

CITY OF PAPILLION
MAYOR AND CITY COUNCIL REPORT
March 21, 2023

| Subject: | Type: | Submitted By: |
|---|------------------------|---|
| A Resolution to approve an Interlocal Agreement between Sarpy County and the Cities of Papillion and LaVista to create a Sarpy County Dive Team | Resolution R23-0046 | Bill Bowes, Fire Chief Chris Whitted, Police Chief |

SYNOPSIS

This resolution would approve the creation of a Dive Team comprised of members of the Sarpy County Sheriff's Office, the LaVista Police Department, and the Papillion Police and Fire Departments to assist and provide mutual aid in the event of a water emergency.

BACKGROUND

The parties to this Agreement are authorized to enter into an Interlocal Agreement pursuant to Neb. Rev. Stat. §§ 13-801 to 13-827 (the "Nebraska Interlocal Cooperation Act"). The Agreement would create a Dive team comprised of members of each department with specialized training and skill in responding to water emergencies. This inter-agency Dive Team will allow for a quicker, more efficient, and more economical response to water emergencies than a single department could provide on its own.

Each Department will retain control and responsibility for its own personnel. The cost of individual equipment and clothing will be borne by the Members' Department and will remain the property of that Department. Each participating Department will have one representative on the Board of Directors, which will oversee the operations of the Dive Team. Joint expenses will be budgeted by the Board of Directors, and each participating Department will contribute to the budget.

FISCAL IMPACT

The Papillion Fire Department and Papillion Police Department will be contributing members of the Dive Team. The expenses of team operation will be absorbed by each participating agency, independent of the other. The initial costs incurred will be a one-time expense of approximately \$15,000 per diver for equipment and various certification training. Associated cost for each year thereafter will be minimal and involve continuing

education and equipment maintenance. A majority of the boat and associated water rescue items needed are already owned by the Sarpy County Sheriff's Office.

RECOMMENDATION

Approval

ATTACHMENTS

Resolution #R23-0046

Interlocal Agreement

RESOLUTION NO. R23-0046

A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PAPILLION TO APPROVE AN INTERLOCAL COOPERATION AGREEMENT BETWEEN SARPY COUNTY AND THE CITIES OF LAVISTA AND PAPILLION TO CREATE AN INTER-AGENCY DIVE TEAM

WHEREAS, Sarpy County and the Cities of LaVista and Papillion desire to create a specialized Dive Team comprised of members of the Sarpy County Sheriff's Office, the LaVista Police Department and the Papillion Police and Fire Departments to provide mutual aid and assistance in the event of a water emergency; and

WHEREAS, the creation of a specially trained and equipped Dive Team will enhance public safety by providing for faster and more efficient water rescues and recoveries.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Papillion, to approve an Interlocal Cooperation Agreement between the Sarpy County Sheriff's Office, the LaVista Police Department and the Papillion Police Department and Fire Department related to the creation of an Inter-agency Dive Team.

PASSED AND APPROVED THIS ____ DAY OF _____, 2023.

CITY OF PAPILLION, NEBRASKA

David P. Black, Mayor

Attest:

Nicole Brown, City Clerk

**INTERLOCAL COOPERATION AGREEMENT FOR
SARPY COUNTY DIVE TEAM**

This Agreement is entered into between the undersigned parties (hereafter individually "Party" and collectively "Parties") on this _____, 2023.

RECITALS

WHEREAS, the Parties and their representative law enforcement and fire/rescue agencies:

