

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
SEPTEMBER 3, 2019 AGENDA**

Subject:	Type:	Submitted By:
INTERLOCAL AGREEMENT FORENSIC AND CRIME SCENE SERVICES	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BOB LAUSTEN POLICE CHIEF

SYNOPSIS

A resolution has been prepared to approve an Interlocal Cooperation Agreement between the City of La Vista and Douglas County for Forensic and Crime Scene Investigation Services.

FISCAL IMPACT

The Interlocal Agreement does not increase or change current charges for Crime Scene Services that have been in place. Charges are based on services used. The police department uses services from Douglas County in complex cases and has averaged approximately \$5,000 per year in recent years. Funds have been budgeted for these services.

RECOMMENDATION

Approval

BACKGROUND

Douglas County has provided forensic and crime scene services to La Vista for the past 20 years. In 2009, the services were formalized with the approval of an Interlocal Cooperation Agreement with Douglas County. It was renewed in November 2014. The agreement expires this month and we would like to renew for another five years.

RESOLUTION NO.

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH DOUGLAS COUNTY FOR FORENSIC AND CRIME SCENE INVESTIGATION SERVICES.

WHEREAS, pursuant to the authority granted under Neb. Rev. Statute 13-801, et. Seq. Reissue 1997, the Mayor and City Council determine that it is in the best interest of the City to renew an interlocal cooperation agreement for the purpose of providing forensic and crime scene investigation services in an efficient and effective manner; and

WHEREAS, the La Vista Police Department has a need for forensic and crime scene investigation services; and

WHEREAS, Douglas County, Nebraska is qualified to provide such services as described in the attached Interlocal Cooperation Agreement.

WHEREAS, Douglas County, Nebraska entered into an Interlocal Cooperation Agreement with the City of La Vista for forensic and crime scene investigation services in November of 2009 and the City of La Vista has been satisfied with the services provided.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of La Vista, Nebraska, hereby authorize the Mayor to execute an Interlocal Cooperation Agreement with Douglas County for forensic and crime scene investigation services.

PASSED AND APPROVED THIS 3RD DAY OF SEPTEMBER, 2019.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**SERVICES AGREEMENT
BETWEEN
DOUGLAS COUNTY, NEBRASKA
AND
La Vista, NEBRASKA**

Under the authority of the Nebraska Inter-local Cooperation Act, Article 8 of Chapter 13 of the Nebraska Revised Statutes, this Agreement is entered into between the Douglas County, Nebraska, (herein after “Douglas County”) a political subdivision of the State of Nebraska, by and through the Douglas County Sheriff, and The City of La Vista, a *political subdivision of the State of Nebraska/municipal corporation of the State of Nebraska*, (herein called “*Requesting Agency*”) for the purpose of providing forensic services.

**SECTION ONE
DUTIES AND RESPONSIBILITIES**

A. Duties of Douglas County

1. Provide the forensic and crime scene services as specified in Schedule of Forensic Services which is attached and incorporated hereunto as Exhibit A and shall strive to respond to any request for assistance in a timely manner.
2. Provide and train personnel as necessary to perform forensic services specified in the Schedule of Forensic Services and as determined by the County Sheriff exercising professional judgment. Said personnel will at all times remain under the management and control of Douglas County. Employment rights of personnel assigned to provide services will not be abridged.
3. Reserve the sole right to determine its own availability to perform the forensic service request. This Agreement shall not be construed to require Douglas County to hire any new or additional personnel to perform forensic services.
4. Provide all equipment and facilities necessary to process a crime scene and to conduct laboratory analysis as specified in the Schedule of Forensic Services.
5. Process evidence in reliance upon the assumption that the evidence was collected and packaged in accordance with the Douglas County Sheriff’s Office, Forensic Services Bureau’s (FSB) packaging guidelines, to which the current guidelines are attached and incorporated hereunto and subject to periodic review and revision by Douglas County. Further, Douglas County retains the right to refuse evidence for forensic

