

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JANUARY 3, 2017 AGENDA**

Subject:	Type:	Submitted By:
FIRST AMENDMENT TO INTERLOCAL COOPERATION AGREEMENT – FIRE AND EMS SERVICES	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BOB LAUSTEN POLICE CHIEF

SYNOPSIS

A resolution has been prepared to approve an amendment to the Interlocal Cooperation Agreement with the City of Papillion and the Papillion Rural Fire Protection District related to Fire and EMS Services.

FISCAL IMPACT

Impact to the Mutual Finance Organization (MFO) funding will be minimal. The proposed changes will provide greater flexibility for the Fiscal Agent's management of the MFO funds.

RECOMMENDATION

Approval

BACKGROUND

In August 2013, the City of Papillion, City of La Vista, and Papillion Rural Fire Protection District (the "Participants") approved an Interlocal Cooperation Agreement ("Fire Interlocal Agreement"), which was effective on October 1, 2013, to create a single fire department and emergency medical service for the entire geographic area encompassed within the Participants' respective boundaries. As part of that Fire Interlocal Agreement, the Participants created the Papillion Fire Protection Mutual Finance Organization ("MFO"), a separate administrative entity, naming the Papillion Finance Director as the MFO Fiscal Agent to coordinate all financial matters contemplated by the Participants.

As a matter of convenience and flexibility in the joint funding of the single Fire Department operations through the MFO, a modification to the fourth paragraph of Paragraph 4.b of Section D. Finances, of the Fire Interlocal Agreement, having to do with reimbursement payments to the individual Participants following the Fiscal Agent's "true-up" calculation of actual receipts and disbursements as compared to budget for the prior fiscal year is being recommended. Under the proposed amendment, true-up funds would remain in the restricted MFO account and would be available to satisfy any shortages in true-up calculations in subsequent years or to be used during the budget process, thereby reducing the necessary contributions of the Participants for that budgetary year.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING THE FIRST AMENDMENT TO THE INTERLOCAL COOPERATION AGREEMENT WITH THE CITY OF PAPIILLION AND THE PAPIILLION RURAL FIRE PROTECTION DISTRICT RELATED TO FIRE AND EMS SERVICES.

WHEREAS, the City of Papillion ("Papillion"), the City of La Vista ("La Vista"), and the Papillion Rural Fire Protection District ("District"), all of Sarpy County, Nebraska (collectively, the "Participants"), entered into an Interlocal Cooperation Agreement, effective on October 1, 2013, to set forth the rights and responsibilities of the Participants in creating a single fire department and emergency medical service ("EMS") for the entire geographic area encompassed within their respective boundaries as said boundaries might be adjusted from time to time, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-804 et seq. (the "Fire Interlocal Agreement"); and

WHEREAS, as part of such Fire Interlocal Agreement, the Participants created a mutual finance organization, known as the Papillion Fire Protection Mutual Finance Organization ("MFO"), as authorized by the Nebraska Municipal Finance Assistance Act, Neb. Rev. Stat. § 35-1201 et seq., naming the Papillion Finance Director as the MFO Fiscal Agent ("Fiscal Agent") to coordinate all financial matters contemplated by the Fire Interlocal Agreement; and

WHEREAS, the Participants desire to modify the terms set forth in the fourth paragraph of Paragraph 4.b of Section D. Finances, of the Fire Interlocal Agreement, as provided in the First Amendment to the Interlocal Cooperation Agreement.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of La Vista that the First Amendment to the Interlocal Cooperation Agreement is hereby approved.

BE IT FURTHER RESOLVED, the Mayor and City Clerk are hereby authorized to sign and execute the necessary documents to effectuate the terms of the First Amendment to the Interlocal Cooperation Agreement on behalf of the City of La Vista.

PASSED AND APPROVED THIS 3RD DAY OF JANUARY, 2017.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**FIRST AMENDMENT
TO
INTERLOCAL COOPERATION AGREEMENT**

This First Amendment to the Interlocal Cooperation Agreement (hereinafter "First Amendment") made this 31st day of December, 2016 ("Effective Date") by and between the City of Papillion ("Papillion"), the City of La Vista ("La Vista"), and the Papillion Rural Fire Protection District ("District") located in Sarpy County, Nebraska (collectively "Participants" or singly "Party") amends and modifies the Interlocal Cooperation Agreement (hereinafter the "Fire Interlocal Agreement") which was adopted by the Participants and made effective on October 1, 2013.

RECITALS:

The Participants entered into the Fire Interlocal Agreement with respect to creating a single fire department and emergency medical service ("EMS") for the entire geographic area encompassed within the respective boundaries of the Participants, as said boundaries might be adjusted from time to time, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-804 et seq.; and

As part of such Fire Interlocal Agreement, the Participants created a mutual finance organization, known as the Papillion Fire Protection Mutual Finance Organization ("MFO"), as authorized by the Nebraska Municipal Finance Assistance Act, Neb. Rev. Stat. § 35-1201 et seq., naming the Papillion Finance Director as the MFO Fiscal Agent ("Fiscal Agent") to coordinate all financial matters contemplated by the Fire Interlocal Agreement; and

The Participants desire to modify the terms set forth in the fourth paragraph of Paragraph 4.b of Section D. Finances, of the Fire Interlocal Agreement to allow funds which would otherwise be refunded to Participants following a "true-up" calculation of actual receipts and disbursements as compared to budget for the prior fiscal year (October 1 – September 30), to remain in the restricted MFO account to satisfy any shortages in true-up calculations for subsequent years, or for a portion to be used during the budget process to reduce necessary contributions from the Participants for the budget year.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Incorporation of Recitals. The recitals set forth above are, by this reference, incorporated into and deemed part of the Fire Interlocal Agreement as modified or amended by this First Amendment.
2. Capitalized Terms. All capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them as set forth in the Fire Interlocal Agreement.
3. Amendments. This First Amendment applies to the following Section of the Fire Interlocal Agreement:

- A. Section D.4.b (4th paragraph). That the fourth paragraph of Paragraph 4.b of Section D. Finances, of the Fire Interlocal Agreement, having to do with payments to the individual Participants following the Fiscal Agent's "true-up" calculation of actual receipts and disbursements as compared to budget for the prior fiscal year, is hereby repealed in its entirety, and the following paragraph is substituted in its place and incorporated into the Fire Interlocal Agreement by this reference:

Section D. Finances.

