the provisions of this Section 5 shall be subject to, governed by and limited to the extent provided by the Nebraska Political Subdivision Tort Claims Act or other applicable provisions of law. Provisions of this Section 5 are not intended to waive, and shall not waive, a party's sovereign immunity.

6. Agreement Term and Termination. This Agreement shall commence on May 1, 2021, and shall continue for a period of one year, until April 30, 2022. Thereafter it shall automatically renew with respect to the County and each City for successive periods of one year unless the County or any City provides the other parties with written notice of its intention to re-negotiate or terminate its participation in the Agreement at least ninety (90) days prior to the anniversary date of the Agreement. If the County or any City gives notice to the other parties of its intention to re-negotiate, such party's participation in the Agreement shall terminate on its anniversary date unless it has been successfully re-negotiated by that date. Recitals at the beginning of this Agreement are incorporated into this Agreement by reference.

IN WITNESS WHEREOF, each of the parties have caused this Agreement to be executed in duplicate by the respective duly authorized officers as indicated below.

COUNTY OF SARPY, NEBRASKA,
A Nebraska Political Subdivision

By: _____
Sarpy County Board Chair

Date: _____

Attest:

Deb Houghtaling, County Clerk

Approved as to Form:



Deputy Sarpy County Attorney

CITY OF BELLEVUE, NEBRASKA,
A municipal corporation and Nebraska Political
Subdivision

By: _____
Mayor

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF GRETNA, NEBRASKA,
A municipal corporation and Nebraska Political
Subdivision

By: _____
Mayor

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF LAVISTA, NEBRASKA,
A municipal corporation and Nebraska Political
Subdivision

By: _____
Mayor

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF PAPILLION, NEBRASKA,
A municipal corporation and Nebraska Political
Subdivision

By: _____
Mayor

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney