

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
SEPTEMBER 2, 2011 AGENDA

Subject:	Type:	Submitted By:
UNITED CITIES OF SARPY COUNTY – INTERLOCAL & LOBBYING AGREEMENT(S)	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

Resolutions have been prepared to approve an Interlocal Cooperation Agreement with the cities of Gretna, Papillion and Springfield to jointly hire a lobbyist and to authorize the execution of a lobbying agreement with Kissel/E&S L.L.C. for lobbying services.

FISCAL IMPACT

The cost for La Vista's participation in FY 11/12 is \$ 9,000.

RECOMMENDATION

Approval.

BACKGROUND

As a participant in the United Cities of Sarpy County, the City's recommended budget includes funding for a lobbyist. Our collaboration with the other cities has been successful as it has allowed us to pursue issues of common interest and stay informed during the session regarding any emerging initiatives or issues that could impact our municipalities.

The mayors of the United Cities have determined that much of the success has been related to our lobbyist and as a result, they are recommending a three year contract with Joe Kohout from Kissel/E&S L.L.C. to continue to represent the cities. The contract for year one is \$36,000, with a 5% increase for year two and a 4.5% increase in year three. Each jurisdiction will be responsible for one-fourth (1/4) of the total.

The need to be informed and proactive on legislative issues remains a priority of the Mayor and Council and is included in the City's Strategic Plan. Action items include continuing to work with other jurisdictions in order to pursue mutual interests and to adopt a common legislative agenda for advancing state policies that promote the common interests of the consortium.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH THE CITIES OF GRETNA, PAPILLION AND SPRINGFIELD TO JOINTLY HIRE A LOBBYIST TO LOBBY ON BEHALF OF THE PARTIES IN THE NEBRASKA LEGISLATURE.

WHEREAS, the cities of Gretna, La Vista, Papillion and Springfield desire to promote the common legislative interest of the four cities which make up the "United Cities of Sarpy County" and

WHEREAS, the cities have agreed that it is in their best interest to hire a joint lobbyist to lobby the Nebraska legislative and executive branches with regard to Nebraska legislation; and

WHEREAS, the parameters of such arrangement have been outlined in the interlocal agreement.

NOW THEREFORE, BE IT RESOLVED, that the Interlocal Cooperation Agreement with the cities of Gretna, Papillion and Springfield to jointly hire a lobbyist to lobby on behalf of the parties in the Nebraska Legislature, is hereby approved, and the Mayor and City Clerk be and hereby are, authorized to execute same on behalf of the City with such revisions or amendments thereto that the City Administrator and City Attorney may determine necessary to carry out the intent of the City Council.

PASSED AND APPROVED THIS _____ DAY OF _____, 2011.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITIES OF
GRETNNA, LA VISTA, PAPILLION AND SPRINGFIELD**

WHEREAS, the Cities of Gretna, La Vista, Papillion and Springfield Municipal Governmental Entities desire to enter this agreement as authorized by the Interlocal Cooperation Act, Neb. Rev. Stat. §13-801 (Reissue 1997), et seq., which provides that two or more public entities may enter into an agreement for the joint and cooperative exercise of powers, privileges, or authorities; and

WHEREAS, pursuant to Interlocal Cooperation Act, Neb. Rev. Stat. §13-801, et seq., (Reissue 1997), the parties wish to permit their local governmental units to make the most efficient use of their powers by enabling them to cooperate with each other on the basis of mutual advantage and thereto 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 of the four communities; and

WHEREAS, the four cities which are a party to this Agreement desire to provide for a joint lobbyist to lobby on behalf of the parties to this Agreement in the Nebraska Legislature; and

WHEREAS, the cities which are a party to this Agreement will be known jointly for purposes of lobbying as "United Cities of Sarpy County"; and

WHEREAS, the purpose of this Interlocal Agreement is to promote the common legislative interest of the four cities which make up the "United Cities of Sarpy County".

NOW, THEREFORE, it is agreed by and between the parties, pursuant to Neb. Rev. Stat. §13-807 (1997), as follows:

1. The parties enter this Agreement to provide for a joint lobbyist to lobby the Nebraska legislative and executive branches with regard to Nebraska legislation.

