

City of Scottsbluff, Nebraska

Monday, December 2, 2019

Regular Meeting

Item Reports2

Council to discuss, consider, and approve the Security Officer Agreement with Western Nebraska Community College (WNCC) and authorize the Mayor to sign the Agreement.

Staff Contact: Kevin Spencer, Police Chief

INTERLOCAL COOPERATION AGREEMENT FOR SECURITY OFFICER

The parties to this Interlocal Cooperation Agreement for Security Officer ("Agreement") are the City of Scottsbluff, Nebraska, A Municipal Corporation, hereinafter referred to as "**CITY**", and Western Nebraska Community College, hereinafter referred to as "**COLLEGE**" who agree to provide the services of a Security Officer, hereinafter referred to as "**SO**" for the **COLLEGE**.

WHEREAS, the **CITY** and **COLLEGE** share the goal of promoting safety at the **COLLEGE** and a positive **COLLEGE** environment;

WHEREAS, the **CITY** and **COLLEGE** acknowledge that crime prevention is most effective when the **CITY** and the **COLLEGE** are working together in a positive and collaborative manner;

WHEREAS, the **CITY** and **COLLEGE** have each committed funds to pay the costs of assigning two (2) **SOs** at the **COLLEGE**; and,

WHEREAS, the purpose of the **SO** Program is to have police patrol, investigation, traffic regulation, and law enforcement activities conducted specifically in the **COLLEGE** environment and on **COLLEGE** premises.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, **CITY** and **COLLEGE** agree as follows:

1. **Purpose** - The **COLLEGE** and **CITY** propose to accomplish the following with regard to having a **SO** in the **COLLEGE**:

1.1 To foster educational programs and activities that will increase students' knowledge of and respect for the law and the function of law enforcement agencies;

1.2 To create a common understanding that: (a) **COLLEGE** administrators, faculty and staff are ultimately responsible for **COLLEGE** discipline and culture; (b) **SOs** should not be involved in the enforcement of **COLLEGE** rules; and (c) a clear delineation of the roles and responsibilities of **SOs** as to student discipline, with regular review by the Parties, is essential;

1.3 To act swiftly and cooperatively when responding to major disruptions and criminal offenses at the **COLLEGE**, such as: security threats; terrorist activity; disorderly conduct; the possession and use of weapons on campus; the illegal possession, sale and/or distribution of controlled substances; and civil unrest;

1.4 To report crimes and to cooperate with law enforcement officials, and other criminal justice agencies, in their investigations that occur at the **COLLEGE** and **COLLEGE** related activities, both on and

off campus;

1.5 To encourage SOs to provide traffic control at COLLEGE when deemed necessary for the safety and protection of students and the general public when the regular patrol officer/deputy is not available; and

1.6 To promote respect for law enforcement officers, the CITY shall require the SOs to conduct themselves in a professional manner.

2. ***Term and Cost Share*** - CITY and COLLEGE agree to fully fund for one (1) year, beginning January 13, 2020 and ending December 31, 2020, the costs of the SO. The COLLEGE shall pay an amount equal to fifty percent (50%) and the CITY shall pay an amount equal to fifty percent (50%) of the costs, which are defined as the 9 month salary and fringe benefits including pension, FICA, disability, health & life insurance for two (2) full-time SOs working forty (40) hours per week during the school term. CITY will bill COLLEGE quarterly for COLLEGE'S share of the payments due hereunder, and COLLEGE shall pay such bills within thirty (30) days after the bills are received.

3. ***Overtime*** - If the COLLEGE requests or requires the SOs to work overtime, COLLEGE shall be billed the overtime worked, at the then existing salary and benefit rate. COLLEGE will be billed the overtime hours on a quarterly basis, and payment will be due from COLLEGE to CITY within thirty (30) days after receipt of said billing. The CITY shall be entitled to flex the SO's weekly hours as comp time or a flexible work schedule to avoid overtime charges, if CITY policy allows.

4. ***SO Selection*** - CITY will provide two (2) certified Nebraska Police Officers to act as SOs during the term of this Agreement. The CITY agrees that in accordance with the Nebraska Fair Employment Practice Act, Nebraska Revised Statute §48-1122, it will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hire, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, or national origin or similarly protected statutes of the employee or applicant. Neither of the parties shall, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances.

