

STAFF REPORT

TO: DODGE COUNTY BOARD OF SUPERVISORS
FROM: Shelly Holzerland, Communications Director
DATE: February 26, 2020
SUBJECT: Interlocal Agreement with Colfax County

Agenda Item # 15
Date 2-26-2020

Recommendation: Approve entering in to an Interlocal Agreement with Colfax County, NE to join the VIPER 911 Servers in a host/multimode 911 region.

Background: In Nebraska, the current 911 system is in the process of transitioning to NextGen 911. The next generation of 911 will be IP based. In order to minimize costs and maximize interoperability, the state is encouraging regionalization of 911 systems. Two 911 servers from the same vendor can be joined together to form a host and other counties can become remotes. Two hosts are needed for redundancy. Dodge and Colfax Counties have the same brand of 911 servers and this interlocal will allow them to become co-hosts capable of hosting a regional system.

The Interlocal Agreement was crafted to allow the inclusion of additional counties in the future. It has been reviewed and approved by the Dodge County Attorney.

This host/remote system will provide the opportunity to share in support costs and allows PSAPs to back each other up. This eliminates the need for costly backup systems and allows PSAPs the freedom to provide support for each other during high volume incidents.

Fiscal Impact: None

This Interlocal Agreement is part of the combined city/county PSAP. The PSAP Governance Board unanimously approved the agreement on January 28, 2020.

INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT is entered into as of this 26 day of February, 2020, by and between the parties (hereafter individually "Party" and collectively "Parties) identified as follows:

The governing boards of the PSAPs:

1. Fremont/Dodge County Governance Board (Dodge County)
2. Colfax County Board of Commissioners (Colfax County)

WHEREAS, The Interlocal Cooperation Act of the State of Nebraska, being specifically Neb. Rev. Stat. §13-801 et. seq., allows separate political subdivisions to cooperate on the basis of mutual advantage to provide for joint undertakings, services and facilities, in a manner and pursuant to forms of governmental organization that will accord with best geographic, economic, population, and other factors influencing the needs and developments of local communities.

WHEREAS, additional benefit and interoperability can be achieved if the Parties would share in the same 911 telephone infrastructure provided knowns as Positron Viper;

WHEREAS, the Parties agree that by sharing the 911 Customer Premise Equipment (CPE) for phones, hereafter referred to as Positron Viper, a degree of resiliency and redundancy can be achieved for 911 as well as a mechanism for cost sharing.

WHEREAS, it is necessary for the Parties to enter into an agreement to set forth their respective rights, duties and obligations, and:

NOW, THEREFORE, IT IS AGREED AS FOLLOWS;

I. Purpose.

A. For the Sharing of the 911 Infrastructure known as Positron Viper, it is the intent of the Parties, individually, will :

1. Each Party, at their own expense, will purchase and configure Positron Power Workstations and software that will connect remotely to the Viper systems located at the Fremont/Dodge County and the Colfax County 911 Centers.
2. Identify backup telephone numbers that the 911 calls could be routed to in the event of failure.
3. Participate in the regional configuration of Viper redundancy.
4. Share in the annual maintenance costs of the two Viper Nodes serving the regional system by dividing the total number of workstations located at each of the participating agencies in the agreement. Maintenance costs of Viper shall be presented to the group thirty (30) days prior to the due date.
5. Provide for the maintenance of their own workstations and any unique interface costs as well as the costs of third party mapping software and connectivity costs.
6. Any required Maintenance or upgrades will be done under the contract that the Fremont/Dodge County PSAP and the Colfax County PSAP have with Century Link.

- B. For the Sharing of the 911 Infrastructure known as Positron Viper, it is the intent of the parties that Fremont/Dodge County and Colfax County will:
 - A. Configure the Viper to allow for the remote operation of the Positron Power positions utilized by Parties
 - B. Configure the Viper so that in the event of a loss of connectivity with parties that calls can be immediately answered in one of the other remote sites as well as locally on administrative lines.
 - C. Ensure that Parties redundancy with Fremont/Dodge County 911's and Colfax County's Viper and is configured so that there should not be a loss of service in the event that the Fremont/Dodge County 911's or Colfax County's Viper is rendered un-useable or is off line for maintenance.
 - D. Any Viper maintenance upgrades will be done under the contracts that Fremont/Dodge County 911 and Colfax County have with CenturyLink. Fremont/Dodge County 911 will then invoice any other Parties for their portion of the costs in accordance with A(1) above.