Paragraph 4. Administration and Distribution of Funds.

* * * * *

- b. Proportionate Share of Expenditures.

* * * * *

[Fourth paragraph]

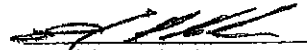
In December, the Fiscal Agent shall provide each Participant with a "true-up" calculation of actual receipts and disbursements as compared to budget for the prior fiscal year (October 1 - September 30). If as a result of the calculation, a Participant would be due a refund associated with the true-up (the "true-up funds"), such true-up funds shall remain in the restricted MFO account. The true-up funds would be available to satisfy any shortages in true-up calculations for subsequent years. The Parties to this Agreement may also choose to use a portion of the true-up funds remaining in the restricted MFO account during the budget process, thereby reducing the necessary contributions from the Parties for that budgetary year.

4. No Other Amendment. Except as specifically modified or amended by this First Amendment, the Fire Interlocal Agreement shall remain in full force and effect.
5. Binding Effect. This First Amendment to the Fire Interlocal Agreement shall be binding upon the Parties, their respective successors, and assigns.

[Signature pages to follow]

CITY OF PAPILLION,
A Municipal Corporation

Date: 12/20/16


David P. Black, Mayor

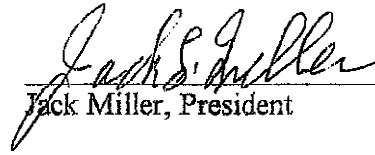
Attest:


Elizabeth Butler, City Clerk



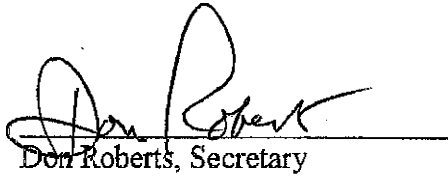
PAPILLION RURAL FIRE DISTRICT

Date: 12-15-16



Jack Miller, President

Attest:



Don Roberts, Secretary

CITY OF LA VISTA,
A Municipal Corporation

Date: _____

Douglas Kindig, Mayor

Attest:

Pam Buethe, City Clerk

RESOLUTION NO. R16-0186

Legislative Version of the First Amendment to the Interlocal Cooperation Agreement (known as the "Fire Interlocal Agreement")

Section D.4.b (4th paragraph) of the Fire Interlocal Agreement

Section D. Finances

* * * * *

4. Administration and Distribution of Funds. Administration and distribution of funds will be as follows:

* * * * *

- b. Proportionate Share of Expenditures. Each Participant, as of the Effective Date, will be responsible for its proportionate share of all actual expenses incurred in preparation for the Fire Department operations during the Transition Period, subject to review and approval of the Fire Chief. Each Participant, on and after the Operations Date, will be responsible for its proportionate share of all actual expenditures for Fire Department operations. Budgeted and actual expenditures for Fire Department operations will include each Party's debt service, lease payments or other obligations coming due in the particular fiscal year on any lease purchase, bonded or other acquisition indebtedness, obligation or refinancing of any real property, Apparatuses/EMS Units or other fire or EMS assets or equipment of the Party on the Effective Date and provided for use under this Agreement ("Existing Indebtedness"). The proportionate share of expenditures to be provided by each Participant will be determined as follows: The total Fire Department budget expenses, minus any funds obtained from the Fund, minus the anticipated EMS or other billing revenue, minus any miscellaneous income within the MFO general funds. The remaining expenses after this calculation will be apportioned to each Participant based on the percentage of total certified property tax valuation attributed to each Participant. The Participants each shall set a portion of its general fund levy at the rate the Participants approved as appropriate to net sufficient revenue to pay each Party's respective share of the general fund expenses of Fire Department operations as budgeted in accordance with this Agreement, after maximum collection and delinquent tax fees pertinent to the Participants. In addition, Existing Indebtedness and any expenses related to bonded or other acquisition indebtedness, obligations or refinancing pursuant to this Agreement for assets acquired after the Operations Date in accordance with this Agreement for Fire Department operations (collectively "Bond Fund Expenses"), will be provided for by the setting of a portion of a Party's bond fund or other levy at a rate the Participants approve, or allocation of other revenue sources, as appropriate to net sufficient revenue to pay the Party's share of the Bond Fund Expenses after maximum collection and delinquent tax fees pertinent

to the Participants for the revenue source used. The Participants' relative shares of Bond Fund Expenses shall be determined and allocated in the same manner as described above with respect to general fund expenses, based on each Party's certified property tax valuations as a percentage of total certified property tax valuations of all Participants. The final portion of the general fund or other levies agreed to by the Participants to pay each Party's allocable share of costs of Fire Department operations will be established after the certified valuation date and prior to September 1st of each year.

If Papillion or La Vista annexes property within its jurisdiction, then the share of operational costs with respect to the annexed areas shall be apportioned to the annexing Party based upon the certified property tax valuation of property within the annexed area with respect to which (and limited to the extent) the Party actually receives levied assessments for the purpose of jointly funding the Fire Department operations and EMS.

The distribution of funds will be as follows: The Fiscal Agent will maintain an account specifically for the purpose of receiving and dispersing funds of the MFO. On the 10th of each month of the fiscal year, October 1 through September 30, the Participants will transfer one/twelfth (1/12) of their respective shares of the annual budgeted financial commitment for all expenses, general, bond and miscellaneous, to this designated account. On the 15th of each month of the fiscal year, October 1 through September 30, the Fiscal Agent will electronically transfer one/twelfth (1/12) of the respective shares of annual budgeted expenses to the designated Participants' account appropriate for the payment of the expenses. Papillion on and after the Operations Date, will collect EMS fees directly. Before the Operations Date, each Party shall collect and retain said Party's EMS fees. Interest accumulated in the MFO account will be used in subsequent fiscal years as miscellaneous income to the benefit of the Participants. The Participants' own cash reserves or other revenue sources will cover cash flow shortfalls during the fiscal year of the Participants. The Fiscal Agent, as soon as practicable, shall give the Participants advance notice of any projected cash flow shortfalls. The Fiscal Agent of the MFO will provide quarterly financial reports to the Participants.

