

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JULY 6, 2021 AGENDA**

Subject:	Type:	Submitted By:
LEASE AND INTERLOCAL AGREEMENT – METROPOLITAN COMMUNITY COLLEGE – DOG PARK	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE PUBLIC WORKS DIRECTOR

SYNOPSIS

A resolution has been prepared to approve a lease and interlocal agreement with Metropolitan Community College for the operation of a public dog park to be located on unimproved land on the north end of property jointly owned by the City of La Vista and The Metropolitan Community College.

FISCAL IMPACT

The FY21/FY22 Biennial Budget provides funding for the proposed dog park.

RECOMMENDATION

Approval.

BACKGROUND

The Mayor and City Council have had previous discussions regarding the potential of locating a dog park in the City and have considered several sites. One of the sites considered during this process was the land north of and adjacent to the Library/Metro Community College Sarpy Center. This land is jointly owned by the City and MCC.

At the February 16, 2021 City Council meeting, discussion was held regarding a dog park located at the Library/Metro CC Site. Neighborhood residents addressed the City Council in support of this location. The Southwind Homeowners Association also submitted a letter to the City indicating their support.

The La Vista Metro Condominium Association, at their February 8, 2021 meeting agreed to that on a trial basis.

The Metropolitan Community College Board subsequently met June 22, 2021 and approved the lease and interlocal agreement for placement of the dog park on the Library/Metro CC site to commence August 1, 2021 and end May 31, 2022 unless renewed or extended by mutual agreement of both parties.

The City Clerk has verified with our current liability insurance carrier that the City is covered for claims such as a dog causing bodily injury in cases where the city was liable.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING A LEASE AND INTERLOCAL COOPERATION AGREEMENT WITH THE METROPOLITAN COMMUNITY COLLEGE FOR PLACEMENT OF A DOG PARK ON LAND JOINTLY OWNED BY THE CITY OF LA VISTA AND THE METROPOLITAN COMMUNITY COLLEGE.

WHEREAS, the La Vista City Council finds it necessary to provide a dog park in the City; and

WHEREAS, the site chosen is jointly owned by the City of La Vista and The Metropolitan Community College; and

WHEREAS, the City of La Vista and The Metropolitan Community College agree to a lease and interlocal agreement allowing the dog park on this site; and

WHEREAS, the term of this agreement will commence on August 1, 2021 and end on May 31, 2022 unless terminated sooner and is subject to renewal and extension of upon the mutual written agreement of the parties; and

WHEREAS, Pursuant to the Interlocal Cooperation Act, Nebraska Revised Statute §13-801, *et seq.*, the Parties wish to permit their local government units to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, such an agreement is in the best interests of the citizens of the City of La Vista.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of La Vista that the Lease and Interlocal Cooperation Agreement with The Metropolitan Community College is hereby approved.

BE IT FURTHER RESOLVED, the Mayor is hereby authorized to sign and execute the necessary documents to the Lease and Interlocal Cooperation Agreement on behalf of the City of La Vista.

PASSED AND APPROVED THIS 6TH DAY OF JULY 2021.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

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Lease And Interlocal - MCC - Dog Park 07.06.2021.Docx

LEASE AND INTERLOCAL AGREEMENT

THIS LEASE AND INTERLOCAL AGREEMENT (the "Agreement") is entered into this ____ of _____, 2021, by and between The Metropolitan Community College Area, a body corporate and political subdivision of the State of Nebraska ("MCC") and the City of La Vista, Nebraska, a municipal corporation and political subdivision of the State of Nebraska (the "City").

RECITALS

- A. The City owns Unit 1, a condominium unit in La Vista Metropolitan Community College Condominium Property Regime, a condominium property regime located in Sarpy County, Nebraska, which condominium unit is located on Lot 1, Metro La Vista Addition to the City of La Vista, Sarpy County, Nebraska ("Lot 1");
- B. MCC owns Unit 2, a condominium unit in La Vista Metropolitan Community College Condominium Property Regime, a condominium property regime located in Sarpy County, Nebraska, which condominium unit is located on Lot 1;
- C. MCC and the City each own an undivided one-half interest as a tenant in common in Lot 2, Metro La Vista Addition to the City of La Vista, Sarpy County, Nebraska ("Lot 2") (Lot 1 and Lot 2 are together referred to herein as the "Sarpy Center Property");
- D. The City wishes to establish and operate, on a trial basis, a public dog park to be located on unimproved land in the northerly portion of the Sarpy Center Property; and
- E. In order to facilitate the City's establishment on a trial basis of a public dog park to be located on unimproved land in the northerly portion of the Sarpy Center Property, the parties have agreed that it is appropriate to enter into a lease agreement to set forth the terms and conditions of the dog park arrangement.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements, covenants and promises set forth herein, the parties agree as follows:

1. **GRANT.** MCC hereby leases to the City, and the City hereby leases from MCC, for the limited purpose of installing, maintaining and operating, on a trial basis, a public dog park (the "Dog Park") located on unimproved land in the northerly portion of the Sarpy Center Property in an area approximately 360' x 90' in size in the location generally identified on Exhibit A attached hereto and incorporated herein by reference (the "Dog Park Site"), the final dimensions and boundaries of which shall be determined by the Director of Facilities, Management and Planning of MCC and the City Engineer of the City. During the term of this Agreement, the City shall have exclusive possession, control and use of the Dog Park Site.

2. **DOG PARK INSTALLATION, MAINTENANCE AND OPERATION.** The City, at the City's sole cost and expense, shall be responsible for all aspects of installing, maintaining and operating the Dog Park on the Dog Park Site, including without limitation the following:
- (a) The City shall install and maintain (i) a chain link fence a minimum of 48" high around the entire perimeter of the Dog Park, (ii) entry/exit gates, (iii) signage, and (iv) all other necessary facilities, including waste removal stations, necessary for the operation of Dog Park. All equipment, materials and supplies used in or about the Dog Park shall be owned or leased by the City and shall not be the property of MCC.
 - (b) The City shall be responsible for maintaining the Dog Park in good repair, condition and appearance, including without limitation (i) mowing, line trimming, over-seeding, fertilizing and providing weed control, (ii) keeping the Dog Park clean and free of litter and debris, including providing pet waste and trash removal, and (iii) such other maintenance and repair as is necessary to maintain the Dog Park in a first-class and sanitary condition.
 - (c) The City shall be entirely responsible for all aspects of operating the Dog Park, including without limitation, (i) establishing and enforcing hours and rules for use of the Dog Park, (ii) enforcing applicable parking regulations within the parking areas on the Sarpy Center Property, and (iii) generally operating the Dog Park in a responsible and safe manner.

MCC shall have no obligation or responsibility whatsoever and shall incur no cost or expense in connection with the installation, maintenance, operation or any other aspect of the Dog Park.

3. **TERM.** The term of this Agreement shall commence on August 1, 2021 (the "Effective Date"), and shall end, unless sooner terminated as provided in this Agreement, on May 31, 2022, subject to renewal and extension hereof upon the mutual written agreement of the parties.
4. **REMOVAL OF DOG PARK FACILITIES.** Within thirty (30) days after the termination or expiration of this Agreement, at its sole expense, the City shall promptly remove the fencing, gates, signage and all other facilities relating to the Dog Park and restore the Dog Park Site to the condition it was in on the Effective Date of this Agreement, reasonable wear and tear excepted.
5. **ASSIGNMENT OR SUBLEASING.** The City may not assign this Agreement or sublet or license any part of the Dog Park Site to a third party without the prior written consent of MCC.
6. **ALTERATIONS AND ADDITIONS.** Other than as set forth in this Agreement, the

City shall not make any alterations or additions to the Dog Park without the prior written consent of MCC. Any alterations or additions to the Dog Park approved under this Section shall be at the City's sole cost and expense.

7. **LEGAL REQUIREMENTS.** The City, at the City's sole cost and expense, shall comply with all applicable laws, orders, ordinances and other public requirements now or hereafter affecting the Dog Park, its installation, operation, maintenance or use. The City shall make all necessary repairs and/or replacements as required by any such public requirements. The City shall indemnify, defend and hold MCC harmless from any expense (including attorneys' fees) or damage resulting from the City's failure to do so.

