

AN ORDINANCE OF THE BOROUGH OF FORTY FORT, COUNTY OF LUZERNE, AND COMMONWEALTH OF PENNSYLVANIA TO ENTER INTO AN INTERGOVERNMENTAL COOPERATION AGREEMENT WITH THE BOROUGH OF COURTDALÉ FOR THE PURPOSE OF PROVIDING SECONDARY OR "BACK-UP" AID, ASSISTANCE, AND POLICE SERVICES TO EACH MUNICIPALITY

ORDINANCE NO. 2 OF 2023

**BOROUGH OF
FORTY FORT**

LUZERNE COUNTY, PENNSYLVANIA

Adopted at a Public Meeting Held on

October 2, 2023

**FORTY FORT BOROUGH
Luzerne County, Pennsylvania**

ORDINANCE No. 2 of 2023

AN ORDINANCE OF THE BOROUGH OF FORTY FORT, COUNTY OF LUZERNE, AND COMMONWEALTH OF PENNSYLVANIA TO ENTER INTO AN INTERGOVERNMENTAL COOPERATION AGREEMENT WITH THE BOROUGH OF COURTDALE FOR THE PURPOSE OF PROVIDING SECONDARY OR "BACK-UP" AID, ASSISTANCE, AND POLICE SERVICES TO EACH MUNICIPALITY.

WHEREAS, the Commonwealth of Pennsylvania encourages municipalities to enter into cooperative agreements for the purpose of sharing police and other public safety services; and

WHEREAS, the Act of December 19, 1996, P.L. 1158, No. 177, §1, 53 Pa. C.S.A. §2301, et seq., the Pennsylvania Intergovernmental Cooperation Act, permits municipalities to enter into agreements to cooperate in the performance of their respective functions, powers, or responsibilities; and

WHEREAS, the Borough of Forty Fort and Borough of Courtdale have previously established and maintained their own independent police forces; and

WHEREAS, the Borough of Forty Fort and Borough of Courtdale believe cooperation between the municipalities relative to its police forces will be beneficial in protecting the public health, safety, and general welfare of its residents; and

WHEREAS, the Borough of Forty Fort and Borough of Courtdale recognize that each other's police departments would provide secondary or "back-up" aid, assistance, and police services to each municipality; and

WHEREAS, pursuant to the Pennsylvania Intergovernmental Cooperation Act, a municipality may enter into an intergovernmental cooperation agreement upon the passage of an ordinance by its governing body; and

WHEREAS, the Borough of Forty Fort and Borough of Courtdale desire to enter into an Agreement for the purpose of having available for use throughout the territorial limits of both municipalities signing said Agreement, the services of police, both full-time and part-time, employed by both municipalities, under the conditions set forth and in compliance with the Municipal Police Jurisdiction Act, 42 Pa.C.S.A. § 8953.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Borough of Forty Fort, County of Luzerne, and Commonwealth of Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

1. The recitals of this Ordinance as set forth above are incorporated herein by reference.
2. Pursuant to the requirements of 53 Pa.C.S.A. § 2305(a), the Borough of Forty Fort enters into an intergovernmental cooperation agreement with the Borough of Courtdale; the same being attached hereto, made a part hereof, and incorporated herein by reference as Exhibit "A."
3. The conditions of the Agreement, the duration and term of the Agreement, and the purpose and objectives of the Agreement are all set forth at length in the Agreement which is attached as Exhibit "A" hereto.
4. The Borough of Forty Fort hereby approves and adopts the Agreement and directs the appropriate borough official to execute the Agreement on its behalf.
5. The attached Agreement shall become effective after adoption of a similar ordinance by the Borough of Courtdale.
6. A copy of the Agreement shall be filed with the minutes of the meeting at which this Ordinance was enacted, and the appropriate borough official is directed to execute the Agreement on behalf of the Borough of Forty Fort with the intent and effect that the Borough shall be bound by the Agreement and all terms and conditions thereof.
7. Any ordinance or resolution or parts thereof inconsistent with the terms of this Ordinance are hereby repealed.
8. The provisions of this Ordinance shall be severable. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal, and/or invalid, such unconstitutionality, illegality, and/or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, and/or parts of this Ordinance.
9. This Ordinance shall become effective immediately upon enactment hereof and consistent with the requirements of Paragraph 5 above.

DULY ENACTED AND ORDAINED this 2 day of October, 2023, by the Council of the Borough of Forty Fort in lawful session duly assembled.