2. The cost for procuring and paying for a lobbyist shall be shared in four equal parts between the parties hereto.

3. A committee consisting of the four cities which are a party to this Agreement, with the mayor of each city being a voting member on the committee, shall seek out, interview and retain a lobbyist on behalf of the United Cities of Sarpy County and the committee shall formally determine and direct the legislative priorities of the United Cities of Sarpy County. A staff member from one of the jurisdictions shall be determined annually to serve as a single point of contact for the exchange of information between lobbyist and UCSC members.

During the legislative session timely communication is essential. Therefore, if there is no objection received within 12 hours of a communication, assent will be assumed (18 hours if notification after 4:00PM). Any agreement entered into for lobbyist services pursuant to this Agreement shall be executed by the Mayor and City Clerk of each of the four cities to this Agreement, unless otherwise agreed by the committee. The term of any such agreement for lobbying services shall not exceed thirty-six months; provided, however, that an agreement may provide for one or more options to renew at the end of the initial or any subsequent term for an additional twelve month term.

4. The mayor of each of the four cities may appoint a designee to represent his or her interest on the committee with the right to cast a vote the same as if the mayor was personally present. A City Attorney may represent their clients at the meeting as long as there is no adverse conflict with one of the other jurisdictions.

5. The retention of a lobbyist and any direction given to the lobbyist whether to develop, propose, support, oppose or remain neutral on legislation shall require the unanimous vote of all four cities. A material change to the initial legislative position of the UCSC shall be brought back for reconsideration at the request of two (2) member cities or upon recommendation of the Lobbyist. Reconsideration of original position to develop, propose, support, oppose or remain neutral on legislation shall require unanimous consent. Carryover legislation from the prior year will require reconsideration automatically. The remaining business affairs of the United Cities shall require a simple majority vote. Each mayor shall be responsible for periodically updating the mayor's respective city council of significant legislation, measures or other developments arising under this Agreement.

6. Term of Agreement. The term of this Agreement shall be for a period as determined by the unanimous vote of the four cities; provided, however, that in all events, the remaining term under this Agreement shall not at any time be shorter than the remaining term of any agreement for lobbying services from time to time in effect under this Agreement.

7. Any of the parties to this Agreement may withdraw from this Agreement by a resolution passed by the party's governing body and upon giving 90 days written notice to the mayors of the other four cities.

8. Entire Agreement. This Agreement contains the entire agreement between the parties hereto, and there are no other written or oral promises, contracts, or warrants which may affect it, except as contained herein. This Agreement cannot be amended except by a written amendment adopted by the governing body and executed by the mayor of each of the parties hereto.

9. Pursuant to Neb. Rev. Stat. §13-804(5) (Reissue 1997), the parties hereby acknowledge, stipulate and agree that this Agreement shall not relieve any public agency of any obligation or responsibility imposed upon it by law.

10. Pursuant to Neb. Rev. Stat. §23-3113 (Reissue 1997), the parties hereto declare and affirm that no officer, member or employee, or no member of their governing bodies, and no other public official of parties who exercise any functions or responsibilities in the review or approval of the undertaking described in this Agreement, or the performing of any parties' obligations pursuant to this Agreement shall exercise or perform any function, responsibility or obligation which affects his or her personal interests, or any partnership or association in which he or she is directly or indirectly interested; nor shall any employee, nor any member of their governing bodies, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

11. It is understood and agreed by the parties hereto that if any part, term, condition or provision of this Agreement is held to be illegal, void or in conflict with any law of this State or the United States, the validity of the remaining parts, terms, conditions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, condition or provision held to be illegal and/or invalid.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the day and year below listed.

CITY OF GRETNA, NEBRASKA

Mayor

Date

Attest: _____
City Clerk

CITY OF LA VISTA, NEBRASKA

Mayor

Date

Attest: _____
City Clerk

CITY OF PAPILLION, NEBRASKA

Mayor

Date

Attest:

City Clerk

CITY OF SPRINGFIELD, NEBRASKA

Mayor

Date

Attest:

City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE MAYOR TO EXECUTE A LOBBYING AGREEMENT BETWEEN THE UNITED CITIES OF SARPY COUNTY AND KISSEL/E&S, L.L.C. FOR LOBBYING SERVICES BEFORE THE NEBRASKA STATE LEGISLATURE AND GOVERNOR.