In December, the Fiscal Agent shall provide each Participant with a "true-up" calculation of actual receipts and disbursements as compared to budget for the prior fiscal year (October 1 – September 30). ~~As a result of those calculations, any "true-up" payments to the individual Participants will be made in the following month of January.~~ If as a result of the calculation, a Participant would be due a refund associated with the true-up (the "true-up funds"), such true-up funds shall remain in the restricted MFO account. The true-up funds would be available to satisfy any shortages in true-up calculations for subsequent years. The Parties to this Agreement may also choose to use a portion of the true-up funds remaining in the restricted MFO account during the budget process, thereby reducing the necessary contributions from the Parties for that budgetary year.

INTERLOCAL COOPERATION AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT ("Agreement") is effective on October 1, 2013 ("Effective Date"), by and between the City of Papillion ("Papillion"), the City of La Vista (hereinafter referred to as "La Vista"), and the Papillion Rural Fire Protection District ("District") located in Sarpy County, Nebraska (collectively "Participants" or singly "Party").

WITNESSETH:

WHEREAS, Papillion and District entered into an Interlocal Cooperation Agreement on December 18, 2001, to set forth the rights and responsibilities of Papillion and District in creating a single fire service for the entire geographic area encompassed within their respective boundaries, which was amended on September 17, 2008, as set forth therein (collectively the "Papillion/District Interlocal Agreement"); and

WHEREAS, La Vista wishes to join Papillion and District as a participant in creating a single fire department and emergency medical service ("EMS") for the entire geographic area encompassed within the respective boundaries of the Participants, as said boundaries might be adjusted from time to time ("Participants' Boundaries"); and

WHEREAS, in addition to authority under other applicable laws, the Participants, as local governmental units of the State of Nebraska, may enter into an Interlocal Cooperation Agreement pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-804 et seq., to set forth the rights and responsibilities of the Participants in creating a single fire department and EMS for the entire geographic area encompassed within the Participants' Boundaries; and

WHEREAS, the Participants desire to create a mutual finance organization as authorized by the Nebraska Municipal Finance Assistance Act, Neb. Rev. Stat. § 35-1201, et seq; and

WHEREAS, the Participants desire to create a separate administrative entity as authorized by Neb. Rev. Stat. § 77-27,142.

NOW, THEREFORE, BE IT AGREED BY THE UNDERSIGNED PARTICIPANTS AS FOLLOWS:

Section A. Purpose and Term.

1. Purpose. The purpose and intent of this Agreement is to specify the rights and responsibilities of the Participants hereto regarding fire operations and EMS to be provided within the Participants' Boundaries.

2. Term. This Agreement shall commence on the Effective Date and terminate on September 30, 2033. Successive, additional ten (10) year options for extension of terms

and conditions of this Agreement shall be part of this Agreement, with each successive, additional ten (10) year option contingent upon approval of the Participants.

Section B. Fire Suppression and Protection and EMS Operations.

1. Fire Department Operations. The Participants, effective April 1, 2014 ("Operations Date"), shall operate as a single fire department and EMS within the Participants' Boundaries, as set forth below:

- a. La Vista and District, on and after the Effective Date and until the Operations Date ("Transition Period"), shall each contribute funding and use of its fire or EMS equipment, and fire apparatuses, EMS medic units and other fire or EMS vehicles (collectively "Apparatuses/EMS Units"), and fire department real property as set forth herein to Papillion for Fire Department training purposes in preparation for the operation of a single Fire Department and EMS; and
- b. La Vista and District, on and after the Operations Date, shall each contribute the use of its Apparatuses/EMS Units and fire department real property as set forth herein to Papillion in order for it to provide Fire Department operations for all Participants and areas within Participants' Boundaries; and
- c. Papillion, on and after the Operations Date, shall expand its Fire Department operations and dedicate all present and future fire and EMS facilities, equipment, personnel and services to provide all fire and EMS operations and services, including but not limited to, fire suppression and protection, fire and life safety code enforcement, EMS (including advanced life support EMS), EMS and any other billing/collection services, and related services, under this Agreement for all of the Participants and areas within Participants' Boundaries ("Fire Department operations"). This Fire Department shall be prepared and begin providing such Fire Department operations on the Operations Date and shall continue to provide such Fire Department operations for the term of this Agreement.

2. Level of Service. Papillion shall assume full responsibility for the provision of all Fire Department operations within the Participants' Boundaries in accordance with this Agreement.

3. Fire Department Name, Administration and Operation. The Participants acknowledge each entity has a proud, long history of providing fire and EMS to their respective jurisdictions. In an effort to recognize that history, the Budget Review and Administrative Committee identified in Section 4 may suggest a Department name change to the respective governing bodies of each entity. All three of the Participants' governing bodies must approve any name change, by a formal public vote of the members either elected or appointed to their respective bodies. Papillion and its Fire Chief shall be vested with the full authority and responsibility for administration and

operation of the Fire Department and all related activities, including management of the operational budget, equipment, Apparatuses/EMS Units, and real property entrusted for use of the Fire Department for the benefit of the Participants and the purposes set forth herein.

The Fire Chief or his designee shall be the primary point of contact and liaison of each Party to this Agreement and upon request shall attend meetings of governing bodies or staff of the Participants to provide updates and address any issues relating to Fire Department operations that might arise from time to time. The Fire Chief initially shall consider and attempt to resolve any issues of any Party arising under this Agreement. Any Party that is dissatisfied with proposed resolution of any issues by the Fire Chief shall have the right to submit the issues for consideration of the administrative officials of the Participants, and if still dissatisfied, with the Committee described in Section 4 below.

