

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
AUGUST 3, 2021 AGENDA

Subject:	Type:	Submitted By:
MEMORANDUM OF UNDERSTANDING SARPY COUNTY FORCE INVESTIGATION TEAM	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BOB LAUSTEN POLICE CHIEF

SYNOPSIS

A resolution has been prepared to approve a Memorandum of Understanding between the cities of La Vista, Bellevue, Papillion, and Sarpy County for the Sarpy County Force Investigation Team (FIT).

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval

BACKGROUND

In February of 2020, the La Vista Police Department hosted an “Officer Involved Shooting” training session for law enforcement officers in Sarpy County. An expert trainer from Las Vegas taught the two-day course. Following the training, La Vista law enforcement command staff met with the County Attorney’s Office to discuss formation of a joint investigative team made up of Sarpy law enforcement officers whose duty would be to investigate officer-involved shootings and use of force incidents where injury had occurred. A subsequent meeting of the police chiefs and Sheriff was then held, and all were in favor of moving forward. To initiate the program, grant funds from the Sarpy County Drug Board were obtained to engage retired Sergeant Jerry McDonald of the Las Vegas Metropolitan Police Department to assist with the development of Operations Manual. A specialized training program is currently being developed and will be presented to FIT team members.

Officers from a department that has an officer under investigation would not be involved in the criminal investigation (*internal* investigations will continue to be handled by the original department). The new independent response team will provide a high degree of impartiality, as its detectives will not be reviewing their own agency or peers. This will also promote public confidence within each of our communities.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING A MEMORANDUM OF UNDERSTANDING FOR THE SARPY COUNTY FORCE INVESTIGATION TEAM.

WHEREAS, the La Vista, Bellevue, Papillion Police Departments and the Sarpy County Sheriff's Office seek to increase expertise and transparency in use of force investigations

WHEREAS, the City of La Vista recognizes the need for a multi-agency response and independent investigations in certain incidents involving a law enforcement officer's use of force.

WHEREAS, the City of La Vista desires to be a member of the Sarpy County Force Investigation Team "SCFIT" for the purpose of carrying out said investigations.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of La Vista, Nebraska, hereby authorize the Mayor to execute a Memorandum of Understanding with the City of Bellevue, the City of Papillion and Sarpy County for the Sarpy County Force Investigation Team.

PASSED AND APPROVED THIS 3rd DAY OF AUGUST, 2021.

CITY OF LA VISTA

Douglas D. Kindig, Mayor

ATTEST:

Pamela Buethe, CMC
City Clerk

Memorandum of Understanding
Sarpy County Sarpy County Force Investigation Team

This Memorandum of Understanding (“MOU”) is entered into as of this ____ day of ____, 2021, by and between the undersigned parties (hereafter individually “Party” or “Agency” and collectively “Parties” or “Agencies”).

WHEREAS, the Parties and their representative law enforcement agencies:

- I. Recognize the need for a multi-agency response and independent investigations in certain incidents involving a law enforcement officer’s use of force.
- II. Understand that investigations of this nature require independence and transparency.
- III. Desire to form the Sarpy County Force Investigation Team “SCFIT” for the purpose of carrying out said investigations.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- I. Purpose. The Parties shall hereby form SCFIT (also referred to herein as “Team”). The purpose of this MOU is to define the roles and responsibilities of the Parties. This MOU is not intended nor shall it be construed to in any way limit the power and authority granted by Neb. Rev. Stat. § 29-215. To that end, each Agency may individually impose in respect to its own officers such conditions or limitations on the exercise of its statutory law enforcement powers as such Agency may choose and so long as not inconsistent with the terms hereof.
- II. Executive Board.
 - a. The Executive Board (“Board”) of the Team consists of the following individuals or their designees: Sarpy County Sheriff, La Vista Chief of Police, Bellevue Chief of Police, and Papillion Chief of Police, and Sarpy County Attorney as ex-officio member.
 - b. The Board is responsible for:
 1. Meeting at least three times per year;
 2. Assigning leadership positions to Team members;
 3. Selecting Team members and any leadership positions for the Team;
 4. Establishing policies and procedures for the operation of the Team, which shall include but not be limited to:
 - a. Chain of command and control over responses;
 - b. Process for activation of the Team;
 - c. Expectations for a Team member’s conduct;
 - d. Qualifications for Team members, including but not limited to, physical agility and tactical firearms qualifications; and
 - e. Any other topics deemed appropriate by the Board.
 5. Performing any other functions necessary for the executive oversight, administration, and supervision of the Team.
 - c. Unless otherwise specified herein, decisions of the Board shall be made by majority vote.