WHEREAS, the cities of Gretna, La Vista, Papillion and Springfield (UNITED CITIES OF SARPY COUNTY) desire to promote the common legislative interest of the four cities which make up the "United Cities of Sarpy County" and

WHEREAS, the cities have agreed that it is in their best interest to hire a joint lobbyist to lobby the Nebraska legislative and executive branches with regard to Nebraska legislation; and

WHEREAS, the Mayor and City Council have identified the need for a lobbyist as a strategic initiative and did appropriate funds in the FY 11/12 municipal budget for the hiring of a lobbyist; and

WHEREAS, the mayors of the United Cities of Sarpy County have recommended Joe Kohout with Kissel/E&S L.L.C. to continue serve as their joint lobbyist.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of La Vista, Nebraska, that the Mayor is hereby authorized to execute a lobbying agreement between the United Cities of Sarpy County and Kissel/E&S L.L.C. for lobbying services before the Nebraska State Legislature and Governor.

PASSED AND APPROVED THIS _____ DAY OF _____, 2011

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

LOBBYING AGREEMENT

THIS AGREEMENT is entered into by and between,

THE City of Gretna, City of La Vista, City of Papillion and City of Springfield ("UNITED CITIES OF SARPY COUNTY"), pursuant to, an Interlocal Agreement dated _____ and entered into under the Interlocal Corporation Act of the State of Nebraska, (together hereinafter "Client")

and

KISSEL/E&S ASSOCIATES L.L.C. (hereinafter "Firm" or "lobbyist").

WHEREAS, the Client is interested in securing the professional services of the Firm, specifically including the services of JOSEPH D. KOHOUT ("Principal Lobbyist"), to provide lobbying services before the Nebraska State Legislature and Governor, in order that the Client's interests and concerns can be best attended, represented and advanced before the Legislature and Governor, and in legislation that is proposed and/or adopted; and,

WHEREAS, it is the purpose of this Agreement to delineate the terms and conditions, including compensation, related to the retention of the services of the Firm in that capacity.

NOW, THEREFORE, in consideration of these premises, it is agreed by and between the parties as follows:

1. Duties: The Firm shall be responsible for monitoring, proposing and advocating on behalf of Client with respect to legislative activity during this Agreement, as such activity may impact or otherwise affect, directly or indirectly, the interests of the Client. In that regard, the Firm shall be responsible for familiarizing itself with the operations and circumstances of the Client to the extent necessary, including legal and political factors and considerations; provided, however, that the Client shall fully cooperate with the Firm in that endeavor. For purposes of this section, proposing shall mean working with the Client and in conjunction with a member of the Legislature for the purposes of introducing legislation during either a regular or special session of the Nebraska Legislature.

Except for additional services specified herein, lobbying services shall include those services ordinarily provided by a professional lobbyist representing the legislative interests of a coalition of cities and shall specifically include but not be limited to regular reports (and special reports advisable under the circumstances) to a person designated by the Client on all matters affected hereunder:

The Firm shall appoint a place or person of contact by which the Firm may be contacted at all times when the Legislature is in session.

The Client shall appoint a place or person of contact by which the Client may be contacted at all times when the Legislature is in session.

The Firm shall supply copies of all bills or other materials on any matters of potential interest or impact to the Client within twenty-four (24) hours following their availability.

The Firm shall provide regular written reports (and special reports advisable under the circumstances) to the Client on any bill or other matter of potential interest or impact to the Client that is introduced before the Legislature or which may otherwise be a subject of discussion by the Legislature, including progress reports on the advancement thereof.

The Firm shall be responsible for the preparation of a legislative package for the current Legislative Session in accordance with the direction of the Client.

The Firm shall be responsible for initiating, drafting, coordinating and/or advocating the introduction and/or and passage of legislation for Client.

The Firm shall be responsive and address matters raised by the Client within specified timeframes, and provide professional counsel and advice to the Client concerning any matter recommended, proposed or actually before the Legislature that may affect the interests of the Client and such other services as are reasonably necessary to properly represent the Client's interests. It is specifically agreed that the Firm shall provide all time and effort and resources reasonably necessary in order to effectively meet the concerns and interests of the Client.