THE BOROUGH OF FORTY FORT:


THOMAS MURRAY, Council President

APPROVED:


BRIAN THOMAS, Mayor

ATTEST:


MICHELE PASCARELLA, Secretary

INTERGOVERNMENTAL COOPERATION AGREEMENT

AN AGREEMENT made the 2nd day of October, 2023 by

and between the BOROUGH OF FORTY FORT and BOROUGH OF COURTDALÉ, both of Luzerne County, Pennsylvania (Hereinafter referred to as "Member Municipalities" or "Member Municipality"), as follows, to wit:

WHEREAS each of the Member Municipalities has previously established and maintained their own independent police force; and

WHEREAS, 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 Courtdale Police Department to support and assist each other and their respective police agencies in times of need; and

WHEREAS, pursuant to Section 1202(24) of the Borough Code, as amended, each of the said Member Municipalities is authorized to enter into contracts for providing police protection and services to adjacent townships and boroughs; and

WHEREAS, cooperation among municipalities in the exercise and performance of their governmental powers, duties and functions is authorized by the various acts of the General Assembly including the Municipal Police Jurisdiction Act, 42 Pa.C.S.A. § 8953(a) and/or 53 Pa.C.S.A. § 2303 pertaining to Intergovernmental Cooperation (formerly 53 P.S. § 483); and

WHEREAS, the Municipalities desire to enter into an Agreement for the purpose of having available for use throughout the territorial limits of all municipalities signing this mutual and joint Agreement, the services of police, both full-time as well as part-time, employed by any and all of the said Municipalities, under the conditions set forth and in compliance with the Municipal Police Jurisdiction Act, 42 Pa.C.S.A. § 8953.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, it is agreed as follows:

DEFINITIONS

Agency: a governmental unit's law enforcement department or agency.

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.

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.

Need: a combination of circumstances requiring action that calls for manpower, vehicles or equipment that is not readily available to the requesting governmental unit.

Officer in Charge of the Police Operations: the senior or highest-ranking officer available of the requesting agency who has responsibility for directing the agency at the time of the need for assistance.

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.

Requesting Agency: the jurisdiction in which a need for assistance exists and that requests aid pursuant to this Agreement.

Responding Agency: the agency or party that sends personnel, vehicles and/or equipment to a requesting agency pursuant to this Agreement.

Available Unit: police officers, vehicles and/or equipment that are available and able to respond to a request for Mutual Aid.

Member Municipality: one of the governmental units that entered into this Agreement.

GENERAL

- (1) (a) The Police Departments and Police Officers of each of the Member Municipalities shall provide mutual aid, assistance, and police services to one another in accordance with the terms and provisions of this Agreement and any rules and regulations which may from time to time be agreed upon and adopted by each and all of the Member Municipalities by duly enacted resolution.
- (b) It is specifically agreed that the intent and purpose of this Agreement and the terms and provisions hereof are for the purpose of providing secondary or "back-up" aid, assistance, and police services to Member Municipalities and, except under those circumstances presenting an immediate and imminent threat of bodily injury and/or peril to life, no Member Municipality shall be responsible for or obligated to provide primary police protection or services to another Member Municipality.
- (c) It is specifically understood and agreed that this Agreement shall not be construed to permit any Member Municipality the right or privilege to "voluntarily" provide primary police protection or services to another Member Municipality; provided, however, that no provision herein shall prohibit any Member Municipality from contracting with any other Municipality for the providing of primary police services and protection. Each Member Municipality shall have and retain the right to exclude the Police Officers of any other Member Municipality from performing primary police protection services within said Member Municipality, provided, that in the event a Member Municipality shall take such action, the Member Municipalities shall meet at its earliest convenience to review said actions and attempt to resolve all issues that may have led to such action.
- (d) 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.

(e) 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.

(f) An authorized representative of any Member Municipality which has withheld or refused to provide requested assistance under this Agreement shall immediately notify the Requesting Agency of such denial.

AUTHORITY, POWERS, AND JURISDICTION OF POLICE OFFICERS

(1.) (a) When, in accordance with the terms and conditions of this Agreement the Police Departments and Police Officers of Member Municipalities are providing secondary or "back-up" aid, assistance, and police services to another Member Municipality or, when said Police Departments and Police Officers are providing police protection and services in any Member Municipality under those circumstances presenting an immediate and imminent threat of bodily injury and/or peril to life, the jurisdiction, powers and authorities of the Police Departments and Police Officers of the Member Municipalities are hereby extended to include each and all of the (above named) Member Municipalities and, under circumstances set forth, each Police Department and Police Officer of said Member Municipalities is hereby specifically given jurisdiction, power and authority in each and all of the (above-named) Member Municipalities to enforce the statutes, laws, ordinances and regulations of each Member Municipality, the Commonwealth of Pennsylvania, and/or the United States of America, and where necessary, prosecute violators and offenders thereof before any Court or tribunal of the Commonwealth of Pennsylvania or the United States of America.

(b) An Officer from the "Agency of Jurisdiction" shall be responsible for police operations at the scene and shall have the authority to direct all personnel and equipment of a Responding Agency unless or until an Incident Commander is designated. The

Requesting Agency or the Incident Commander is responsible to establish a communication plan for the incident.

(c) The Member Municipalities 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.

(d) 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.

(e) 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, or against department policies and/or procedures. In addition, the ranking officer under his or her command, may terminate aid to the Requesting Agency, if the Responding Agency must respond in its own primary jurisdictional area.