- II. Authority: The authority for this Agreement is that authority granted by law, including without limitation the general powers of each Party, the Nebraska Interlocal Cooperation Act, Article 8 of Chapter 13, Neb. Rev. Stat § (1943);

- III. Cost Sharing/Budget and Finance:

This agreement shall also allow for sharing of costs of the 911 Mapping Software Geocomm's GeoLynx Software Solutions. The cost of map sharing will be paid in accordance with the provisions of I(A)(1) above. The costs associated with any other 911 mapping software will be the responsibility of the respective agency.

- IV. Terms of Agreement. This Agreement shall be effective beginning on February 25, 2020, and shall automatically renew yearly thereafter every March 1st. ("Renewal Term"). Prior to the expiration of this Agreement, any Party may give the other Parties thirty (30) days written notice of the notifying Party's desire to renegotiate this Agreement. During the pendency of these negotiations this Agreement will remain in full force and effect.

- V. Withdraw and/or Termination:
 - A. A party may terminate this Agreement for convenience at any time for any reason by giving the other Party one year's written notice. Each party shall be liable for its share of all cost specified herein until the effective date of the termination.
 - B. This Agreement may be terminated for a material breach not cured within a reasonable time following written notice. Such notice, to be effective must describe the breach or breaches complained of and provide a reasonable time to cure, not less than 45 days from receipt of notice, only the payment of money, in which case such time may be 30 days. Following a failure to cure the non-breaching Party may notify the remaining Parties in writing that the Agreement is terminated as to the breaching Party effective in ninety (90) days following the receipt of such notice. Each Party shall be liable for its share of all costs specified herein until the effective date of the termination.
 - C. The Parties herein reserve the right, by written request sent by certified mail from the notifying Party to the other parties, to amend as provided herein any provision of this

Agreement. If on or after 180 days of such amendment notice, amendment negotiations fail, then a Party may notify the others in writing of that Party's intent to withdraw and that the notifying Party's participation in this agreement is terminated following ninety (90) days after the withdrawal notice. All such notices provided for in this section shall be sent by certified mail as identified in Paragraph XIX.

- VI. Liability Insurance: The Parties agree to be self-insured or to carry liability insurance written on an "occurrence" basis (as distinguished from "claims made" basis) covering all law enforcement and/or communication center personnel/equipment assigned by each Party and insuring against liability for negligence, bodily injury, personal injury and property damage, in an amount not less than the maximum liability of such Party under applicable law. No Party represents in any way that the insurance specified herein, whether in scope of coverage or limits, is adequate or sufficient to protect any other Party or its interests. Each Party 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 any Party's liability hereunder or to fulfill the indemnification provisions of this Agreement.
- VII. Entire Agreement. This Agreement contains the entire agreement of the Parties. No representations were made or relied upon by any Party other than those that are expressly set forth herein. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or prior course of dealings. No agent, employee or other representative of any Party is empowered to alter any of the terms hereof except as provided herein.
- VIII. Amendments/Modification. This Agreement may be modified for any reason, including but not limited to adding another Party. Said modification shall be made by written addendum, approved and executed by the Parties. No alteration or variation of the terms and conditions of this Agreement shall be valid unless made pursuant to an addendum. Every addendum shall specify the date on which its provisions shall be effective.
- IX. Assignment. None of the Parties may assign its rights under this Agreement.
- X. Successors and Assigns Bound by Covenants. All covenants, stipulations, and agreements herein shall inure to the benefit of the Parties and extend to and bind the legal representatives, successors, and assigns of the Parties
- XI. Waiver. The failure of a 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 a Party which it is 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.