- processing and/or refuse to process or reprocess evidence submitted to the Douglas County Forensic Services Bureau if Douglas County believes, in its sole discretion, that the evidence has been compromised and/or otherwise contaminated.
6. Designate a Douglas County Crime Scene Investigation lead crime scene investigator upon arrival to a crime scene and said lead crime scene investigator shall coordinate services with the Requesting Agency's on-site command officer.
 7. The lead crime scene investigator will notify the requesting agency of any breach noted while at crime scene or with evidence collected and/or processed.
 8. The Douglas County Forensic Services Bureau has extensive dedicated equipment and facilities to ensure the provision of highly professional crime scene investigation and forensic services. Specific arrangements for the use of equipment and/or facilities is necessarily limited to assigned Douglas County Sheriffs Office personnel.
 9. Provide written findings upon completion of any forensic analysis-performed. All records, reports, and documents concerning the performance of services provided by Douglas County Sheriffs Office personnel will be appropriately recorded and securely maintained in accordance with Sheriffs Office records/reporting directives and the State Records Retention Act.
 10. Send written notification to the authorized representative of the Requesting Agency upon completion of forensic analysis for each item(s) of evidence submitted to Douglas County Forensic Services Bureau.
 11. Invoice the Requesting Agency on a monthly basis or as forensic services are provided by Douglas County, whichever is the earlier to occur. The invoice will reflect actual services rendered on each item submitted for forensic analysis. Crime scene investigation services and deposition and/or court appearances will be billed for a minimum of two (2) hours with additional time billed in 30 minute increments.
 12. Update the Schedule of Forensic Services, attached as Exhibit A, no less than annually and provide a copy of said Schedule to the Requesting Agency's authorized representative no less than thirty (30) days prior to the effective date of said Schedule.

B. Duties of Requesting Agency

1. Submit evidence to the Douglas County Forensic Services Bureau in accordance with the current Douglas County Sheriff's Office, Forensic Services Bureau's packaging guidelines, to which the current guidelines are attached and incorporated hereunto and subject to periodic review and revision by Douglas County. It is the sole responsibility of the Requesting Agency to comply with said packaging guidelines in effect on the day the evidence is submitted.

2. Submit a request for forensic service(s) that will be completed by the Forensic Services Bureau in a timely manner. The Requesting Agency shall pay an additional charge to Douglas County when such tests require expedient handling and/or additional personnel or services to meet a specific time requirement requested by the Requesting Agency. Douglas County reserves the right to refuse to perform the forensic services if it deems, in its sole discretion, that the service cannot be complete on or before the requested date.
3. Crime Scene Services:
 - i. Requesting Agency agrees to designate one Requesting Agency law enforcement official on site as a command officer to coordinate all communications with the Douglas County Sheriff's Office lead crime scene investigator. Said command officer shall be designated before or upon arrival of Douglas County Crime Scene Investigation Unit personnel at a crime scene and shall remain the command officer throughout the investigation.
 - ii. Requesting Agency agrees to maintain the crime scene in accordance with the current National Institute of Justice guidelines in effect on the day the crime scene is discovered.
 1. In the event that there has been a breach of crime scene integrity before the arrival of Douglas County Crime Scene Investigation Unit personnel, Requesting Agency's command officer shall report the nature and details of the breach at the time of arrival to said scene to Douglas County's lead crime scene investigator.
 2. In the event that a breach of crime scene integrity is discovered during or after the arrival of Douglas County Crime Scene Investigation Unit personnel, Requesting Agency's command officer shall notify Douglas County's lead crime scene investigator immediately and report the nature and details of the breach to the authorized representative of the Douglas County Sheriff within twenty-four (24) hours.
4. Claim and take possession of item(s) and evidence submitted to Douglas County Forensic Services Bureau for forensic analysis within one week after notification that testing of said item(s) is complete. Douglas County will not be responsible for evidence storage and disposal and is released from any liability for any item(s) and/or evidence unclaimed by the Requesting Agency eight days after said notification. The Requesting Agency may also be subject to additional storage fees for said unclaimed evidence.

5. Cooperate at all times with the employees and representatives of the Douglas County Sheriff's Office providing services under this Agreement.
6. Make payment for provided services no more than thirty (30) days after receipt of an invoice reasonably documenting all applicable charges and fees.