8. **INSURANCE AND INDEMNITY.**

- (a) The City shall secure, and at all times during the term of this Agreement shall maintain in full force and effect, a policy or policies of commercial public liability insurance with respect to the Dog Park and its operation by the City, with combined limit coverage for bodily injury and property damage of not less than \$2 million per occurrence and \$5 million aggregate (may include both primary and excess or umbrella coverage). The policies shall be endorsed to cover contractual liability, including specifically the liability to indemnify MCC that is imposed on the City by this Agreement. The City agrees to abide by the rules of its insurance carriers.
- (b) The insurance policies required to be obtained by the City under the terms of this Agreement shall be underwritten by an insurance carrier or carriers authorized to do business in the State of Nebraska and rated "A" or better by A.M. Best & Company. The policies shall also be endorsed so as to require the insurance company underwriting the policies to give MCC written notice at least 30 days in advance of any cancellation or material change in the policy contract. The City shall provide MCC with current Certificates of Insurance or other satisfactory evidence confirming that the coverages required by this section are at all times in full force and effect, which Certificates of Insurance shall name MCC as an additional insured.
- (c) The City shall protect, indemnify, defend and hold harmless MCC, its officers, board members, employees, agents, servants, successors and assigns from and against any and all third-party claims, actions, damages, losses, liability and expense (including attorneys' fees) in connection with loss of life, bodily injury and/or damage to property arising from or out of any occurrence in, on, or about the Dog Park, or which arises from, out of or in conjunction with the occupancy, operation or use of the Dog Park or any part thereof, or which arises from, out of or in conjunction with the presence of any invitees, employees, agents, contractors or subcontractors thereon, or occasioned wholly or in part by any act or omission of the City, its agents, contractors, employees, servants, subtenants or invitees,

including a breach of the City's obligations under this Agreement. If any action or proceeding is brought against MCC, its officers, board members, employees, agents, servants, successors or assigns by reason of any of the aforementioned causes, the City upon receiving written notice thereof from MCC, agrees to defend such action or proceeding by competent counsel reasonably acceptable to MCC at the City's own expense.

9. **DEFAULT:** The City shall be in default under this Agreement if the City fails to keep, observe or perform any term, covenant or condition of this Agreement within ten (10) days after written notice from MCC.
10. **REMEDIES:** After an event of default occurs, MCC may, at MCC's option, without further notice or demand, except as provided below in this Section, do any of the following:
 - (a) Give the City notice that this Agreement is terminated effective as of the date stated in the notice; and cause the City to cease operating the Dog Park and to remove all facilities relating to the Dog Park as provided for in Section 4 above.
 - (b) Pursue any and all other remedies available at law or in equity that are not inconsistent with the terms of this Agreement.

Notwithstanding anything in this Agreement to the contrary, MCC and City each agrees that it does not intend any provision of Section 7 or subsection 8(c) to waive, and each agrees that it does not waive, any defense, limitation, or other protection, right or provision under the Political Subdivisions Tort Claims Act or other applicable law, as amended from time to time, in connection with any claim against MCC or City.

11. **NOTICES:** All notices, consents, approvals, requests, demands, objections, waivers and other communications (collectively, "Notices") which may or are required to be sent, delivered, given, made, maintained or obtained pursuant to the terms of this Agreement shall be in writing and shall be given either by hand delivery, by prepaid United States certified mail, or by a reputable overnight delivery service that guarantees next day delivery and that provides a receipt. All Notices shall be addressed to the parties at their respective main office. All Notices given by certified mail as provided above shall be deemed given two (2) days after they are so mailed. All Notices given by overnight delivery or hand delivery shall be deemed given upon delivery. A party's failure or refusal to accept service of a Notice will constitute delivery of the notice.
12. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and may be modified only by a writing signed by both parties after the date of this Agreement. This Agreement supersedes any and all prior oral or written agreements or understandings

between the parties relating to the Dog Park.


13. **RELATIONSHIP OF PARTIES.** Nothing contained in this Agreement shall be deemed or construed by the parties or by any third party to create the relationship of principal and agent or a partnership or a joint venture between the parties.
14. **NET LEASE:** This is an absolutely net lease for MCC. The City shall pay all costs and expenses relating to the Dog Park and the activities carried on therein, including but not limited to all taxes and assessments, repairs and maintenance, utilities and all insurance. Any cost, expense or obligation relating to the Dog Park which is not expressly declared herein to be that of the City shall be deemed to be an obligation of the City to be performed by the City at the City's expense.
15. **MISCELLANEOUS:**
 - (a) **Interpretation.** All provisions of this Agreement have been negotiated by both parties at arm's length and neither party shall be deemed the scrivener of this Agreement. This Agreement shall not be construed for or against either party by reason of the authorship or alleged authorship of any provision of this Agreement.
 - (b) **Governing Law.** This Agreement shall be governed by and it shall be construed in accordance with the law of the State of Nebraska.
 - (c) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

MCC:

The Metropolitan Community College Area,
a body corporate and political subdivision
of the State of Nebraska

By: _____

Name: James R. Thibodeau

Title: General Counsel

CITY:

City of La Vista, Nebraska,
a municipal corporation and political
subdivision of the State of Nebraska

By: _____

Name: _____

Title: _____

EXHIBIT A

Sarpy Center Dog Park Reference Map