- XII. 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.
- XIII. Indemnification/Liability. To the extent permitted by law, each Party (as “indemnitor”) agrees to indemnify, defend, and hold harmless each of the other Parties (as “indemnitee(s)”) from and against any and all claims, losses, liability, costs, or expenses, including reasonable attorney’s fees (hereinafter collectively referred to as “claims”) arising out of bodily injury, including death, or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee(s), are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers. 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 Subdivisions Tort Claims Act or other applicable provisions of law.
- XIV. Notification of Claims and Lawsuits. In the event that a claim or lawsuit is brought against a Party for any matters related to this Agreement, it shall be the duty of that Party to notify the other Parties of said claim or lawsuit.
- XV. Sovereign Immunity. Nothing in this Agreement shall be construed as an express or implied waiver of the sovereign immunity of any Party in any forum or jurisdiction.
- XVI. No Third Party Rights. 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, agents and servants.
- XVII. Applicable Law/Venue. This Agreement shall be construed and all of the rights, powers and liabilities of the Parties hereunder shall be determined in accordance with the laws of the State of Nebraska. Venue for any action under this Agreement shall be in Fremont, Nebraska, Dodge County District Court or for any federal action, it shall be in United States District Court for the State of Nebraska.
- XVIII. Nondiscrimination. The Parties, in the performance of this Agreement, shall not discriminate in violation of the Federal or State law or local ordinances. In accordance with state and federal law, the Parties shall 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 race, color, age, religion, sex, disability, national origin or similar protected status of the employee or applicant.

XIX. Notice and Authorized Representatives. Notice, required under this Agreement, shall be delivered in writing and shall be effective upon receipt by the authorized representative. Delivery shall be made by certified mail, return receipt requested. For purposes of Notice, following individuals are the authorized representatives of the Parties:

DODGE COUNTY

County Sheriff	&	Director of Communications/911
Dodge County Sheriff's Office		725 N Park Ave
428 N. Broad St.		Fremont, NE 68025
Fremont, NE 68025		
(402) 727-2702		(402) 727-2677

COLFAX COUNTY

Sheriff of Colfax County	&	Director of Communications/911
411 E. 11 th St.		411 E. 11 th St.
Schuyler, NE 68661		Schuyler, NE 68661
(402) 352-8526		(402) 352-8526

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

XXI. 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.

XXII. 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 majority decision of the Parties shall govern.

XXIII. Independent Contractor. 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 the parties or their personnel, employees, agents, contractors or servants, 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 constructed to be the employee or agent of the other for any purpose whatsoever. None of the Parties nor its personnel, employees, agents, contractors or servants 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. 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.

- XXIV. Multiple Counterparts: This agreement, involving numerous parties, may be executed in multiple counterparts each of which may bear the signatures of less than all of the parties hereto, and it shall be in full force and effect even if so executed.
- XXV. Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience, and in no way define or limit the scope of any section.
- XXVI. Dispute Resolution. Any Dispute which, in the judgement of a Party to his Agreement, may affect the performance of such Party shall be reduced to writing and delivered to the other Parties. As soon as possible thereafter, the Parties authorized representatives shall schedule a face to face meeting 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 shall 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. If the Parties are unable to resolve their dispute using the process described above, the Parties may commence a legal action against the other Party.
- XXVII. Public Employer Contract Provision (Ne Rev. Stat. 4-114(2)). Pursuant to and in order to be in compliance with Neb. Rev. Stat. §4-114(2), each Party hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of 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 physically performing services within the State of Nebraska.
- XXVIII. Public Benefits – Neb. Rev. Stat. §§4-108 – 113. No party is an individual or sole proprietorship. Therefore, no Party is subject to the public benefits attestation and related requirements of Neb. Rev. Stat. §§4-108 – 113.

COUNTY OF DODGE, NEBRASKA,
A Nebraska Political Subdivision

By: _____
Dodge County Board Chairman

Date: _____

Attest:

Fred Mytty, County Clerk

Approved as to Form:

Dodge County Attorney

COUNTY OF COLFAX, NEBRASKA,
A Nebraska Political Subdivision

By: _____
Colfax County Board Chairman

Date: _____

Attest:

Rita M. Mundil, County Clerk

Approved as to Form:

Colfax County Attorney

CITY OF FREMONT, NEBRASKA,
A municipal corporation and Nebraska Political Subdivision

By: Mayor

Date: _____

Attest:

City Clerk

Approved as to Form:

Fremont City Attorney