1. Wish to provide for law enforcement and fire/rescue personnel backup and other such assistance as any of the parties may require in time of a water emergency or other time of need;
2. Have not only common goals, staffing needs, training needs and other needs in common in the area of law enforcement and fire/rescue, but also overlapping demands for law enforcement and fire/rescue responses, often to water related incidents which require the specialized attention of a team trained specifically in underwater rescues and recoveries;
3. Expressed a desire to respond more swiftly to critical law enforcement and fire/rescue incidents, with enhanced local control and a more consistent response, and with a combined larger group of personnel than any one of the agencies could provide alone;
4. Recognize that water emergencies are serious life threatening situations requiring the need for a specially trained and equipped team and that responses to these incidents are better served and more economical when the resources are combined to form a multi-jurisdictional dive team; and
5. Desire to form the Sarpy County Dive Team, which Team shall work in conjunction with and provide support to the Sarpy County Search and Rescue Unit.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- I. Purpose. The Parties shall hereby form the Sarpy County Dive Team, which shall provide law enforcement and fire/rescue personnel specially trained in underwater rescues and recoveries to provide mutual aid and assistance in time of water emergencies. The purpose of this Agreement is to define the roles and responsibilities of the Parties when providing mutual aid and assistance through the activation of the Team in responding to water related rescues and recoveries.
- II. Definitions: As used herein the following terms shall have the following meanings:

- A. "Agency(ies)" or "Cooperating Agency(ies)" shall mean the police/fire/sheriff department(s) of the Parties which are signatories hereto.
- B. "Executive Board ("Board")" shall mean the board comprised of the Agency heads or their designated representatives, who shall be responsible for administering this cooperative undertaking as provided in Paragraph IV.
- C. "Team" shall mean all duly sworn paid law enforcement officers and fire/rescue personnel in the employment of any Agency that have been assigned by their employing Agency head to participate in the Dive Team in accordance with the policies and procedures as adopted by the Board and Agencies.
- D. "Team Member" shall mean a member of the Dive Team and includes "Law Enforcement Team Member."
- E. "Law Enforcement Team Member" shall mean a member of the Dive Team who is a certified law enforcement officer.

III. Authority:

- A. The authority for this Agreement is that authority granted by law, including without limitation the general powers of each Party and Agency, as well as Neb. Rev. Stat. §§ 13-801 to 13-827 (the "Nebraska Interlocal Cooperation Act"), Neb. Rev. Stat. § 29-215, and Neb. Rev. Stat. § 81-1401 et seq.
- B. This Agreement 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 on its own personnel such conditions or limitations regarding their exercise of statutory powers as such Agency may choose and so long as not inconsistent with the terms hereof.

IV. Executive Board.

- A. The Executive Board ("Board") consists of the Sarpy County Sheriff, La Vista Chief of Police, Papillion Chief of Fire and Papillion Chief of Police, (or their designees).
- B. The Board is responsible for:
 - 1. Meeting at least twice per year;
 - 2. Assigning leadership positions to Team members;
 - 3. Approving expenditures from the Team budget;
 - 4. Selecting Team members and any leadership positions for the Team;
 - 5. Establishing policies and procedures for the operation of the Team, which shall include, but are not limited to:
 - a. Chain of command and control over critical incident responses;
 - b. Process for activation of the Team in response to critical incidents;
 - c. Process for search warrants and investigations;
 - d. Expectations for a Team member's conduct
 - e. Qualifications for Team members, including but not limited to, physical agility and dive proficiencies; and
 - f. Any other topics deemed appropriate by the Board.
 - 6. Performing any other functions necessary for the executive oversight, administration, and supervision of the Team.
- C. Each member of the Board has an equal vote in all decisions of the Board.
- D. Unless otherwise specified herein, decisions of the Board shall be made by majority vote.

V. Cost Sharing/Budget and Finance:

- A. Sarpy County shall be responsible for general financial administration of the Team, and thus will coordinate budgetary expenditure matters with all Agencies.
- B. Sarpy County will provide each Agency with a semiannual report on all receipts and disbursements.
- C. All costs associated with the initial purchase, repair, or replacement of a Team member's equipment and clothing shall be the responsibility of the Team member's Agency. This equipment and clothing shall remain the property of the Team member's Agency.
- D. Cost of training for individual Team members will be the responsibility of the Team member's Agency.
- E. Team members are considered employed 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, personnel costs and related benefits including health insurance, retirement, etc., shall be the responsibility of the employing Agency.
- F. Each Agency shall contribute funding for making combined purchases necessary for operations of the Team. The amount of annual funding to be contributed by each Agency shall be determined by the unanimous vote of the Board as part of the budget process as outlined in the policies and procedures adopted by the Board and Agencies.
- G. Any remaining funds in the Team budget at the end of the fiscal year will be held in the account for future purchases.
- H. By March 1 of each year, a proposed budget request will be submitted to the Board. Said requests shall itemize requested purchases for the following budget cycle. The process for approval or denial of the request shall be identified in the policies and procedures adopted by the Board and Agencies.
- I. If an emergency expense arises outside of the customary budgetary process, the Board may approve said expense.