4. Annual Budget Process. The Participants shall form a Budget Review and Administrative Committee ("Committee"). The Committee, working with the Fire Chief and Fiscal Agent, shall be responsible for financial oversight, preparing and recommending the budget submitted to Papillion for Fire Department operations, providing status reports, gathering feedback of Participants, and making recommendations to Papillion or the Fire Chief related to Fire Department operations. The Committee shall also be responsible for acting in an advisory capacity to the Fire Chief and Papillion in matters of administration and oversight of this Agreement and the cooperative undertaking set forth herein. Meetings of the Committee shall be held at least quarterly, unless otherwise agreed by its members. Each Party shall designate two (2) representatives to serve on the Committee. Each Party also shall designate an alternate representative to temporarily serve as needed. All representatives and alternate representatives shall serve at the pleasure of the appointing Party, and the appointing Party shall fill any vacancies in its appointments. Each of the City Administrators of La Vista and Papillion or his or her designee shall serve as an ex officio, nonvoting member of the Committee. The District may appoint an ex officio, nonvoting member of the Committee. The Papillion City Administrator, unless otherwise specified by the Committee, will serve as the Committee's Chairperson. The Papillion Fire Chief or his designee shall also serve on the Committee as an ex officio, nonvoting member for the purpose of providing information and recommendations regarding the Fire Department operations budget and shall attend the scheduled meetings of the Committee. At least four (4) Committee members, including at least one (1) Committee member representing each Party to this Agreement, must be present at a meeting to constitute a quorum of the Committee to transact business. The affirmative votes of a majority of those present at a meeting at which a quorum is present, and including the affirmative vote of at least one Committee member representing each Party to this Agreement, shall be required for the Committee to act.

Notwithstanding anything in this Section 4 or elsewhere in this Agreement to the contrary, any of the following matters related to Fire Department operations, of which the related costs or expenses are to be allocable among and shared by the Participants

pursuant to this Agreement, shall be subject to prior approval of the governing body of each Party to this Agreement:

- a. Acquisition of any direct or indirect interest in real property;
- b. Any budgeted or nonbudgeted expenditure, or series of related expenditures, by purchase, lease or any other method totaling \$50,000 or more;
- c. Increase of 5% or more of annual budgeted or actual expenditures;
- d. Property tax levy on property within a Party's boundaries; or
- e. Issuance or commitment to bonded debt, lease purchase or any similar indebtedness, financing or obligation.

The Committee, for the purposes of Neb. Rev. Stat. § 77-27,142(3), shall be a separate administrative entity relating to public infrastructure projects, as defined in Neb. Rev. Stat. § 77-27,142(2), including without limitation the joint use and acquisition of buildings and capital or other equipment used in the operation of municipal government or to provide municipal services and specifically Fire department operations and services. Said Committee shall be created and come into existence effective January 1, 2014 or on such other date as agreed by the chief administrative officials of the Participants. The Committee shall be responsible for assessing and making recommendations for long term development of unified governance of said public infrastructure projects with respect to the Participants, and at least every five years after this Agreement is entered the Committee shall review performance of such projects, including without limitation capital, operating and service delivery costs, effectiveness and efficiencies, with comparable paid fire departments, in addition to any other benchmarks periodically established by the Committee or Nebraska Legislature.

5. Equipment. The District and La Vista agree to create a schedule of, and grant Papillion full use and authority over, all fire or EMS equipment owned or leased by the District or La Vista during the term of this Agreement, subject to provisions of applicable law or leases. Papillion agrees to provide for property and casualty insurance satisfactory to the Participants of not less than \$2 million per occurrence, \$5 million general aggregate and naming each Party as an additional insured, maintenance in good and working condition and repair, and all other requirements and expenses associated with this equipment and to include such costs in the operational expense of the Fire Department. Papillion agrees to use reasonable judgment and care in using the equipment. Any sale, disposition or other transfer or conveyance ("Conveyance") of any Party's fire or EMS equipment, or any interest therein, pursuant to this Agreement shall be jointly recommended by the Fire Chief, the Papillion City Administrator, and chief administrative official of the owner, lessor or lessee of the equipment, and such Conveyance shall be approved by the respective Party's governing body, if required. All of the net proceeds, if any, received from the Conveyance of such equipment, after paying to said owner, lessor or lessee the amount necessary to satisfy any remaining indebtedness, lease payments or other obligations related to its financing the original acquisition cost of said equipment, shall be transferred to the Papillion Fire Protection Mutual Finance Organization ("MFO"), and used for general funding of the Fire

Department. The Participants agree to enter and execute such agreements, instruments or other documents as any owner, lessor or lessee may require for use or Conveyance of equipment pursuant to this Section 5.

6. Fire Apparatuses and EMS Medic Units. The District and La Vista agree to create a schedule of, and grant Papillion full use and authority over, all fire Apparatuses/EMS Units owned or leased by the District or La Vista during the term of this Agreement, subject to provisions of applicable law or leases. Papillion agrees to provide for property and casualty insurance satisfactory to the Participants of not less than \$2 million per occurrence, \$5 million general aggregate and naming each Party as an additional insured, maintenance in good and working condition and repair, and all other requirements and expenses associated with such Apparatuses/EMS Units and to include such costs in the operational expense of the Fire Department. Papillion agrees to use reasonable judgment and care in using the Apparatuses/EMS Units. Any Conveyance of any Party's Apparatuses/EMS Units, or any interest therein, pursuant to this Agreement shall be jointly recommended by the Fire Chief, the Papillion City Administrator, and chief administrative official of the owner, lessor or lessee of the Apparatuses/EMS Units, and such Conveyance shall be approved by the respective Party's governing body, if required. All of the net proceeds, if any, received from the Conveyance, after paying to said owner, lessor or lessee the amount necessary to satisfy any remaining indebtedness, lease payments or other obligations related to its financing the original acquisition cost of said Apparatuses/EMS Units, shall be transferred to the MFO, and used for general funding of the Fire Department. The Participants agree to enter and execute such agreements, instruments or other documents as any owner, lessor or lessee may require for use or Conveyance of Apparatuses/EMS Units pursuant to this Section 6.

La Vista acknowledges that it is aware of Papillion's plan to construct a new Public Works Facility, which will provide maintenance services to all Fire Department Apparatuses/EMS Units. La Vista agrees that until such facility is completed or until such time that Papillion advises La Vista that other maintenance arrangements have been made to service its Apparatuses/EMS Units, La Vista agrees that it shall continue providing reasonable maintenance on such Apparatuses/EMS Units. La Vista may seek reimbursement for such maintenance by submitting a billing invoice to Papillion within an administratively practicable time as determined by the La Vista and Papillion Finance Directors in consultation with the Fire Chief.