SECTION TWO

TERM, DURATION, REVIEW, REVISION, AND TERMINATION

This Agreement shall become effective on December 1, 2019 and shall remain in effect until November 30, 2024, a term no greater than five (5) years. This Agreement may be terminated upon mutual written consent of the parties or by either of the parties giving sixty (60) days written notice to the other of its intention to terminate the Agreement. Any termination of this Agreement will not relieve either Party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. Upon expiration, this Agreement may be extended or renewed for an additional term by mutual written agreement of the Parties. A review of the agreement will be conducted annually or more often as needed. Revision of the Agreement may be conducted as needed/deemed necessary by Douglas County.

SECTION THREE

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. Any and all acts that either Party or its personnel, employees, agents or contractors 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 or contractors 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 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 or contractors shall in no way be the responsibility of the other Party. Neither 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.

Both 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 age, 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 any applicable 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.

Unless otherwise indicated, all references to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; and the words "herein," "hereinbefore," "hereinafter," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

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. Entire Agreement

This Agreement contains the entire agreement of the Parties. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or prior course of dealings. No representations were made or relied upon by either Party other than those that are expressly set forth herein. No agent, employee or other representative of either Party is empowered to alter any of the terms hereof except as provided herein.

F. 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.

G. Assignment.

None of the Parties may assign its rights under this Agreement without the express prior written consent of the other Party. An assignment without such prior written consent shall be a material breach of this Agreement.

H. Successors and Assigns Bound by Covenants.

All covenants, stipulations and agreements in this Agreement shall inure to the benefit of the Parties hereto and extend to and bind the legal representatives, successors, and assigns of the respective Parties hereto.

I. Waiver.

The failure of either 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 either Party which is it 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.

J. 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.

K. Notice of Breach.

Either Party shall provide written notice to the other of breach of this Agreement, upon which notice the receiving party shall have ten business days to cure such breach to the mutual satisfaction of the Parties. During the cure period, the Parties shall act in good faith to perform their respective duties described herein.

L. Indemnification

Requesting Agency shall assume all risk of loss, indemnify, defend and hold Douglas County and its employees, agents, assignees and legal representatives harmless from all liability, loss, expense, cost, attorney's fees, claim, judgment, suit and / or cause of action (whether or not meritorious), settlement, or demand for personal injury, death or damage to tangible property (hereinafter "Claim") which may accrue against County to the extent it is caused by the negligent or intentional acts or omissions of Requesting Party, its officers, employees, agents, assigns and / or subcontractors. .

The provisions of this section shall survive expiration or termination of this Agreement.

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 Subdivision Tort Claims Act or other applicable provisions of law.

M. No Third Party Rights.

This Agreement is executed for the benefit of the named parties only. This Agreement is not intended to, nor shall it provide third parties, excluding any assignment as provided herein, 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 and agents.

N. Authorized Representatives and Notice.

Except for any notice required under applicable law to be given in another manner, any notice or communication required or permitted hereunder shall be given in further consideration of the mutual covenants herein contained, the Parties hereto expressly agree that for purposes of

notice, during the term of this Agreement and for the period of any applicable statute of limitations thereafter, the following named individuals shall be the authorized representatives of the Parties:

FOR THE COUNTY

R. Justin Aumann
Douglas County Sheriff's Office
15345 West Maple Road
Omaha, NE 68116
(402) 444-7459
(402) 444-3644 fax

FOR REQUESTING AGENCY

Chief Robert S Lausten
La Vista Police Department
7701 South 96 Street
La Vista, NE 68128
(402) 331-1582
(402) 331-7210 fax

Notice shall be in writing and shall be effective upon receipt. Delivery may be by hand, in which case a signed receipt shall be obtained, or by United States mail, registered or certified, return receipt requested or by facsimile with a signed return facsimile acknowledging receipt. A Party's contact person may be changed by at any time by providing written notice of the updated contact information to all the Parties.