d. With the exception of the County Attorney as Ex-Officio, each member of the Board has an equal vote in all decisions of the Board.

III. Policies and Procedures. Policies and procedures approved by the Executive Board shall govern the function and operation of the Team. The policies and procedures shall govern the details for the Team's response and investigation. In the event of a conflict, Team policies and procedures shall be superseded by law, applicable collective bargaining agreement, and Agency policy. The Team policies and procedures, as amended, are incorporated herein by this reference.

IV. Employment status. A team member is considered employed solely by his or her own Agency and shall be considered and held as serving in the regular line-of-duty of the Agency that employs the Team member. Thus, equipment, uniform, personnel costs, and related benefits including health insurance, retirement, etc., shall be the responsibility of the employing Agency. Each Party shall assume any and all liability for the payment of salaries, wages, or other compensation due or claimed due to its own employees, including workers' compensation claims, and each Party shall hold the other harmless therefrom. Except as explicitly agreed to by Parties in writing, each Party shall not be liable for compensation or benefits to any other Party's employee, nor for any compensation or indemnity to any other Party's employee for any injury or sickness arising out of his or her employment, and each Party hereby agrees to hold the other Party harmless against any such claims. Internal Affairs Investigations and disciplinary action arising out of a Team Member's conduct, omissions, actions, etc. while serving on the Team shall be handled by that Team Member's Agency. Notification or initiation of an investigation will follow the employing Agency's policies.

V. Liability Insurance. The Parties agree to be self-insured or to carry liability insurance written on an "occurrence" basis (as distinguished from "claims made" basis) covering all law enforcement personnel assigned by each Party and insuring against liability for bodily injury, personal injury and property damage, in an amount not less than the maximum liability of such Party under applicable law.

VI. Dispute Resolution Process. In the event of a dispute arising under this MOU, the matter shall be referred to the Board for resolution. Written notice of the dispute shall be provided to each Board member. The Board shall then meet and attempt to resolve the dispute in a satisfactory manner. This meeting must take place within ten business days after all Board members have been served notice of the dispute. The Board shall issue a written decision within thirty days after the meeting. The content of the written decision shall be approved by a majority of the Board. During the pendency of this process, the Parties and Agencies shall act in good faith to perform their respective duties described herein. No Party or Agency shall institute a formal legal proceeding, file a claim, provide notice of withdraw, etc., until after the Board has issued a written decision.

VII. Terms of MOU and termination. This MOU shall be effective for an initial term of two years beginning on the date this MOU is fully executed by the parties. At the end of the initial two-year term, this MOU shall automatically renew for additional one-year terms

(“Renewal Term”). Any party may withdraw from this MOU by providing written notice to the Executive Board. In order to adequately staff future investigations, two-weeks’ notice of termination is requested.

VIII. **Mutual Non-Discrimination Clause.** In accordance with Neb. Rev. Stat. § 48-1122, each Party agrees that neither it nor any of its subcontractors or agents shall discriminate against any employee or applicant for employment to be employed in the performance of this MOU, with respect to hire, tenure, terms, conditions, or privileges of employment, because of age, color, disability, genetic information, marital status, military status, national origin, pregnancy, race, religion, sex, or any other prohibited basis of discrimination.

