

ORDINANCE 2022 – 4

AN ORDINANCE OF THE MUNICIPALITY OF KINGSTON, COUNTY OF LUZERNE, COMMONWEALTH OF PENNSYLVANIA, A HOME RULE MUNICIPALITY APPROVING THE TERMS AND CONDITIONS OF A POLICE MUTUAL AID AGREEMENT WITH FORTY FORT BOROUGH

WHEREAS, the MUNICIPALITY OF KINGSTON (hereinafter “Municipality”) and FORTY FORT BOROUGH have entered into a police mutual aid agreement setting forth the terms and conditions of the provision of police services when called for by a participating borough; and

WHEREAS, cooperation between the “Municipality” and the surrounding communities in the exercise and performance of their governmental powers, duties and functions is authorized by the various Acts of the General Assembly, including as may be applicable but not limited to the Borough Code, and the Intergovernmental Cooperation Act; and

WHEREAS, it is recognized that the Intergovernmental Cooperation Act, separate and apart from these other Codes, provides for an ordinance related thereto, and the purpose of this ordinance is to conform to the requirements of the Intergovernmental Cooperation Act.

NOW THEREFORE, be it Ordained and Enacted by the Governing Body of the Municipality of KINGSTON, Luzerne County, Commonwealth of Pennsylvania, and it is hereby Ordained and Enacted by the authority of the same as follows:

1. Pursuant to the Intergovernmental Cooperation Act, 53 Pa. C.S.A. Section 2301, et seq., the terms and conditions of a police services mutual aid agreement by

and between the "Municipality" and Forty Fort Borough as recommended by the Chief of Police of the Municipality of Kingston is hereby approved and adopted, said Agreement being substantially in the form attached hereto as Exhibit A, which Agreement is incorporated herein and made a part hereof. The "Municipality" is hereby authorized, by Resolution of the Governing Body adopted at a public meeting, to enter into such an Agreement, on substantially similar terms, with any other particular named surrounding borough upon recommendation of the Police Chief. Further, the "Municipality" is authorized, by resolution, to enter into any extension or extensions of such Agreement.

2. The appropriate authorized officers of the "Municipality" are hereby authorized to execute and enter into said Police Services Mutual Aid Agreement on behalf of the "Municipality" and to take all actions and execute all documents necessary to implement said Agreement.

3. Pursuant to the Intergovernmental Cooperation Act, 53 Pa. C.S.A. § 2307, the following are specified:

- (1) The conditions of the Agreement are set forth in Exhibit A.
 - (2) The duration of the term of the Agreement is set forth in Exhibit A.
 - (3) The purpose and objectives of the Agreement, including the powers and scope of authority delegated in the Agreement are set forth in Exhibit A.
 - (4) The manner and extent of any financing the Agreement are set forth in Exhibit A.
 - (5) The organizational structure necessary to implement the Agreement are set forth in Exhibit A.
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- (6) The manner in which personal property is to be acquired, managed, licensed or disposed of is set forth in Exhibit A.
- (7) No new entity is created under 53 Pa. C.S.A. § 2307(7) which will have employees.

4. This Ordinance shall become effective in conformity with Kingston Charter Section 213.

INTRODUCED at a meeting of the Town Council of the Municipality of Kingston held the 2nd day of May, 2022.

ADOPTED at a regular meeting of the Town Council of the Municipality of Kingston, Luzerne County, Pennsylvania held the 6th day of June, 2022.

FOR THE TOWN COUNCIL OF THE
MUNICIPALITY OF KINGSTON

By: 
Rob Jacobs, President 3-21-23

ATTEST:

Valerie Norton, Secretary

Date: _____


APPROVED:


Jeffrey R. Coslett, Mayor

Date: 3-21-23

ATTESTATION BY
ACTING INTERIM MUNICIPAL SECRETARY
PURSUANT TO MUNICIPAL RESOLUTION
2023-6

Executed this 20th day of March, 2023 as authorized by Resolution
2023 – 6 dated March 20, 2023 of the Town Council of the Municipality
of Kingston.

 3-21-2023 Ordinance 2022-4

Paul Keating – Acting Interim Municipal Secretary



Law Enforcement Mutual Aid Agreement

Forty Fort & Kingston Municipal Police Departments



ARTICLE ONE

For valuable consideration, the sufficiency and receipt of which hereby acknowledged by the parties hereto, this agreement is entered into on this _____ day of, _____, by and between the Forty Fort Police Department and the Kingston Municipal Police Department.