5. ***Change in Assignment of SO*** - The CITY and COLLEGE acknowledge that specific skills, experience, and expertise are important elements to the success of this Agreement. In the event that the current SOs are unable to perform their duties hereunder, due to illness, injury, relocation, career change or other extenuating circumstances, the CITY shall identify a successor to perform the duties set out in this Agreement, within a reasonable time frame, subject to availability of a certifiably trained SO or another officer comparably trained. The

COLLEGE'S financial obligations shall cease until a suitable replacement is selected and assigned. Training of a successor **SO** shall be the responsibility of **CITY**.

6. **Evaluations** - The **CITY** and **COLLEGE** shall enter into good-faith discussions to evaluate the **SOs** on a regular basis. The evaluation is to ensure that the **SOs** are meeting the requirements of the **COLLEGE** and the **CITY**. The **CITY** and **COLLEGE** shall coordinate efforts to conduct evaluations on employee's appraisal as established by **CITY** policy.

7. **Agreement Renewal** - This Agreement shall renew automatically for each successive contract year unless it is determined, after good-faith evaluations have been performed, that the **SOs** are not satisfactorily meeting the requirements of the Agreement. Any intention to not renew the Agreement must be mutually agreed upon by the **CITY** and **COLLEGE** no later than October 1 of a calendar year.

8. **Supplies and Equipment** - The **CITY** shall provide the **SOs** with standard police patrol vehicles and will maintain the vehicles, including all expenses associated with the operation of the vehicle and insurance. The **CITY** shall also provide the **SO** with uniforms, equipment, weapons, cellular phone and other law enforcement related items to conduct the job tasks described in this Agreement and in the job description and standards provided for the **SOs** position by the **CITY**. The **COLLEGE** agrees to provide the **SOs** with the usual and customary office supplies and forms required in the performance of their duties, a private office within the **COLLEGE** accessible to the students, a computer, printer, fax machine.

9. **SO Duties** - The duties of the **SO** shall be as follows:

- 9.1 Abide by the professional rules of conduct of a certified law enforcement officer;
- 9.2 Respond to students' questions;
- 9.3 Explain the law enforcement's role in society to students;
- 9.4 Demonstrate the concern of the **CITY** for students;
- 9.5 Provide safety and security for the campus;
- 9.6 Create good will and increase the understanding of law enforcement;
- 9.7 Strengthen student and law enforcement relationships;
- 9.8 Provide a forum where law enforcement, students and faculty become acquainted and earn mutual respect;
- 9.9 Open lines of communication between public agencies and students on campus;
- 9.10 Enforce federal, state and local criminal laws and ordinances, and assist administrators with the enforcement of **COLLEGE** policies and administrative regulations as specifically agreed to by the parties;
- 9.11 Investigate and report data of all events, criminal activity

committed on or adjacent to **COLLEGE** property, and at **COLLEGE** functions;

9.12 Provide consultation to students in special situations, such as students suspected of engaging in criminal misconduct, when requested by the **COLLEGE**;

9.13 Provide traffic control and enforcement on campus;

9.14 Provide monthly written reports to the **COLLEGE**.

10. **Roles and Responsibilities for SO Program Regarding College Discipline -**

10.1 Disciplining students for **COLLEGE**-based rule violations is the responsibility of the **COLLEGE** and **COLLEGE** administrators. Law enforcement is the responsibility of the **CITY**. The **CITY** and the **COLLEGE** shall use best efforts to follow the principles in this Interlocal Cooperation Agreement regarding the division between **COLLEGE** discipline and law enforcement.

10.2 **SOs** can provide assistance when (a) required by Nebraska State or City law; (b) when there is a threat to the safety of students, **COLLEGE** employees, visitors or public safety personnel or **COLLEGE** property; (c) to assist victims of crime, missing persons, and persons in mental health crisis; (d) in an attempt to prevent criminal activity from occurring; (e) it is required as part of emergency management response; or (f) as specifically agreed to by the parties herein.

10.3 **SO** should not act as a **COLLEGE** disciplinarian. **COLLEGE** staff should not involve **SOs** in disputes that are solely related to **COLLEGE** discipline. However, if the **COLLEGE** concludes an incident is a violation of the law, the **COLLEGE** may contact the **SOs** and the **SOs** shall then determine whether law enforcement action is appropriate.