7. Real Property. The Participants acknowledge that there are two (2) types of real property interests as indicated on Exhibit "A", leased property and nonleased property, the use of which is being provided under this Agreement for the purposes stated herein. The Participants agree that Exhibit "A" shall be amended from time to time hereafter to include any real property interests or improvements acquired, improved or devoted after the Effective Date of this Agreement for Fire Department operations. With regard to leased property, the Participants shall grant Papillion full use and authority over its respective leased real property, subject to provisions of applicable law or leases, for the term of the applicable leases. With regard to non-leased property, the Participants shall

allow the use of all real property now or hereafter identified in Exhibit "A", attached hereto, subject to applicable law. The Participants desire, if economically and legally feasible and advisable, that non-leased property ultimately will be conveyed and directly or indirectly united in shared ownership for the mutual benefit of the Participants pursuant to this Agreement. Accordingly, the Participants, in consultation with the Committee and legal and economic advisors of the Participants, within 12 months after this Agreement is executed, will reasonably assess and determine the feasibility and advisability of such conveyances and unity of ownership and take further action, if deemed appropriate and agreed to by the Participants.

Papillion agrees to provide for property and casualty insurance satisfactory to the Participants at current replacement cost and general liability coverage of at least \$2 million per occurrence, \$5 million general aggregate and naming each Party as an additional insured, maintenance in good and working condition and repair, and all other requirements and expenses associated with such real property and to include such costs in the operational expense of the Fire Department.

Any Conveyance of any Party's real property, or any interest therein, pursuant to this Agreement, shall be jointly recommended by the Fire Chief, Papillion City Administrator, and chief administrative official of the owners, lessors and lessees of the real property, and such Conveyance shall require approval of all of the Participant's governing bodies. All of the net proceeds, if any, received from the disposition of such real property, after paying to the Party that is the owner or lessee of the real property the amount necessary to satisfy said Party's remaining indebtedness, lease payments or other obligations related to its financing the original acquisition of said real property, and unless otherwise specified by said Party, shall be transferred to the MFO, and used for general funding of the Fire Department.

Any Conveyance of jointly held real property, or any interest therein, pursuant to this Agreement, shall be jointly recommended by the Fire Chief and Papillion City Administrator, and such Conveyance shall require approval of all of the Participant's governing bodies. All of the net proceeds, if any, received from the disposition of such real property, after paying the amount necessary to satisfy any remaining indebtedness, lease payments or other obligations related to financing the original acquisition of said real property, shall be transferred to the MFO, and used for general funding of the Fire Department.

The Participants agree to enter and execute such leases or other agreements, instruments or documents as any owner, lessor or lessee may require for use or Conveyance of any real property interests described in this Section 7.

La Vista's building and grounds department will provide normal operating maintenance of real property used in Fire Department operations located in La Vista, which maintenance will include regular trash removal, lawn and landscape upkeep and snow removal. In addition, La Vista will continue to operate the building energy management system in use for La Vista District No. 2 on and after the Effective Date for

the term of this Agreement so long as said system is in use by La Vista. Costs incurred by La Vista for the real property used in Fire Department operations on or after the Operations Date pursuant to this paragraph shall be reimbursed by Papillion as billed by La Vista, and included in the annual budget and allocated among the Participants as shared expenses of Fire Department operations pursuant to this Agreement.

8. **Personnel and Civil Service.** All present and future sworn positions within the Fire Department shall be employees of Papillion and subject to the collective bargaining agreement between Papillion and the Professional Firefighters Association of Papillion, Local No. 3767, and the Rules and Regulations of the Papillion Civil Service Commission and the Nebraska Civil Service Act, Neb. Rev. Stat. § 19-1826, et seq.

9. **Training.** Papillion shall assure that all mandated training or training required to meet the level of services required by this Agreement is provided, as appropriate, on an ongoing basis to the Fire Department employees.

Section C. Mutual Finance Organization.

1. The Participants hereby create a mutual finance organization as authorized by the Nebraska Municipal Finance Assistance Act, Neb. Rev. Stat. § 35-1201, et seq. This mutual finance organization shall be known as the Papillion Fire Protection Mutual Finance Organization or MFO, or the name consistent with the name of the Fire Department.

2. The City of Papillion Finance Director shall serve as the MFO Fiscal Agent, who, in consultation with the Committee and chief financial official of each Party, shall act for the joint and mutual benefits of the member Participants under this Agreement. The MFO shall not acquire or hold any property other than public funds for distribution to the Fire Department hereunder. Any property purchased with MFO funds shall be jointly titled to the Participants.

3. **General Powers and Duties.** The duties of the MFO shall be:

- a. To transact any necessary business for financing the operations and equipment needs of the Fire Department or MFO;
- b. To have charge and custody of and manage all funds of the MFO for the purposes set forth in this Agreement; and
- c. To seek funding from the Nebraska Mutual Finance Assistance Fund (hereinafter "Fund") or other potential funding organizations or funds, if eligible.

The MFO is authorized to prepare and submit a timely application to the Fund or any other funding, if any, for the maximum assistance available to the MFO. The MFO is authorized to do all things necessary and proper to obtain funding assistance, including

signing applications and receiving funds without further or additional authorization of the individual parties to this Agreement.

Section D. Finances

1. **Property Tax Levy.** The Participants hereby agree to levy a general fund property tax at an equal rate, as determined by unanimous agreement of the Participants, on each \$100 taxable valuation of the property subject to levy within their respective boundaries for the purpose of jointly funding the single Fire Department operations by the Participants. For purposes of this Section 1, the agreed levy of each Party will be the portion of said Party's general fund levy to pay said Party's allocable share of Fire Department operations as determined pursuant to this Agreement. The Participants prior to September 1st of each year shall agree upon the general fund tax rate. The agreed upon property tax rate shall be in addition to agreed levies for each Party's allocable share of bonded indebtedness and lease-purchase contracts in existence on July 1, 1998, or of other Bond Fund Expenses not paid by the general fund levy, as determined pursuant to this Agreement.

