

**CITY OF PAPIILLION
MAYOR AND CITY COUNCIL REPORT
APRIL 6, 2021 AGENDA**

Subject:	Type:	Submitted By:
A resolution to approve the Tri-Mutual Aid agreement and to authorize the Fire Chief to sign the agreement.	Resolution R21-0063	Bill Bowes Fire Chief

SYNOPSIS:

This agreement updates the previous 2007 agreement. Significant changes include provisions and language that will enhance the ability of member departments to seek reimbursement from the federal government in times of disaster. The agreement is based upon requests for mutual aid, as opposed to automatic mutual aid.

FISCAL IMPACT:

None

RECOMMENDATION:

Approval

BACKGROUND:

Papillion was one of three founding organizations of the Tri-Mutual Aid Association in 1946. Since that time, the association has grown to 29 fire departments in five counties in eastern Nebraska and western Iowa.

ATTACHMENTS:

1. Resolution R21-0063
2. 2020 Tri-Mutual Aid Agreement

RESOLUTION NO. R21-0063

BE IT RESOLVED by the Mayor and City Council of the City of Papillion to approve the Tri-Mutual Aid Agreement for the Fire Department.

BE IT FURTHER RESOLVED that the Fire Chief is authorized to sign the agreement.

PASSED AND APPROVED THIS 6th DAY OF APRIL, 2021.

CITY OF PAPILLION, NEBRASKA

David P. Black, Mayor

Attest:

Nicole Brown, City Clerk

(SEAL)



TRI-MUTUAL AID FIRE FIGHTERS ASSOCIATION INTERLOCAL AGREEMENT

Under the authority of the Nebraska Interlocal Cooperation Act, Article 8 of Chapter 13 of the Nebraska Revised Statutes, this Mutual Aid Agreement is hereby entered into by the communities and the rural/suburban/special fire districts within Douglas County Nebraska, Sarpy County Nebraska, Cass County Nebraska, Washington County Nebraska, Dodge County Nebraska, Saunders County Nebraska, and Pottawattamie County Iowa, as described in Section 1 below.

WHEREAS, the Interlocal Cooperation Act authorizes local government agencies to enter into agreements for purposes of providing services to each other; and,

WHEREAS, the entities described in Section 1 below desire to create an association so that they may work together and mutually cooperate in fighting fires and responding to other emergencies which assume or threaten to assume proportions beyond the capacity of the fire and EMS defenses of any individual town, rural or suburban fire district, or of any community; and,

WHEREAS, the signatories to this Agreement have agreed to create the Tri-Mutual Aid Fire Fighters Association for purposes of providing this assistance to each other; and,

WHEREAS, this Agreement contemplates that these entities will provide mutual aid and protect the safety and lives of the property within the various communities from fire loss, medical emergencies, natural and man-made disasters.

WHEREAS, Nebraska Law also provides that the parties may contemplate reimbursement for services and assistance rendered to other governmental agencies should such mutual aid extend beyond the agreed upon time; and,

WHEREAS, the Agreement also details the process by which the entities may recover from each other, and may seek reimbursement when contemplated under the Nebraska Emergency Management Act (NEMA) and the Federal Emergency Management Act (FEMA); and,

WHEREAS, the signatories to this Agreement have agreed as described herein.

NOW, THEREFORE, BASED ON THE PREMISES DESCRIBED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Tri-Mutual Aid Fire Fighters Association. The signatories to this Agreement comprise the Tri-Mutual Aid Fire Fighters Association ('Association'), which is made up of the communities and rural/suburban/special fire protection districts of Douglas, Sarpy,



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Cass, Washington, Dodge and Saunders Counties of Nebraska and Pottawattamie County of Iowa, namely:

Springfield	Louisville	Waterloo
Carter Lake	Ponca Hills	Blair
Elkhorn Fire District	Omaha Airport Authority	Council Bluffs
Papillion	Murray	Ralston
Valley	Yutan	Boys Town
Wahoo	Offutt	Plattsmouth
Bellevue	Omaha	Irvington
Bennington	Fort Calhoun	Fremont
Gretna	Arlington	Fremont Rural
Kennard	Millard Fire District	Ashland

The Tri-Mutual Aid Fire Fighters Association herein shall be governed by a board of directors of three people elected by the member fire departments of the association as provided by the Constitution and By-laws of the Association. The main office of the Association shall be the Secretary-Treasurer of the Association. That office may change at the desire of the Association. A copy of the Constitution and By-laws of the Tri-Mutual Aid Fire Fighters Association shall be maintained in the office of the entity and shall be available for review by any member.

- Purpose. The purpose of the Tri-Mutual Aid Fire Fighters Association is to better ensure the safety of the lives and property of citizens within communities from fire loss, medical emergencies, and natural disasters. Each entity that is a member of the association initiates their mutual cooperation in fighting fires and other emergencies, which assume or threaten to assume, proportions beyond the capacity of the fire and EMS defenses of any individual town, rural or suburban fire protection district, or of any community or mutual aid association adjoining the Tri-Mutual Aid Fire Fighter Association from which a request for assistance has been made. The entities initiate the assistance to each other in the use of fire apparatus, medic units, specialized units or apparatus, firefighter/EMTs, fire officials, fire, medical or HAZMAT/CBRN (Hazardous Material/Chemical, Biological, Radiological, Nuclear) equipment and any other items the fire defense required to control the fire, medical or HAZMAT/CBRN related emergency or disaster.
- Term Duration and Termination. This Agreement shall become effective upon its execution and shall remain in effect for a period of ten (10) years absent further action from any party. Upon expiration, this Agreement may be extended or renewed for an additional term by mutual written Agreement of the party.



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This Agreement may be terminated upon mutual written consent of the parties, or any individual party may withdraw from the Association by providing ninety (90) days written notice to the others of its intention to withdraw from the Agreement. At the end of the ninety (90) day period, such entity shall have no further obligation under this Agreement.

4. Obligation of the Parties.
 - a. Provision of Aid and Assistance. When an entity within the Association needs aid or assistance, they shall request assistance that they need from that member or members from whom they need aid or assistance. Pursuant to the terms and conditions set forth in this Agreement, it shall not be construed to impose an obligation on any entity due to this Agreement to provide mutual aid when it has been requested. When requested, an individual entity may deem itself unavailable to respond and shall also inform their requester of its services.
 - b. Procedure for Requesting Assistance. The request for assistance shall be made by the authorized representative of a recipient agency to the authorized representative of the providing agency. This request must indicate that it is made pursuant to this Agreement.
5. Equipment Available. Parties to this Agreement agree to make all available equipment that they have as part of their stock available to mutual aid requests. Such equipment shall include all fire apparatus, medic units, specialized units or apparatus, firefighters, EMTs, fire officials, fire medical or HAZMAT/CBRN equipment and any other items that might be required to assist in a fire, medical or HAZMAT/CBRN related emergency or disaster.
 - a. Supervision and Control. It is understood that any Fire Department that is part of the Association shall retain control of its own forces and that the Fire Chief and/or his/her designated representative of the local Fire Department requesting mutual aid shall be the coordinator, or incident commander, in charge of the entire task force for the duration of an emergency requiring the use of mutual aid. It is understood by the parties that incident command must be established and documented using the required Incident Command System (ICS) form agreed to by the parties (ICS Form 201). It is understood that all agencies that are a party to this Agreement shall operate under the National Incident Management System (NIMS) utilizing the Incident Command System (ICS) to ensure personnel accountability, resource management and ability to request additional resources from within or



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outside the jurisdictional area of responsibility. Additionally, where and when needed, the entities shall operate under a unified command structure which shall be documented on an ICS Form 201.