10.4 **SOs** should not interview students or collect evidence for solely **COLLEGE** disciplinary purposes.

11. **SO Scheduling** - During the school year, the **SO** will work on all scheduled school days, Monday through Friday with adjustments as required for special school functions and activities as needed to equal 40 hours in one calendar week. Special assignments and time off will be approved by the **CITY**.

11. **SO Supervision** - The **SO** shall be an employee of the **CITY** at all times and for all purposes. The **CITY** shall be directly responsible for all employee costs, except as otherwise set forth herein. The supervision of the **SOs** shall be by the **CITY** with input from the **COLLEGE**. During any school crisis the **SO** shall immediately contact the Chief of Police.

12. **Insurance** - **CITY** shall provide all insurance for the **SOs** and the officer's activity with regard to this Agreement. This Agreement does not establish any partnership, joint venture, or any type of legal association between the parties, but is to be construed as an interlocal agreement between the parties.

13. ***Entire Agreement, Severability*** - This Agreement constitutes the entire agreement between the parties and may be amended only by a written document signed by the representatives of the legislative bodies of each of the parties. If any portion of this Agreement is deemed to be unenforceable or against public policy, it shall not affect the remaining portions of this Agreement.

14. ***Controlling Law*** - The terms of this Agreement shall be interpreted and enforced under the laws of the State of Nebraska.

15. ***Default, Remedies*** - Time is of the essence in performance of this Agreement. In the event of default by either party, the other party may pursue any right or remedy available to them at law or in equity for the enforcement and/or termination of this Agreement, and the ascertainment and collection of damages, including the right of specific performance.

16. ***Training, testing*** - The SOs will be subject to current procedures in effect for CITY employees including attendance at all mandated training and testing to maintain state peace officer certification. This training and certification takes place throughout the year and will necessitate the absence of the SOs from the COLLEGE.

17. ***Confidential Information and FERPA*** - Student "educational records" maintained by the COLLEGE are confidential information, governed and protected by the federal law known as the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g), as amended, and its related regulations promulgated by the Department of Education, found at 34CFR Part 99. This Agreement shall refer to the Act and the regulations collectively as "FERPA". For purposes of this FERPA, the SO is designated as a COLLEGE official and as its law enforcement unit. The SOs are authorized by the COLLEGE to (1) enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the COLLEGE itself, or (2) maintain the physical security and safety of the COLLEGE. The CITY and the SOs agree to in all respects comply with all applicable provisions of FERPA. Nothing in this Agreement may be construed to allow either party to maintain, use, disclose, or share student record information in a manner not permitted by FERPA. The parties further acknowledge that the COLLEGE has implemented policies and guidelines which describe when and how protected student information may be obtained, shared, or otherwise disseminated and that the CITY and its agents are subject to such policies and guidelines and will comply with same. The COLLEGE shall provide a copy of these policies and guidelines to the SOs and the CITY.

18. ***Record Requests*** - The CITY and the COLLEGE are subject to the State's public record laws, found at Nebraska Revised Statute § 84-712 et seq. The parties understand that the terms of this Agreement require them to cooperate with respect to numerous records, in many formats, for purposes of fulfilling their respective

obligations. In the event either party receives a public record request seeking records or information which is or may be covered by this Agreement, the parties agree to provide notice to each other as soon as reasonably possible in order to discuss the disclosure requirements under those laws. The party receiving the request will have the ultimate decision-making authority on whether the records are disclosed, provided the other party has not elected to seek a judicial determination that such disclosure is not required.

19. ***Administration*** - The COLLEGE's President and the CITY's Chief of Police ("Administrators") shall be responsible for jointly administering the cooperative undertaking described in this Agreement. The Administrators, with the approval from the governing boards of each of the Parties, may take any action authorized, either explicitly or implicitly, by the Interlocal Cooperation Act, including any action that may be necessary to perform the duties and functions as provided in this Agreement.

20. ***Inspection of CITY's Records*** - The CITY shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the COLLEGE under this Agreement. All CITY records relating to this Agreement, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation, and/or reproduction, during normal working hours, by the COLLEGE's agent or its authorized representative to permit the COLLEGE to evaluate, analyze, and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze, and verify any and all invoices, billings, payments, and/or claims submitted by the CITY pursuant to this Agreement.