2. **Rural Fire District Levy Limitation:** The Participants hereby acknowledge current Nebraska State Law limits the levy authority of the Rural Fire District. If, in the event the expense to effectuate this Agreement exceeds the Rural Fire District's levy authority, the Cities of Papillion and LaVista shall have the option to either fund the additional expenses or reduce the overall expenses associated with the Agreement to equalize the levy. The Rural Fire District agrees to request an adequate levy to fund their annual pro-rata portion of the expenses or the maximum levy authority granted by state law during the term of this Agreement. The Rural Fire District also agrees to utilize any reserve accounts and assets, to the extent allowed by law and within Generally Accepted Accounting Procedures, to meet their financial obligations pursuant to this Agreement.

3. **Fiscal Agent.** The City of Papillion Finance Director shall be the fiscal agent ("Fiscal Agent") for the purposes stated herein and shall be responsible for coordinating all financial matters contemplated in this Agreement on behalf of the Participants. Each Party to this Agreement during normal business hours shall be provided access and have the right to inspect Fiscal Agent's records and other information related to this Agreement, and Fiscal Agent shall provide such reports, records or other information as any Party may from time to time request. Any Party at its cost may from time to time request an audit of Fiscal Agent records related to this Agreement.

4. **Administration and Distribution of Funds.** Administration and distribution of funds will be as follows:

- a. **Budget Review Process.** The Fire Chief before July 1 each year shall prepare a proposed general fund, bond fund and any expense budgets for presentation to the Committee for its review and recommendation. The Committee before July 1 each year shall meet to review the Fire Chief's proposed general fund, bond fund and any expense budgets and make recommendations for approval or denial, or adjustments to such budgets.

Thereafter, the Fire Chief will prepare the Fire Department budget for the Fiscal Agent for inclusion in Papillion's annual budget for presentation and approval by the Papillion City Council, including the Committee's recommendations of approval or adjustments.

This budget authorization process must be completed prior to July 15th each year to allow the Participants to initiate their budget process, which involves a timeline established by Nebraska statutes.

- b. **Proportionate Share of Expenditures.** Each Participant, as of the Effective Date, will be responsible for its proportionate share of all actual expenses incurred in preparation for the Fire Department operations during the Transition Period, subject to review and approval of the Fire Chief. Each Participant, on and after the Operations Date, will be responsible for its proportionate share of all actual expenditures for Fire Department operations. Budgeted and actual expenditures for Fire Department operations will include each Party's debt service, lease payments or other obligations coming due in the particular fiscal year on any lease purchase, bonded or other acquisition indebtedness, obligation or refinancing of any real property, Apparatuses/EMS Units or other fire or EMS assets or equipment of the Party on the Effective Date and provided for use under this Agreement ("Existing Indebtedness"). The proportionate share of expenditures to be provided by each Participant will be determined as follows: The total Fire Department budget expenses, minus any funds obtained from the Fund, minus the anticipated EMS or other billing revenue, minus any miscellaneous income within the MFO general funds. The remaining expenses after this calculation will be apportioned to each Participant based on the percentage of total certified property tax valuation attributed to each Participant. The Participants each shall set a portion of its general fund levy at the rate the Participants approved as appropriate to net sufficient revenue to pay each Party's respective share of the general fund expenses of Fire Department operations as budgeted in accordance with this Agreement, after maximum collection and delinquent tax fees pertinent to the Participants. In addition, Existing Indebtedness and any expenses related to bonded or other acquisition indebtedness, obligations or refinancing pursuant to this Agreement for assets acquired after the Operations Date in accordance with this Agreement for Fire Department operations (collectively "Bond Fund Expenses"), will be provided for by the setting of a portion of a Party's bond fund or other levy at a rate the Participants approve, or allocation of other revenue sources, as appropriate to net sufficient revenue to pay the Party's share of the Bond Fund Expenses after maximum collection and delinquent tax fees pertinent to the Participants for the revenue source used. The Participants' relative shares of Bond Fund Expenses shall be determined and allocated in the same manner as described above with respect to general fund expenses, based on each Party's certified property tax valuations as a percentage of total certified

property tax valuations of all Participants. The final portion of the general fund or other levies agreed to by the Participants to pay each Party's allocable share of costs of Fire Department operations will be established after the certified valuation date and prior to September 1st of each year.

If Papillion or La Vista annexes property within its jurisdiction, then the share of operational costs with respect to the annexed areas shall be apportioned to the annexing Party based upon the certified property tax valuation of property within the annexed area with respect to which (and limited to the extent) the Party actually receives levied assessments for the purpose of jointly funding the Fire Department operations and EMS.

The distribution of funds will be as follows: The Fiscal Agent will maintain an account specifically for the purpose of receiving and dispersing funds of the MFO. On the 10th of each month of the fiscal year, October 1 through September 30, the Participants will transfer one/twelfth (1/12) of their respective shares of the annual budgeted financial commitment for all expenses, general, bond and miscellaneous, to this designated account. On the 15th of each month of the fiscal year, October 1 through September 30, the Fiscal Agent will electronically transfer one/twelfth (1/12) of the respective shares of annual budgeted expenses to the designated Participants' account appropriate for the payment of the expenses. Papillion on and after the Operations Date, will collect EMS fees directly. Before the Operations Date, each Party shall collect and retain said Party's EMS fees. Interest accumulated in the MFO account will be used in subsequent fiscal years as miscellaneous income to the benefit of the Participants. The Participants' own cash reserves or other revenue sources will cover cash flow shortfalls during the fiscal year of the Participants. The Fiscal Agent, as soon as practicable, shall give the Participants advance notice of any projected cash flow shortfalls. The Fiscal Agent of the MFO will provide quarterly financial reports to the Participants.

In December, the Fiscal Agent shall provide each Participant with a "true-up" calculation of actual receipts and disbursements as compared to budget for the prior fiscal year (October 1 – September 30). As a result of those calculations, any "true-up" payments to the individual Participants will be made in the following month of January.