(3) All property, equipment or supplies owned by a Member Municipality shall remain the sole property of said Member Municipality and, unless otherwise specifically agreed by each and

all of the Member Municipalities, all property, equipment and supplies hereinafter purchased by any Member Municipality shall remain the sole property of the purchasing Municipality, whether or not, from time to time, said property shall be utilized by the Police Departments and Police Officers of other Member Municipalities in the furtherance and performance of this Agreement, or any rules and regulations adopted under authority hereof.

(4) Each Member Municipality shall:

- (a) Have sole authority to appoint, discharge and /or otherwise govern and direct its own Police Department and its duly appointed Police Officers.
- (b) Be solely responsible for providing any and all compensation, benefits (including but not limited to insurance, pensions, paid leave, etc.), and any other emoluments of office for the members of its Police Department.
- (c) Be solely responsible for providing its own Police Department and Police Officers with any and all equipment, uniforms and supplies as each Member Municipality, in its sole discretion; shall deem appropriate.

(5) All mutual aid, assistance, and police services provided by the Police Departments and Police Officers of the Member Municipalities and all expenditures authorized and incurred by each Member Municipality in the furtherance of and performance of this Agreement shall be deemed to be services performed and expenditures incurred for public and governmental purposes, and all immunities from liability afforded each Member Municipality when performing the aforesaid services or incurring the aforesaid expenses shall be extended to each and every Member Municipality during the performance of or in the furtherance of this Agreement.

(6) Each Member Municipality shall, and hereby waives any and all claims and/or causes of action against each and all of the other Member Municipalities, which claims may arise from or out of the participation of each Member Municipality's Police Department or Police Officers in the furtherance of or performance of this Agreement.

(7) Each Member Municipality does hereby indemnify, save and hold harmless each other Member Municipality from any and all suits, claims, or demands, including costs, expenses and attorney's fees incident to or resulting from any injury to any person(s) or any legal entity, or

damage to property which may arise out of or as a result of the acts or omissions of any Member's Municipality' Police Department or Police Officers during the performance of any act or action authorized under the terms and provisions of this Agreement.

(8) Each Member Municipality shall insure its own police vehicles so as to provide insurance coverage for public liability, generally, bodily injury and property damage at minimum levels and amounts which may be agreed upon from time to time by the Member Municipalities, and further, each Member Municipality shall take any and all steps necessary to include as additional insureds under the terms of the aforesaid insurance policies each and all of the Member Municipalities under those circumstances arising from the use of said police vehicles as may be required from time to time in the furtherance or performance of the mutual aid, assistance and police services provided for in this Agreement.

Written evidence of such action by the Member Municipalities shall be provided annually to the other.

PROCEDURES FOR ADOPTION, AMENDMENT, AND TERMINATION

(1) It is understood and agreed that each Member Municipality must approve this Agreement in its entirety for it to become adopted.

(2) In the event this Agreement is adopted, any amendment to this Agreement shall be adopted and become effective only upon approval of all of the governing bodies of each Member Municipality.

(3) Any Member Municipality may terminate its participation in this Agreement by notifying each other Member Municipality, in writing, at least sixty (60) days prior to the proposed effective date of termination and participation in this Agreement by a Member Municipality.

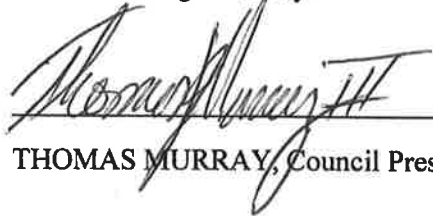
(4) In the event any Member Municipality shall terminate its participation in this Agreement, or in the event all Member Municipalities shall mutually agree to terminate this Agreement, and there is pending any case or cases then being prosecuted by Police Officers of any Member Municipality terminating its participation in this Agreement, or all Member Municipalities in the event of a mutually agreed upon termination of this Agreement, it is agreed that said Police Officers shall continue to prosecute and be responsible for the prosecution of such cases through their conclusion as if this Agreement were still in full force and effect.

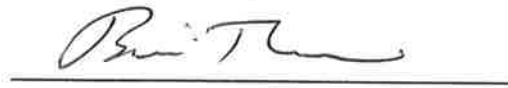
(5) The effective date of this Agreement shall be that date upon which the last of the Member Municipalities shall adopt this Agreement.

AND NOW, in consideration of the mutual promises set forth herein and agreeing to be bound by the terms and conditions of this Agreement we have set our hands and seals on the date or dates so stated below.

THE BOROUGH OF FORTY FORT

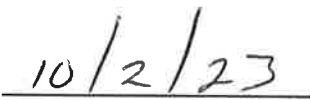
For the Borough of Forty Fort


THOMAS MURRAY, Council President


BRIAN THOMAS, Mayor

APPROVED:



DANIEL E. HUNSINGER, Chief of Police


DATE

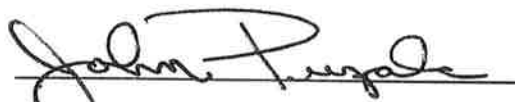
THE BOROUGH OF COURTDALE


For the Borough of COURTDALE


CARL HODOROWSKI, Council President


JACLYN DIGNAN, Mayor

APPROVED:


JOHN PIESZALLA, Chief of Police


DATE