21. ***Body-Worn Cameras (BWCs)*** - All parties agree that any use of BWCs by SOs must be subject to and in compliance with federal, state, and local laws and regulations regarding their use and operation. The CITY shall use its best efforts to notify the COLLEGE at least two weeks before its SOs assigned to the COLLEGE are to begin use of BWCs, and it will provide written information to the COLLEGE. Every SO equipped with a BWC shall be trained in the operation of the equipment prior to its use. To maximize the effectiveness of the BWC and the integrity of the video documentation, SOs shall adhere to the objectives and procedures outlined in this Agreement and the CITY's general operations orders or similar policies or procedures when they utilize BWCs. The CITY may, if not otherwise prohibited by law, provide to the COLLEGE copies of any such filming of students, parents, employees, or others upon COLLEGE property, upon request for such copies by the COLLEGE, as a law enforcement record. In the event that the CITY receives advice that providing a copy of such videos is prohibited, the CITY agrees to utilize its best efforts to facilitate the availability of its officer(s) that made the video to testify, upon request by the COLLEGE, in any disciplinary hearing concerning his/her/their knowledge of the facts and circumstances of the videoed incident. Any such film or video taken by, and kept in the possession of

CITY's SOs may be considered law enforcement records under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. sec. 1232g and 34 C.F.R. Sec. 99.8. Any copy of such film or video, if permitted by law to be provided to the COLLEGE, may become an educational record of the COLLEGE. The SO's shall at all times recognize and comply with the confidentiality of student and education records and may only seek such records in accordance with the requirements of COLLEGE policy and state and federal law.

22. ***No Separate Legal Entity*** - This Agreement does not establish a separate legal or joint entity.

23. ***Manner of Acquiring, Holding, and Disposing of Real and Personal Property*** - The Parties' will not be jointly acquiring, holding, or disposing of real property under this Agreement. In no event shall the Administrators have the authority to acquire real property on behalf of the Parties. The Administrators shall have the authority to acquire and hold any personal property that is needed or required for the implementation of any purpose of this Agreement. The title to all such personal property shall be held in the name of the acquiring party for the benefit of all Parties. The Parties shall have the authority to dispose of such personal property, provided that (a) any such disposal shall comply with state law, and (b) any funds raised from such sale shall be shared by the parties in proportion to their contribution made to obtain the property.

24. ***Financing and Budgeting*** - This Agreement and the matters contemplated herein do not require joint financing, nor shall a joint budget be required. Each party will budget separately to pay the costs and expenses that are incurred to fulfill its obligations under this Agreement. For planning and budgeting purposes, the CITY shall provide to the COLLEGE the estimated cost of the SO no later than October 15th of each year. The CITY will confirm to the COLLEGE the actual cost of the SO for the following COLLEGE year prior to July 1st.

25. ***Expenses*** - Except as otherwise provided herein, each party shall be responsible for its own expenses related to this Agreement.

26. ***Taxes*** - This Agreement does not grant the Parties any authority to levy, collect, or account for any tax authorized under Nebraska Revised Statutes sections 13-318 through 13-326 or 13- 2813 through 2816.

27. ***Employment Eligibility Verification*** - The Parties shall use a federal immigration verification system to determine the work eligibility status of employees and who are physically performing services within the State of Nebraska. If a party employs or contracts with any subcontractor in connection with this Agreement, the contracting party shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

28. ***Termination*** - Either party may terminate this Agreement for any or no reason and at any time by giving the other party at least ninety (90) days prior written notice of the same. Provided, the written notice must be delivered to the other party prior to October 1 of a calendar year. Any joint funds or property in possession of the Parties as a result of this Agreement shall be divided and distributed to the party that contributed it or funded its purchases.

29. ***Appropriation of Funds*** - The Parties' obligations under this Agreement are expressly subject to the appropriation of funds by the **COLLEGE's** Board of Governors and the **CITY's** City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the obligations under this Agreement, the Parties may terminate this Agreement.

[SIGNATURE PAGE WILL FOLLOW]

This Agreement was signed by each party on the date shown in the following acknowledgments.

CITY OF SCOTTSBLUFF, NEBRASKA
A Municipal Corporation,

**WESTERN NEBRASKA COMMUNITY
COLLEGE,**

By _____
Raymond Gonzales, Mayor
City of Scottsbluff, Nebraska

By _____