- c. Annexation of District Valuation. In consideration of Papillion or La Vista sharing future bonded or other acquisition indebtedness or obligation payments for Fire Department operations, the District will excuse the partial annexation agreement payments due to the District, if any, from Papillion or La Vista. Further, the District agrees to not require Papillion or La Vista to make similar payments during the term of this Agreement for any annexations with effective dates during the term of this Agreement. The District will appropriately enter into partial annexation agreements with any

other city that annexes portions of the District. Payments that are made from these agreements, during the term of this Agreement, to the District will be used as miscellaneous income in calculating funding levels as described in this Section. In the event that any other such city makes a payment that is a lump sum instead of installments for the term of the bond or other acquisition indebtedness or obligations, that lump sum will be considered to have been made as installments and amortized over the term of the indebtedness or obligations it is related to.

Section E. Termination by Material Breach or by Agreement.

1. Termination by Material Breach. A Party or Parties shall have the option to terminate this Agreement with respect to any other Party that commits a material breach of this Agreement. A Party or Parties seeking to terminate this Agreement for a material breach of another Party, shall notify the Participants in writing specifying the alleged breach and provide the breaching Party a minimum time of not less than thirty (30) days to cure the alleged breach. However, if the nature of the material breach is such that more than thirty (30) days are reasonably required for its cure, the breaching Party shall be in compliance with this provision if the breaching Party commences to cure within the thirty (30) day period, and thereafter diligently pursues such cure to completion. Unless a longer period of time is authorized, the termination shall be final and become effective at the end of a transition period of one hundred twenty (120) days following the failure to cure within the specified cure period ("Termination Transition Period"), as extended; provided, however, the Termination Transition Period shall be extended (a) as the Participants reasonably deem necessary or appropriate in the interests of public safety, or (b) until one hundred twenty (120) days after final determination of any lawsuit, including appeals, affirming a termination pursuant to this Section E. It is understood by the Participants, notwithstanding any termination or reason given therefore, that services and payments, if any, continue through the Termination Transition Period. Upon completion of the Termination Transition Period, the terminating Party's obligation for payment of its proportionate share under this Agreement shall terminate with respect to all payments of the Party due after the effective date of termination; provided, however, the terminating Party shall remain obligated for all payments of the Party under this Agreement that were due before the effective date of the termination.

2. Termination by Agreement. Unless terminated due to a material breach by a Party, or by the written consent of all Participants to terminate this Agreement ("Complete Termination"), this Agreement shall not terminate before the end of the initial or any subsequent term.

3. Continuation of Fire Department Operations and EMS. Upon the termination of any Party from this Agreement, such Party shall assume full responsibility for the administration of Fire Department operations within its respective boundaries upon the effective date of such termination. The termination of a Party to this Agreement shall not terminate the Agreement in regards to the remaining Parties, and such Agreement

shall remain in effect for such Parties for the remainder of the term of this Agreement or as otherwise provided herein.

4. Distribution of Assets upon Termination.

- a. **Complete Termination of Agreement by Participants.** Upon Complete Termination of this Agreement, unless otherwise agreed by all Participants, all property contributed to or acquired by the Fire Department during and under the terms of this Agreement shall be disposed of in the following manner:
 - i. All jointly held vehicles, equipment and other personal property acquired during the term of this Agreement shall be sold in an arm's length sale to an unrelated third party, unless otherwise agreed to by the Participants; and
 - ii. All vehicles, equipment and other personal property contributed by and titled to a Party or Participants for use pursuant to this Agreement shall be returned to the respective Party or Participants; and
 - iii. All interests in jointly held real property acquired during this Agreement shall be sold in an arm's length sale to an unrelated third, unless otherwise agreed to by the Participants; and
 - iv. All interests in real property contributed by and titled to a Party or Participants for use pursuant to this Agreement shall be returned to the respective Party or Participants; and
 - v. All unexpended funds or reserves in the MFO account collected during the term of this Agreement, receivable or otherwise existing under this Agreement, shall be distributed based on the Party's proportionate share of overall expenditures existing on the day prior to termination.
- b. **Termination of Any Party by Material Breach or Agreement.** In the event of termination, if any, by any Party either by agreement or material breach, this Agreement shall remain in effect with respect to the remaining Parties. The terminating Party's interest in assets under this Agreement shall be distributed as follows, unless otherwise agreed by the terminating Party and remaining Parties:
 - i. The terminating Party will receive all vehicles, equipment and other personal property and all interests in real property titled to such Party that was contributed to the Fire Department by such terminating Party for use pursuant to this Agreement;

- ii. The terminating Party will receive a proportionate share of the current value of all vehicles, equipment and other personal property and of all interests in real property jointly held that was acquired during the term of this Agreement. The remaining Participants shall have the option to distribute such proportionate share on an installment basis over a twenty-four (24) month period following termination of this Agreement. Current value shall be determined by qualified appraisers selected by agreement of the terminating Party and remaining Parties; or in the absence of agreement, then by the average of the appraisals of each item, with one appraiser appointed by the terminating Party and one appraiser appointed by the remaining Parties. The terminating Party's proportionate share shall be its share of expenditures existing on the day prior to termination; and
- iii. The terminating Party's share of unexpended funds or reserves in the MFO account collected during the term of this Agreement, receivable or otherwise existing under this Agreement, shall be distributed to the terminating Party based on its proportionate share of overall expenditures existing on the day prior to termination.

Notwithstanding any provision of this Agreement to the contrary the Participants, acknowledging the unique and critical nature of this Agreement and need to ensure continued, uninterrupted delivery of fire, EMS and related services to each of the Participants, agree that, in the event of a breach, there would not be an adequate remedy at law, and accordingly any Party shall have the right to enforce this Agreement by specific performance.

Section F. Miscellaneous Provisions.

1. **Effect of Agreement.** This Agreement shall supplement and not replace or modify the terms of any mutual assistance agreements or interlocal cooperation agreements among the Participants or any of them in effect upon the date of this Agreement; provided, however, (a) Papillion and District intend for this Agreement to revoke the Papillion/District Interlocal Agreement in its entirety as of the Operation Date of this Agreement, (b) Papillion and District intend that any terms or provisions in conflict as between the Papillion/District Interlocal Agreement and this Agreement prior to such revocation, including but not limited to the proportionate share of expenses, shall be governed by the terms of this Agreement, and (c) La Vista and District designate Papillion to carry out, and Papillion assumes and agrees to carry out, any covenant or obligation under any mutual assistance or interlocal cooperation agreement of District or La Vista to provide mutual assistance, fire, EMS or related operations, services or support.