ARTICLE TWO

PURPOSE AND INTENT

- A. The intent of this Agreement is to set forth the terms and conditions of a law enforcement mutual aid agreement between the Forty Fort Police Department and the Kingston Municipal Police Department to support and assist each other and their respective police agencies in times of need; and
- B. Whereas, legal authority for this Agreement can be found in the Pennsylvania Intergovernmental Cooperation Act (53 Pa. C.S.A. § 2301 -2315); the Municipal Police Jurisdiction Act (42 Pa. C.S.A. § 8953); the Political Subdivision Tort Claims Act (42 Pa. C.S.A. § 8501 et seq.) and Act 93 of 2008 - Intrastate Mutual Aid Act (35 Pa. C.S.A § 7331 et seq.), and
- C. Whereas, the parties hereto are each authorized to lawfully provide, establish, maintain, and operate law enforcement and other emergency agencies and services; and
- D. Whereas, each of the Parties hereto has and maintains law enforcement and emergency equipment and vehicles; and
- E. Whereas, law enforcement incidents may arise in one or another of the jurisdictions of the Parties, resulting in greater demands than the personnel, vehicles and/or equipment of that Party can handle, or emergencies of such intensity may occur that cannot be fully handled by the personnel, vehicles and/or equipment of the Party in whose jurisdiction the need occurs; and
- F. Whereas, it is in the best interest of each of the parties that it may have the law enforcement and emergency services of and from the other Parties available to aid and assist it regarding law enforcement and/or responding to other emergencies; and
- G. Whereas, the establishment of a law enforcement mutual aid agreement will serve an important public purpose and will promote the safety, security and general welfare of the inhabitants, visitors and property owners of the Parties; and
- H. Now, therefore, the Parties agree to provide mutual aid and assistance in accordance with the understandings, commitments, terms and conditions for said aid and assistance as specified in this Agreement as follows:

ARTICLE THREE

DEFINITIONS:

- A. Agency: a governmental unit's law enforcement department or agency.
- B. Mutual Aid: the reciprocal agreement predetermined between two (2) or more governmental units or communities desiring to support each other upon request for supplemental personnel and/or equipment. Also, the act of providing mutual aid.
- C. Incident Commander: the person responsible for the overall management of the incident and retains all vested authority in the incident. The Incident Commander is normally located at a command post.
- D. Need: a combination of circumstances requiring action that calls for manpower, vehicles or equipment that is not readily available to the requesting governmental unit.
- E. Officer in Charge of the Police Operations: the senior or highest-ranking officer available of the requesting agency who has responsibility for the directing of the agency at the time of the need for assistance.
- F. Officer in Command of Police Operations: shall mean the senior or highest-ranking officer on duty for a responding agency at the time a request for mutual aid is made.
- G. Requesting Agency: the jurisdiction in which a need for assistance exists and that requests aid pursuant to this Agreement.
- H. Responding Agency: the agency or party that sends personnel, vehicles and/or equipment to a requesting agency pursuant to this Agreement.
- I. Available Unit: police officers, vehicles and/or equipment that are available and able to respond to a request for Mutual Aid.
- J. Party: one of the governmental units that entered into this Agreement.
- K. Parties: two or more of the governmental units that entered into this Agreement.

ARTICLE FOUR

DETERMINATION AND DECLARATION OF NEED:

The Requesting Agency shall be responsible for determining and declaring that a need for Mutual Aid exists in its jurisdiction.

ARTICLE FIVE

REQUEST OF ASSISTANCE:

Upon determining that a need for assistance exists and that a Mutual Aid response is necessary, the Requesting Agency shall request aid from the Responding Agency.

ARTICLE SIX

RESPONSE TO REQUEST:

- A. The Responding Agency shall make available to the Requesting Agency such personnel, vehicles and/or equipment that can safely be sent or released to respond to the need. The Parties agree to use their best efforts to respond to a request for a Mutual Aid by sending Available Units automatically and promptly to the staging area/scene/site as requested by the Requesting Agency.
- B. The aid rendered will be to the extent or scope of available personnel, vehicles and equipment not immediately required to remain behind for adequate protection of the territorial limits of the Responding Agency. The judgement of the Police Chief, or his/her designee, of the Responding Agency shall be final as to the personnel, vehicles and equipment that are Available Units to render aid.
- C. An authorized representative of any Party which has withheld or refused to provide requested assistance under this Agreement shall immediately notify the Requesting Agency of such denial.