It is further understood and agreed that in performance of its responsibilities hereunder, the status of the Firm shall be that of an independent contractor. The Firm shall be free to act in accordance with its own judgment and discretion; provided, however, that the Firm shall have no authority to bind or act on behalf of the Client except as specifically approved in advance by the Client. It is specifically agreed that no person employed by the Firm for related or incidental services shall be construed to be an employee or agent of the Client. Responsibility therefor shall be that of the Firm, including responsibility for any errors, actions or omissions thereof. Performance of its responsibilities hereunder shall be in strict compliance with all applicable state, federal and local laws, rules and regulations, as well as applicable ethical requirements.

The Firm will prepare and submit in a timely manner any filings and pay any related fees or other amounts from time to time required of Firm arising out of or resulting from the services provided hereunder. The Firm also will notify Client sufficiently in advance and prepare a draft of any filings periodically required of Client during this Agreement.

2. Term: Unless terminated for cause, this Agreement shall be in full force and effect commencing October 1, 2011 through September 30, 2014 ("Term"). Client shall have the option to renew this Agreement at the end of the Term, and at the end of any subsequent term thereafter, for one or more additional twelve month terms, on the terms and conditions set forth herein, upon notice to Firm ninety days before expiration of the Term or any subsequent term; provided, however, that Firm shall have the option to reject Client's renewal of this Agreement upon written notice to Client within fifteen days after receiving Client's notice of renewal. This Agreement may be terminated before the end of the Term or any subsequent term upon mutual written Agreement of the parties; or by the Client if Client determines that there is "cause" for termination. For the purpose of the Agreement, "cause" shall include, without limitation, the Firm's or Principal Lobbyist's failure, refusal or neglect to perform any duty required hereunder, negligence or alleged criminal misconduct.

3. Compensation and Expenses: The Client agrees to pay the Firm as compensation for all services, hereunder, the sum of Thirty-six Thousand Dollars (\$36,000.00) during the first twelve (12) months of the term. For the twelve (12) months beginning October 1, 2012 and ending September 30, 2013, Client agrees to pay the firm as compensation for all services, hereunder, the sum of Thirty-seven Thousand, Eight Hundred Dollars (\$37,800.00). For the twelve (12) months beginning October 1, 2013 and ending September

30, 2014, Client agrees to pay the firm as compensation for all services, hereunder, the sum of Thirty-nine Thousand, Five Hundred Dollars (\$39,500.00).

On October 1 of each year that this agreement is in force, or as soon thereafter as is possible, Firm shall invoice Client for total compensation, and this sum shall be due and payable within thirty (30) days of receipt of said invoice. Firm shall deposit and hold the sum in a separate interest bearing client trust account and shall, on the last working day of each month, draw against the total amount on hand in said account a sum equal to Three Thousand Dollars (\$3,000.00) for professional services provided during the first twelve (12) months of the term. During the second twelve (12) months of the term, Firm shall draw against the total amount on hand in said account an amount equal to Three Thousand, One Hundred Fifty Dollars (\$3,150.00) for professional services. During the third twelve (12) months of the term, Firm shall draw against the total amount on hand in said account an amount equal to Three Thousand, Two Hundred Ninety-one and 66/100ths Dollars (\$3,291.66) for professional services. Interest earned on Client amounts held in said account will be paid to Client at the end of the Term, unless otherwise requested by Client. Any balance remaining in said account to the credit of Client upon termination of this Agreement shall be returned to Client.

The Firm shall provide a copy of the firm's trust card or similar statement at the end of each month detailing the date on which a withdrawal occurred which is detailed in the paragraph above and the amount of Client's funds on hand in the account.

4. Captions: Captions used in this contract are for convenience and are not used in the construction of this contract.

5. Applicable Law: Except to the extent preempted by federal law, Nebraska law shall govern the terms and performance of this contract. The parties agree to submit and not object to personal jurisdiction of any state court of or located in Sarpy County, Nebraska, and that personal jurisdiction of and in any such court shall be proper, convenient and not objectionable.