2. **Separate Legal Entities.** This Agreement shall not be construed to have created a separate legal entity.

3. Indemnification. Each Party agrees to release, indemnify and hold harmless ("Indemnifying Party") each other Party ("Indemnified Party") and said Indemnified Party's officers, officials, employees and agents, and each of them, from and against all liabilities, claims, costs and expenses whatsoever arising out of or resulting from the negligence, acts or omissions of the Indemnifying Party, or the officers, officials, employees, agents or contractors of the Indemnifying Party.

4. Governmental Subdivision. Except as provided herein, each Party shall maintain its autonomy and indebtedness as a governmental subdivision. This Agreement shall not relieve any Party of any obligations or responsibility imposed upon it by law except to the extent of actual and timely performance by Papillion as provided under this Agreement, which performance may be offered in satisfaction of the obligation or responsibility.

5. Modifications. That no modification, termination or amendment of this Agreement may be made except by written agreement signed by all of the Participants.

6. Severability. In case one or more of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable for any reason in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

7. Entire Agreement. Except as otherwise provided in Section F.1 of this Agreement, the entire agreement between the Participants hereto is contained in this Agreement, and this Agreement supersedes all previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument, duly authorized and executed by Participants subsequent to the date hereof. All schedules, and exhibits referenced in this Agreement, and all lease or sublease agreements, documents of transfer or conveyance and other documents or instruments now or hereafter adopted or executed by any of the Participants to carry out this Agreement shall be incorporated into and become part of this Agreement by this reference.

8. Assignment. This Agreement may not be assigned by any Party without express written consent of the Participants; provided, however, in the event that the Fire Department consolidates with any other fire department this Agreement, at the option of the Participants, may be assigned to the newly created fire department. Fire Department consolidation requires the Participants unanimous approval.

9. Further Assurances. From and after the Effective Date of this Agreement, the Participants agree to cooperate with each other and will use commercially reasonable efforts to implement the transactions contemplated by this Agreement. Each Party, at any time and from time to time, upon request by any other Party and without further consideration, shall take or cause to be taken such actions and execute, acknowledge

and deliver, or cause to be executed, acknowledged and delivered, such additional assurances as may be required and reasonably requested for confirming and accomplishing the matters and transactions hereunder. Such assurances shall be in the form and content satisfactory to the requesting and responding Parties, without increasing or extending any cost, duty or liability of the responding Party.

10. Further Authorization. The Mayors of Papillion and La Vista and President of the District each shall be authorized to take all further actions to carry out the terms and conditions of this Agreement, including without limitation, executing such leases, agreements, instruments or other documents as said Mayors or President determine necessary or appropriate.

11. Counterparts. This Agreement may be executed in one or more counterparts, each and all of which shall constitute an original and all of which when taken together shall constitute the same agreement.

12. Nondiscrimination. Notwithstanding anything in this Agreement to the contrary, (i) each Party agrees that it and any of its subcontractors shall not discriminate against any employee or applicant for employment to be employed in performance of this Agreement, with respect to the employee's or applicant's hire, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, disability, or national origin; and (ii) one or more of the Participants is a recipient of federal funds, and as a result all required contractual provisions related to such federal funds shall be deemed incorporated into this Agreement by this reference and binding upon the Participants.

13. Remedies. All remedies under this Agreement shall be cumulative and not restrictive of other remedies. The Participants agree that any Party shall have the right to exercise any remedies available to it at law or in equity, including without limitation, specific performance.

[End of Document]

CITY OF PAPILLION,
A Municipal Corporation

Date: 8/16/13

[Signature]
David P. Black, Mayor

Attest:

[Signature]
Elizabeth Butler, City Clerk

PAPILLION RURAL FIRE DISTRICT

Date: 8/16/2013

[Signature]
Jack Miller, President

Attest:

[Signature]
Don Roberts, Secretary

CITY OF LA VISTA,
A Municipal Corporation

Date: 8/13/2013

[Signature]
Douglas King, Mayor

Attest:

[Signature]
Pam Buethe, City Clerk



Date: 8/13/2013

Interlocal Cooperation Agreement
Fire Department - Real Property
Exhibit "A"

Fire Station and Address	Legal Description	Title Holder or Leaseholder Prior to Effective Date of Interlocal Cooperative Agreement	Title Holder or Lease Holder After Effective Date of Interlocal Cooperative Agreement – Ultimate Objective	Outstanding Bonds
Papillion Fire Station 1 146 N. Adams St. Papillion, NE 68046	LOTS 1 & 2 BLOCK 16 PAPILLION	Papillion Volunteer Fire Department, Inc. (Title holder) City of Papillion (Leaseholder)	Papillion Volunteer Fire Department, Inc. (Title holder) City of Papillion (Leaseholder)	No
Papillion Station 2 11749 S. 108 St. Papillion, NE 68046	DAM SITE 20 33-14-12 and TAX LOT 8 32-14-12	City of Papillion	City of La Vista, City of Papillion, Papillion Rural Fire Protection District	Yes
La Vista District 1* 8110 Park View Blvd. LaVista, NE 68128	LOT 1 LA VISTA CIVIC CENTER	City of La Vista	City of La Vista, City of Papillion, Papillion Rural Fire Protection District	No
La Vista District 2 10727 Chandler Rd. LaVista, NE 68128	LOT 248A VAL VISTA	City of La Vista Facilities Corporation (Title holder) City of La Vista (Lessee)	City of La Vista, City of Papillion, Papillion Rural Fire Protection District	Yes

* Only first level of La Vista District 1 will be provided for use under this Agreement. La Vista will retain the second level of La Vista District 1 for its independent use apart from this Agreement. In addition to other allocable costs, a share of utility and other operating costs of La Vista District 1 will be apportioned to Fire Department operations under this Agreement pro rata, based on square footage of La Vista District 1 designated for Fire Department operations, and paid by Papillion when billed by La Vista, which costs will be allocated among and paid by the Participants as shared costs under this Agreement.