O. Unavailability of Funding language

Due to possible future reductions including but not limited to County, State and/or Federal appropriations, Douglas County cannot guarantee the continued availability of funding for this Agreement, notwithstanding the consideration stated in this Agreement. In the event funds to finance this Agreement become unavailable either in full or in part due to such reduction in appropriations, Douglas County may terminate the Agreement or reduce the consideration upon notice in writing to Contractor. The notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Douglas County shall be the final authority as to the availability of funds. The effective date of such Agreement termination or reduction in consideration shall be specified in the notice as the date of service of the notice or the actual effective date of the County, State and/or Federal funding reduction, whichever is later. Provided, that reduction shall not apply to payments made for services satisfactorily completed prior to the effective date. In the event of a reduction of consideration, Contractor may cancel this Agreement as of the effective date of the proposed reduction upon the provision of advance written notice to Douglas County.

P. Drug Free Policy.

Requesting Agency has established, maintains, and enforces a drug free workplace policy.

Q. New Employee Work Eligibility Status (Neb. Rev. Stat. § 4-114).

Requesting Agency 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.

R. Public Benefits.

With regard to Neb.Rev.Stat. §§4-108 - 113, neither Party is an individual or sole proprietorship. Therefore, neither Party is subject to the public benefits attestation and related requirements of Neb.Rev.Stat. §§4-108 – 113.

S. Joint Work Product.

This Agreement is the joint work product of both Parties; accordingly, in the event of any ambiguity, no presumption shall be imposed against or in favor of either Party by reason of document preparation.

T. 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.

U. Insurance.

Requesting Agency shall maintain comprehensive General Liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) for each person and Five Million Dollars (\$5,000,000.00) for each occurrence and shall provide proof thereof. Requesting Agency agrees to provide and maintain throughout the term of this Agreement and at its own expense adequate statutory Nebraska workers' compensation insurance and shall provide proof thereof. Annually and at least 60 days before the effective date of any material change in or cancellations of, such insurance, written notice shall be mailed by the Requesting Agency's insurance carrier to Douglas County Purchasing. The policies required to be maintained shall be with companies rated A or better in the most current issue of A.M. Best's Insurance Ratings Guide. Insurers shall be licensed to do business in the state of Nebraska and domiciled in the USA. Douglas County shall be named as an additional insured on Requesting Agency's Certificates of Insurance except for Workers' Compensation policies/certificates. Requesting Agency shall

provide a certificate of insurance to Douglas County Purchasing. Requesting Agency shall provide the certificate(s) before work or services are undertaken pursuant to this Agreement and annually thereafter at least thirty (30) prior to the policy expiration date. All insurance documents and insurance notifications shall be sent to:

Douglas County Purchasing Agent
902 Civic Center,
1819 Farnam St.
Omaha, NE 68183

Douglas County does not represent in any way that the insurance specified herein, whether in scope of coverage or limits, is adequate or sufficient to protect Requesting Agency or its interests. Requesting Agency 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 Requesting Agency's liability hereunder or to fulfill the indemnification provisions of this Agreement.

V. 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 Douglas County Sheriff's decision 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.

W. Conflict of Interest.

In the performance of this Agreement, Requesting Agency will avoid all conflicts of interests or appearances of conflict of interest. Requesting Agency will report any conflict of interest immediately to County. Requesting Agency assures County that no County employee will have a financial or personal interest in this Agreement. Requesting Agency did not and will not provide any money or other benefit of any kind to any County employee in the procuring of, facilitation of, execution of or during the duration of this Agreement.

X. Dispute Resolution.

Any dispute which, in the judgment of a Party to this Agreement, may affect the performance of such Party shall be reduced to writing and delivered to the other Party. As soon as possible thereafter, the Parties authorized representatives shall schedule a face to face meeting in Omaha, Nebraska to resolve the dispute in a mutually satisfactory manner. Prior to the institution of any formal legal proceeding, the Parties must meet in this manner to resolve the

dispute. This meeting must take place within ten (10) business days after service of the written statement of dispute. During the pendency of negotiations, the Parties shall act in good faith to perform their respective duties described herein.

IN WITNESS WHEREOF, the parties hereunto set their hands to this Agreement upon the day and year hereinafter indicated.

DOUGLAS COUNTY, NEBRASKA

City of La Vista, NEBRASKA

Chairperson

Date

Mayor/Chairperson Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

/s/ Joshua R. Woolf

8/16/19

County Attorney

Date

Attorney

Date