ARTICLE SEVEN

DIRECTION AT THE SCENE OF THE NEED:

- A. An Officer of the Requesting Agency shall be responsible for police operations at the scene. All personnel and equipment of a Responding Agency unless an Incident Commander is designated. The Requesting Agency or the incident Commander is responsible to establish a communication plan for the incident.
- B. The Parties agree to utilize the National Incident Management System ("NIMS") during any emergency involving Mutual Aid. It is understood that both the Requesting Agency and the Responding Agency have a responsibility to ensure proper incident management implementation and interface to ensure resource utilization, safety and accountability, and organization.

ARTICLE EIGHT

WITHDRAWAL OF PERSONNEL AND EQUIPMENT:

After notification to the Incident Commander or, if none, to the Officer in Charge at the scene, personnel, vehicles and/or equipment of the Responding Agency may be withdrawn at the discretion of the Officer in command of the Responding Agency. The Responding Agency shall not have any obligation to keep its personnel, vehicles and/or equipment at the scene of the Requesting Agency's incident for a longer period of time than is deemed necessary by the Officer in Command of Police Operations of the Responding Agency.

ARTICLE NINE

INSURANCE:

Each Party shall procure and maintain at all times, at its sole exclusive expense, insurance coverage, including comprehensive liability, personal injury, property damage, worker's compensation, and if applicable, emergency medical service professional liability, with a minimum of \$1,000,000 on General liability, Police Professional and Public Officials Liability with an additional \$1,000,000 umbrella limit that will go over those policies for a total of \$2,000,000. The obligations of the Section may be satisfied by a Party's membership in a self-insurance pool, a self-insurance plan, or arrangement with an insurance provider approved by the state of jurisdiction with the above minimum dollar limits.

LIABILITY:

- A. No Party to this Agreement shall be liable for declining or failing to respond to or, inversely, for withdrawing from a request for assistance.
- B. Each Requesting Agency and Responding Agency operating under this Agreement shall bear the risk of its own actions as it would with normal, day-to-day operations within its own jurisdictional area.
- C. Requesting Agencies shall not be responsible for the liability or the defense of the employees, volunteers, agents and subcontractors of the Requesting Parties. Each Party covenants and agrees that it will not sue another Party to this Agreement for any liability related to this Agreement that is covered by the other Party's insurance and to waive any right of subrogation regarding such matters.

ARTICLE TEN

COMPENSATION FOR AID:

- A. The Responding Agencies and Requesting Agencies waive all claims for compensation and pay from each other including wages, disability payments, retirement, furlough and payments or charges made for equipment, vehicles, supplies and materials used or expended while rendering service under this Agreement.
- B. Any expenses recoverable from third parties will be equitably distributed among the Responding Parties. Nothing herein will operate to bar any recovery of funds from any state or federal agency under any existing statutes.

ARTICLE ELEVEN

IDEMNITY IN JOINT TRAINING:

Each Party to this Agreement shall release, indemnify and hold harmless the other Parties for, from and against all claims, demands, costs or damages (including attorney's fees) for bodily injury, including death, or property damage to any person, participant or entity arising out of the acts or omissions of participants and/or personnel of the Party conducting any joint training programs or exercise (unless the Party conducting any such program or exercise was grossly negligent).

ARTICLE TWELVE

REIMBURSEMENT:

When a Requesting Agency becomes aware of, or makes application for, reimbursement for the cost of operations from a non-Party, it shall notify the other Parties of the availability of such funds. When applicable, the initiating governmental agency (i.e. Party) will apply for all Parties. Each Party shall maintain appropriate records to support any request for reimbursement.