IX. **Indemnification/Liability.** To the extent permitted by law, each Party (as “indemnitor”) agrees to indemnify, defend, and hold harmless each of the other Parties (as “indemnitee(s)”) from and against any and all claims, losses, liability, costs, or expenses, including reasonable attorney’s fees (hereinafter collectively referred to as “claims”) arising out of bodily injury, including death, or property damage, but only to the extent that such claims are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers; provided that, a Party shall have no liability whatsoever for declining to respond, delaying to respond, or terminating its response to another Party’s request for mutual aid and assistance. These indemnification provisions are not intended to waive a Party’s sovereign immunity. A Party’s liability is governed by and limited to the extent provided by the Nebraska Political Subdivisions Tort Claims Act or other applicable provisions of law.

X. **Notification of Claims and Lawsuits.** In the event that a claim or lawsuit is brought against a Party for any matters related to this MOU, it shall be the duty of that Party to notify the other Parties of said claim or lawsuit.

XI. **Sovereign Immunity.** Nothing in this MOU shall be construed as an express or implied waiver of the sovereign immunity of any Party in any forum or jurisdiction.

XII. **Notice and Authorized Representatives.** Notice, required under this MOU, shall be delivered in writing and shall be effective upon receipt by the authorized representative. Delivery shall be made by certified mail, return receipt requested. For purposes of Notice, following individuals are the authorized representatives of the Parties:

SARPY COUNTY
County Sheriff
Sarpy County Sheriff’s Office
8335 Platteview Road
Papillion, NE 68046

CITY OF LA VISTA
Chief of Police
La Vista Police Department

7701 South 96th Street
La Vista, NE 68128

CITY OF PAPILLION

Chief of Police
Papillion Police Department
1000 East 1st Street
Papillion, NE 68046

CITY OF BELLEVUE

Chief of Police
Bellevue Police Department
1510 Wall Street
Bellevue, NE 68005

- XIII. **Drug Free Policy.** Parties assure each other that each has established and maintains a drug free workplace policy.
- XIV. **New Employee Work Eligibility Status (Neb. Rev. Stat. § 4-114).** 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 services within 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.
- XV. **Public Benefits.** With regard to Neb. Rev. Stat. §§ 4-108-113, no Party is an individual or sole proprietorship. Therefore, no Party is subject to the public benefits attestation and related requirements of Neb. Rev. Stat. §§ 4-108-113.
- XVI. **Joint Work Product.** This MOU is the joint work product of the Parties; accordingly, in the event of any ambiguity, no presumption shall be imposed against or in favor of any Party by reason of document preparation.
- XVII. **Authority.** Each of the persons signing below warrant and represent that they have the authority to enter into this MOU and to bind the parties hereto.
- XVIII. **Interlocal Cooperation Act Provisions.** This MOU is entered into pursuant to the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. §§13-801 et seq., as amended. This MOU does not create any separate legal or administrative entity, except for the Board described above which shall be responsible for the administration of this MOU. This MOU 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 MOU. No real or personal property shall be acquired jointly by the Parties to perform the conditions of this MOU 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 MOU, it shall do so in the same manner that it deals with other property of such Party.

- XIX. Multiple Counterparts. This MOU, involving numerous parties, may be executed in multiple counterparts each of which may bear the signatures of less than all of the parties hereto, and it shall be in full force and effect even if so executed.
- XX. Headings. The section headings appearing in this MOU are inserted only as a matter of convenience, and in no way define or limit the scope of any section.

COUNTY OF SARPY, NEBRASKA,
A Nebraska Political Subdivision

By: _____
Sarpy County Board Chairman

Date: _____

Attest:

Deb Houghtaling, County Clerk

Approved as to Form:

Deputy Sarpy County Attorney

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

By: Mayor

Date: _____

Attest:

City Clerk

Approved as to Form:

Papillion City Attorney

CITY OF LA VISTA, NEBRASKA,
A municipal corporation and Nebraska Political Subdivision

By: Mayor

Date: _____

Attest:

City Clerk

Approved as to Form:

La Vista City Attorney

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

By: Mayor

Date: _____

Attest:

City Clerk

Approved as to Form:

Bellevue City Attorney