- b. Documentation of Service/Services at Scene. It shall be the responsibility of the requesting department to document the scene specific details and summary of the incident to justify the request and services under this Agreement. Each individual party shall also document all services, personnel, and equipment utilized during an event under this Agreement. This documentation shall be retained for three (3) years following the date of the incident, or if a claim is made under the Nebraska Emergency Management Act (NEMA) or the Federal Emergency Management Act (FEMA) from the project close out date, whichever is later.
6. Reimbursement.
- a. Each member of the Tri-Mutual Aid Fire Fighters Association shall be responsible for its own expenses during the first twenty-four (24) hours of the operational period, except for HAZMAT/CBRN costs, which may always be recoverable. It is understood that the receiving agency shall reimburse the providing agency for the following costs and expenses incurred by the providing agency because of extending aid and assistance after the operating period of twenty-four (24) hours. It is further understood that the reimbursement to the providing agency by the receiving agency shall not be conditioned or contingent upon the receiving agency being compensated or reimbursed through a claim made under NEMA or FEMA.
 - (1.) Personnel. – During the period of assistance, the providing agency shall continue to compensate its employees according to the then prevailing Ordinances, rules, regulations, and agreements, if applicable. During the first twenty-four (24) hours of the operational period, those expenses shall be considered to have been donated to the receiving agency.
 - (2.) Material, Equipment, Supplies, and Labor. – The providing agency shall be reimbursed for all materials, equipment, supplies, and labor furnished by, used or damaged after the first twenty-four (24) hours of the operational period. Such reimbursement shall not be conditioned or contingent upon the receiving agency obtaining reimbursement through a claim made under NEMA or FEMA. Any material, equipment and supplies provided during the initial twenty-four (24) hour operational period shall be considered donated resources. The receiving agency shall not be responsible for reimbursing the providing agency for the cost of any damage caused by gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of the providing agency's personnel. The



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providing agency shall be responsible for tracking their own materials, equipment, supplies and any other expenses that may be available for reimbursement. Any equipment damaged while providing mutual aid should be retained and the damage documented by the providing department. When payment is due and further reimbursement is requested, the providing agency shall submit invoices to the receiving agency for all costs and expenses and the receiving agency shall pay the amount due upon reimbursement. In the absence of a reimbursement fee and/or cost schedule for labor and equipment owned by the providing agency being provided to the requesting agency prior to responding to a mutual aid request, the most current and published FEMA Schedule of Equipment Rates (Schedule) and the stipulations in 44 CFR 206.228 shall be used as a basis for reimbursement of same or similar costs and expenses. Prior to their use in mutual aid, if it is determined that there is no same or similar cost or expense rate for equipment owned by the providing agency listed in the Schedule, or if costs, rates, fees or services to be rendered are not stipulated in 44 CFR 206.228, then reimbursement shall be contingent upon the providing agency submitting the anticipated costs, expense or fee to the requesting agency prior to their engagement or use in mutual aid with payment subject to the actual final invoice for such costs, expense or fee. If an agency submits for FEMA reimbursement, the applicable requirements, and stipulations of 2 CFR 200 and 44 CFR 206.228 apply.

- (3.) Notwithstanding the above, actual, and reasonable HAZMAT/CBRN costs will be paid to the providing department giving assistance by the receiving department and billed at rates no greater than the providing department's charges for its own jurisdiction. This shall include hazardous material expenses from the moment the operation commences. The receiving department requesting such HAZMAT/CBRN assistance may then recover such costs paid from the responsible party causing or allowing such hazardous materials spill or release.
- b. Record Keeping. The receiving entity shall provide information, directions and assistance for record keeping to the providing agency's personnel. The providing agency shall maintain records and invoices concerning reimbursement. In the event of a declaration of disaster when reimbursement expenses for mutual aid are attempted to be recovered from NEMA or FEMA, it shall be the responsibility of the department requesting assistance to certify and submit all eligible expenses and any accompanying documentation to NEMA/FEMA. The agency providing the assistance shall cooperate in providing that information, such as the billing and payment. The providing agency shall send an invoice for reimbursable costs and expenses, if applicable, together with appropriate documentation as required by the