VI. Dive Team Operations:

- A. Requests for Activation. Requests for activation of the Dive Team may be made by the Police Chief, Fire Chief, Sheriff, or designated representative thereof of the Agency requesting assistance. In situations posing an immediate threat to the life and safety of a first responder or other individual, any supervisor may make the request.
- B. Authority to Arrest and Detain: Subject to the limitations herein, a Law Enforcement Team member responding to an incident outside of his or her Agency's jurisdiction shall have full law enforcement authority, including the authority to arrest and detain, in the following circumstances:
 - 1. The commission of a felony witnessed by the Law Enforcement Team member; or
 - 2. The Law Enforcement Team Member is a witness to a criminal

act or threatened criminal act, or a traffic infraction, whether or not constituting felonious conduct, where non-arrest poses immediate danger or threat to life or safety to the Law Enforcement member or any other person or persons:

- a. While engaged in or providing services under this Agreement.
- b. While cooperating in water related incidents or other cooperative law enforcement activity authorized by this Agreement.

- C. Internal Affairs Investigations/Disciplinary Actions. 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 Team Member's Agency. Notification or initiation of an investigation will follow the employing Agency's policies.
- D. Declining/Delaying/Terminating Response. The Agencies acknowledge that the purpose of this Agreement is to provide mutual aid and assistance in response to critical law enforcement incidents. However, a Police Chief, Fire Chief, Sheriff, or designated representative thereof, may decline to respond, may be delayed in responding, or may terminate its response, to an Agency's request for mutual aid and assistance. Notification of said declination, delay, or termination must be made pursuant to the policies and procedures adopted by the Board and Agencies.
- E. Recordkeeping. Each Party shall be responsible for maintaining all records and reports which the individual agency is required to keep in the regular course of business.

VII. Policies and Procedures. The Board is responsible for establishing policies and procedures for the operation of the Team (see Section IV(B)(5)). These policies and procedures may be amended from time to time by approval of the Board. Each Agency shall adopt identical policies and procedures for its Team members.

VIII. Terms of Agreement. This Agreement shall be effective for a term of two years beginning on April 1st, 2023, and ending March 30, 2025. At the end of the initial two-year term, this Agreement shall automatically renew for additional two-year terms ("Renewal Term"), unless otherwise terminated at any time by a Party. If a Party withdraws from this Agreement prior to end of the Initial Term or with less than thirty (30) days prior to the renewal date, that Party shall not be entitled to participate in the division of any assets acquired jointly by the Dive Team.

- A. Property. If a Party withdraws from this Agreement after the initial term and with at least 30 days' notice prior to the Renewal Term, the Party shall retain title to all property, resources, and equipment it had prior to, or obtained while, a Party to this Agreement. Within thirty (30) days after withdrawal, the withdrawing Party shall remove and retake

possession of such property. Any property, resources, or equipment purchased or donated on behalf of the Team shall be disposed of upon withdrawal in accordance with the policies and procedures adopted by the agencies.

B. Liability. If a Party withdraws from this Agreement, it shall not be relieved of liability incurred by the Board prior to such withdrawal, including, but not limited to, such Party's responsibilities for funding the then current annual Team budget. In addition, in the event that the withdrawing Party has made a financial commitment to fund any specific future expense(s) of the Board which would impact future Team budgets as a result of such withdrawal, the withdrawing Party may remain financially responsible for its committed share of such specific future expense(s), as determined by the Board.