ARTICLE THIRTEEN

JURISDICTION OVER PERSONNEL AND EQUIPMENT:

- A. Each Party to this Agreement shall continue to provide the same salaries, workers compensation, retirement and other fringe benefits to its employees responding to a Mutual Aid request as those employees would receive while on duty in their own jurisdiction.
- B. The Incident Commander of the Requesting Agency shall be in command of all responding personnel, vehicles and equipment from the Responding Agency. All personnel, vehicles and equipment of a Responding Agency will be under the immediate command of the highest-ranking officer attached to such Responding Agency. All commands and orders for the use of such personnel, vehicles and equipment will be made by the Incident Commander of the Requesting Agency through the ranking officer of the Responding Agency whenever possible. The ranking officer of the Responding Agency, however, at all times has the power to decline a specific duty assignment if he or she feels the assignment is unsafe. In addition, the ranking officer under his or her command, thus terminating aid to the Requesting Agency, if the Responding Agency has to respond in its own primary jurisdictional area.

ARTICLE FOURTEEN

TERMINATION:

- A. This agreement commences on the Effective Date and continues until terminated in accordance with this Section.
- B. Any party to this Agreement may terminate this Agreement by providing all of the other Parties with written notice thirty (30) days prior to the time withdrawing Party wishes to withdraw its services from this Agreement. The withdrawal of any Party will not terminate or have any effect upon the applicability of the provisions of this Agreement as to the other remaining Parties or as to the withdrawing Party for events that occurred prior to its withdrawal.
- C. This Agreement will continue unless and until terminated by the action of all of the Parties hereto, or unless all but one Party has withdrawn this Agreement.

ARTICLE FIFTEEN

EFFECTIVE:

This Agreement becomes effective once signed by the Forty Fort Police Department and the Kingston Municipal Police Department and shall remain in full force and effect until such time as it is terminated earlier by the process specified in this Agreement.

ARTICLE SIXTEEN

AMENDMENTS:

All amendments or changes to this Agreement shall be in writing and signed by all of the Parties.

ARTICLE SEVENTEEN

MISCELLANEOUS:

- A. Entire Agreement. This agreement sets forth the entire agreement and contract between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not construed strictly for or against any Party. The Parties have taken all actions and secured all approvals necessary to authorize, implement and complete this Agreement.
- B. No Joint Venture. Neither the provisions of this Agreement nor the mutual provision of services and aid described herein are intended to and do not create a joint venture.
- C. Severability of Provisions. If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, then that provision shall be deemed severed from this Agreement. The remainder of the Agreement shall remain in full force and effect.
- D. Governing Law/Consent to Jurisdiction and Venue. This Agreement is made and entered into in the Commonwealth of Pennsylvania and shall in all respects be interpreted, enforced, and governed under the laws of the Commonwealth of Pennsylvania.
- E. Captions. The captions, heading, and titles in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.
- F. Terminology. All terms and words used in this Agreement, regardless of the numbers or gender in which they are used, are deemed to include any other number any other gender as the context may require.
- G. Recitals. The Recitals shall be considered an integral part of this Agreement.
- H. Amendment. This Agreement may be amended, or an alternative form of the Agreement adopted only upon the written agreement and approval of all of the local units of government that are parties hereto.
- I. Compliance with all Laws. The Parties shall comply with all federal and Pennsylvania laws, rules, regulations, and orders applicable in carrying out this Agreement.

- J. No Third-Party Beneficiaries. This Agreement does not create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, cause of action, right of indemnification (i.e. contractual, legal, equitable, or by implication), right of subrogation as to any Party's rights in this Agreement, or any other right of any kind in favor of any individual or legal entity who or which is not a party to this Agreement. There are no third-party beneficiaries.
- K. Counterpart Signatures. This Agreement may be signed in counterpart. The counterparts taken together shall constitute only one (1) agreement or contract overall.
- L. Permits and Licenses. Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certifications, and governmental authorizations for its employees and/or agents necessary to perform all of its obligations under this Agreement. Upon request, a Party shall furnish copies of any permit, license, certificate or governmental authorization to the requesting Party.
- M. No Implied Waiver. Absent a written waiver, no fact, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by any Party shall subsequently affect its right to require strict performance of this Agreement.
- N. Attestation. The undersigned units of local government or public agencies hereby attest that the governing body of the local unit of government identified below has lawfully adopted and approved this Agreement and authorized him or her to execute it on its behalf.

EXECUTION:

Dated: _____

By _____
Mayor, Forty Fort Borough

Dated: _____

By _____
Mayor, Municipality of Kingston

Dated: _____

By _____
Council President, Forty Fort Borough

Dated: _____

By _____
Council President, Municipality of Kingston

Dated: _____

By _____
Secretary, Forty Fort Borough

Dated: _____

By _____
Secretary, Municipality of Kingston