6. Interest of the Lobbyist: Lobbyist covenants that he presently has no interests and shall not knowingly acquire any interest, direct or indirect that would conflict in any manner or degree with performance of services required under this contract. Lobbyist will notify the client of lobbyists's intent to represent clients relevant to the fields of interest to the client. This said notification should allow the client and lobbyist to determine potential conflicts. Client recognizes that Lobbyist is engaged in the business of lobbying for a number of clients. From time to time an issue of legislative concern may affect more than one of Lobbyist's clients. Client and Lobbyist further recognize that the legislative interests of the United Cities of Sarpy County and the other clients of Lobbyist may not always be compatible. Any conflict of interest which arises with respect to any legislative issue will be brought to the attention of all affected clients by the Lobbyist and will be resolved in the following manner: 1) An attempt will be made to resolve or compromise the conflict between clients; 2) If a client elects to withdraw the conflicting issue from its legislative program, the conflict of interest will be considered resolved; 3) If a conflict is not resolved by a client's withdrawal of the issue or mutual compromise of the conflicting points of view, Contractor shall continue to represent, on the conflicting issue, only the legislative interests of the client which has had the Contractor for the longest period of time. In this circumstance, Client agrees that it will not object in any manner to this continued representation.

Notwithstanding anything in this paragraph or elsewhere in this Agreement to the contrary, if at any time Client perceives in its sole discretion that Firm may not be able to impartially continue performing lobbying services for Client, Client shall have the option to terminate this Agreement with ten days written notice to the Firm. In that case, Firm shall pay Client the balance of Client funds remaining in the client trust account at the time and cooperate in transitioning representation of Client to another lobbyist selected by Client. Firm

agrees to maintain during and after this Agreement the confidentiality of all Client communications and information obtained pursuant to its representation of Client and to use the same for the sole benefit of Client.

7. Modifications: This contract contains the entire agreement of the parties. No representations were made or relied upon by either party, and there is no other agreement or understanding, other than as expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof unless done in a written amendment executed by each party.

8. Assignment: Personal lobbying of members of the legislative or executive branches or their offices shall be performed by the Principal Lobbyist unless otherwise agreed by the Client. Other lobbying services shall be provided under the direction and control of the Principal Lobbyist by such members or employees of the Firm as the Principal Lobbyist designates. The Firm may not assign any right under this contract without the express prior written consent of the Client.

9. Strict Compliance: All provisions of this contract and any document that shall be attached hereto by the parties and incorporated herein by specific reference shall be strictly complied with as written.

10. Authorized Representative: In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process during the term of this contract and for the period of any applicable statute of limitations thereafter, the following named individuals shall be the authorized representative of the parties:

(1) The United Cities of Sarpy County
Brenda Sedlacek Gunn
City Administrator
La Vista City Hall
8116 Park View Boulevard
La Vista, Nebraska 68128

(2) Kissel/E&S Associates L.L.C.
Joseph D. Kohout
301 S. 13th Street, Suite 400
Lincoln, Nebraska 68508

11. Insurance. Firm shall obtain and maintain during this Agreement such insurance in such amounts and providing such coverages as Client from time to time requires, issued by an insurer acceptable to Client that is authorized to do business in the State of Nebraska, and naming the Client (and each of the municipalities comprising Client) as an additional named insured.

12. Remedies. Any remedies specified herein for breach of this Agreement shall be cumulative and available to and exercisable by the parties along with all other remedies at law or in equity, including, but not limited to, injunction and specific performance. The municipalities comprising the Client will have the authority to jointly enforce this Agreement pursuant to the Interlocal Agreement, or to severally enforce this Agreement.

13. Client Action. Except as otherwise provided herein, Client action under this Agreement shall require such approval and be taken in the manner provided in the Interlocal Agreement.

EXECUTED this ____ day of _____, 2011.

CITY OF GRETNNA, NEBRASKA

ATTEST:

By: _____
Mayor

City Clerk

CITY OF LA VISTA, NEBRASKA

ATTEST:

By: _____
Mayor

City Clerk

CITY OF PAPILLION, NEBRASKA

ATTEST:

By: _____
Mayor

City Clerk

CITY OF SPRINGFIELD, NEBRASKA

ATTEST:

By: _____
Mayor

City Clerk

KISSEL/E&S ASSOCIATES L.L.C.

By: _____
Joseph D. Kohout

By: _____
Gordon E. Kissel, Managing Partner

Witnessed by: _____