- IX. 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 and fire/rescue 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. No Party represents in any way that the insurance specified herein, whether in scope of coverage or limits, is adequate or sufficient to protect any other Party or its interests. Each Party is solely responsible to determine its need for and to procure additional coverage which may be needed in connection with this Agreement. The procuring of insurance as required by this Agreement shall not be construed to limit any Party's liability hereunder or to fulfill the indemnification provisions of this Agreement.
- X. 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 Agreement, 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.
- XI. Incorporation of Recitals. The recitals set forth above are, by this reference, hereby incorporated into and deemed part of this Agreement.
- XII. Entire Agreement. This Agreement contains the entire agreement of the Parties. No representations were made or relied upon by any Party other than those that are expressly set forth herein. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or prior course of dealings. No agent, employee or other representative of any Party is empowered to alter any of the terms hereof except as provided herein.
- XIII. Amendments/Modification. This Agreement may be modified for any reason,

including but not limited to adding another Party. Said modification shall be made by written amendment, approved and executed by the governing bodies of each Party. No alteration or variation of the terms and conditions of this Agreement shall be valid unless made pursuant to an amendment. Every amendment shall specify the date on which its provisions shall be effective.

- XIV. Assignment. None of the Parties may assign its rights under this Agreement.
- XV. Successors and Assigns Bound by Covenants. All covenants, stipulations, and agreements herein shall inure to the benefit of the Parties and extend to and bind the legal representatives, successors, and assigns of the Parties.
- XVI. Waiver. The failure of a Party to insist on strict performance of any covenants or conditions, or to exercise any option herein conferred on any one or more instances, shall not be construed as a waiver or relinquishment of any such covenant, condition, right, or option, but the same shall remain in full force and effect. For a waiver of a right or power to be effective, it must be in writing signed by the waiving Party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power. In addition, any act by a Party which it is not obligated to do hereunder shall not be deemed to impose any obligation upon that Party to do any similar act in the future or in any way change or alter any of the provisions of this Agreement.
- XVII. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect.
- XVIII. 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 which result in vicarious/derivative liability to the indemnitee(s), are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers; provided, however, 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.
- XIX. Notification of Claims and Lawsuits. In the event that a claim or lawsuit is

brought against a Party for any matters related to this Agreement, it shall be the duty of that Party to notify the other Parties of said claim or lawsuit.

- XX. Sovereign Immunity. Nothing in this Agreement shall be construed as an express or implied waiver of the sovereign immunity of any Party in any forum or jurisdiction.
- XXI. No Third Party Rights. This Agreement is not intended to, nor shall it provide third parties with any remedy, claim, liability, reimbursement, cause of action or other right or privilege; except that this Agreement's indemnification provision shall also inure to the benefit of a Party's employees, officers, agents and servants.
- XXII. Notice and Authorized Representatives. Notice, required under this Agreement, 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
(402) 593-2288

CITY OF LA VISTA

Chief of Police
La Vista Police Department
7701 South 96th Street
La Vista, NE 68128
(402) 331-1582

CITY OF PAPIILLION

Chief of Police
Papillion Police Department
1000 East 1st Street
Papillion, NE 68046
(402) 597-2035

CITY OF PAPIILLION

Chief of Fire
Papillion Fire Department
10727 Chandler Rd
La Vista, NE 68128
(402) 339-8617

- XXIII. Drug Free Policy. Parties assure each other that each has established and maintains a drug free workplace policy.
- XXIV. 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.
- XXV. Public Benefits. With regard to Neb. Rev. Stat. §§ 4-108 to 4-113, 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 to 4-113.
- XXVI. Joint Work Product. This Agreement 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.
- XXVII. Authority. Each of the persons signing below warrant and represent that they have the authority to enter into this Agreement and to bind the Parties hereto.
- XXVIII. No Separate Legal Entity. This Agreement does not create a separate legal entity under the Interlocal Cooperation Act. For purposes of that Act, this Agreement shall be administered jointly by the Parties. In the event of a conflict, the majority decision of the Cooperating Agencies shall govern. This Agreement does not contemplate acquiring, holding or disposing of joint property nor does it contemplate the levying or collecting of any tax.
- XXIX. Multiple Counterparts: This Agreement, 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.
- XXX. Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience, and in no way define or limit the scope of any section.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, we, the contracting Parties, by our respective duly authorized agents, hereby enter into this Agreement, effective on the day and year affixed above. Executed on the dates indicated with signatures below.

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