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receiving agency, as soon as practical after such costs and expenses have been incurred. In instances where recovery is sought from NEMA or FEMA labor apparatus and equipment rates should be included for the reimbursement rates established by those entities. If those rates are determined not to be appropriate, the agency requesting the payments beyond the reimbursement schedule is responsible for providing the explanation as to why their rates may be unique and higher than the NEMA/FEMA Schedule of Equipment Rates in place at the time.

- c. Inspection of Records. All agencies subject to this Agreement shall make their records regarding cost and expenses for assistance provided under this Agreement available for audit upon request at any recipient of service under the Agreement.
7. Liability and Indemnity. Each department subject to the Tri-Mutual Aid Fire Fighters Association Agreement shall be responsible for any liability for acts and omissions of its employees, officers and volunteers while performing services under this Agreement. Each party to this Agreement agrees to indemnify the others from all expenses incurred because of the negligence or intentional acts of their personnel. Each party to this Agreement shall maintain, at their own option, insurance, or self-insurance to provide public liability protection for such indemnity obligation.
8. General Provisions.
 - a. Independent Contractors. It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing a partnership or joint venture between the Parties. All acts that either Party or their personnel, employees, agents, contractors, or servants, perform pursuant to the terms of this Agreement shall be undertaken as independent contractors and not as employees of the other. The Parties shall, except as provided herein, act in their individual capacities and not as agents, employees, partners, joint ventures or associates of the other. An employee or agent of one shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. None of the Parties nor its personnel, employees, agents, contractors, or servants shall be entitled to any benefits of the other. The Parties shall not provide any insurance coverage to the other or their employees including, but not limited to, workers' compensation insurance. Each Party shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers' compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. Any and all claims that may or might arise under the Workers' Compensation Act of the State of Nebraska on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of



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any such person or personnel arising out of employment or alleged employment, including without limitation claims of discrimination against a Party, its officers, employees, agents, contractors or servants shall in no way be the responsibility of another Party. No Party shall have any authority to bind the other by or with any contract or agreement, nor to impose any liability upon the other. All acts and contracts of each shall be in its own name and not in the name of the other, unless otherwise provided herein.

- b. Nondiscrimination. All parties agree that in accordance with the Nebraska Fair Employment Practice Act, Neb.Rev.Stat. §48-1122, they will not 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 the race, color, religion, sex, disability, or national origin of the employee or applicant. None of the Parties shall, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances.
- c. Captions. Captions used in this Agreement are for convenience and are not used in the construction of this Agreement.
- d. Applicable Law and Venue. Parties to this Agreement shall conform to all existing and applicable city ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.

Venue for any non-federal legal proceeding under this Agreement shall be in the State of Nebraska, District Court of Douglas County and for any federal legal proceeding in the United States District Court for the State of Nebraska located in Omaha Nebraska.

- e. Amendments/Modification. This Agreement may be modified only by written amendment, duly executed by authorized officials of the Parties. No alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Every amendment shall specify the date on which its provisions shall be effective.
- f. Drug Free Policy. All parties have established and maintain a drug free workplace policy.
- g. Conflict of Interest. In the performance of this Agreement, Requesting Agency



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will avoid all conflicts of interests or appearances of conflict of interest. Requesting Agency will report any conflict of interest immediately to the other party from whom aid is requested. Requesting Agency assures the other parties that no employee or volunteer will have a financial or personal interest in this Agreement.

Dated this _____ day of _____, Year 2020

Fire Department/Agency Name (Print)

Chief Officer of Department/Agency (Print)

Chief Officer of Department/Agency
(Signature)

Community Governing Body Representative
(Print)

Community Governing Body Representative
(Signature)