

RESOLUTION 2021-03
COMMONWEALTH OF PENNSYLVANIA
LACKAWANNA COUNTY DISTRICT ATTORNEY'S OFFICE

LACKAWANNA UNITED DRUG ENFORCEMENT TEAM

MUNICIPAL DRUG TASK FORCE AGREEMENT

THIS AGREEMENT, made this 3rd day of March, 2020, by and between the Lackawanna County District Attorney's Office (hereinafter, "LCDAO"), Lackawanna United Drug Enforcement Team (hereinafter, "LUDET"); and The Borough of Clarks Summit (hereinafter, "Municipality"), collectively referred to as the "Parties";

WITNESSETH that:

WHEREAS, the Commonwealth of Pennsylvania, Office of Attorney General (hereinafter, "PA-OAG") has established a municipal drug task force program throughout Pennsylvania to coordinate narcotics investigation, enforcement and prosecution activities: and

1

WHEREAS, the said municipal drug task force program operating in Lackawanna County is presently administered by the District Attorney of Lackawanna County acting as agent for PA-OAG; and

WHEREAS, the herein-named Municipality intends to participate in and is a necessary part of these drug task force activities; and

WHEREAS, the parties wish to establish the administrative framework for carrying out drug enforcement activities under the program in said Municipality and throughout the geographical area covered by Lackawanna United Drug Enforcement Team; and

WHEREAS, mobility and the common problem of illegal use and trafficking of narcotics and other illegal drugs have obliterated municipal boundaries in the enforcement of drug law through the Commonwealth of Pennsylvania, as those engaged in said activities do not recognize such municipal boundaries; and

WHEREAS, municipal police departments have been frustrated by jurisdictional limitations, manpower and equipment shortages and inadequate financial resources in attempting to stem illegal narcotics and drug trafficking; and

WHEREAS, there is an urgent need for uniformity and continuity in the enforcement of such laws in the Commonwealth of Pennsylvania; and

WHEREAS, coordination of police activity in the fight against illegal narcotics and drug trafficking has historically been sporadic, resulting in duplication of effort and reduced coordination; and

WHEREAS, the aforementioned Municipality has determined that the provision of mutual police aid across jurisdictional lines will increase its ability to enforce the provisions of narcotics and illegal drugs laws and to preserve the safety and welfare of the entire area; and

WHEREAS, the District Attorney of Lackawanna County, by his/her signature on the present Agreement, hereby requests the aid and assistance of the Municipality's police department to carry out municipal drug task force activities in compliance with the Municipal Police Jurisdiction Act, 42 Pa.C.S. §8953(a)(3); and

WHEREAS, the Municipality desires to enter into an agreement for the purpose of

having available for use throughout the territorial limits of all Lackawanna County municipalities signing municipal drug task force agreements similar to the instant document, the services of police, both full-time and part-time officers, 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. §8953; 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 to wit: 53 Pa.C.S. §2303 (formerly 53 P.S. §483) and ratified by mutual ordinance pursuant to 53 Pa. C.S. §2305 (formerly 53 P.S. §485); and

WHEREAS, in accordance with the provisions of 53 Pa. C.S. § 2314 (formerly 53 P.S. §488), the Local Government Commission of the Commonwealth of Pennsylvania has reviewed this Agreement and has made recommendations; and

NOW, therefore, the Parties, intending to be legally bound, hereby agree as follows:

1. The Parties will cooperate in carrying out the work of LUDET and agree to perform their individual duties as set forth in this Agreement and in accordance with LUDET Guidelines and Standard Operating Procedures, as have been or shall be set forth by the District Attorney of Lackawanna County as the overall administrator of the municipal drug task force program in Lackawanna County .

2. Any employee of the Parties to this Agreement shall remain an employee of his/her employer for the purposes of any activity under this Agreement and each party

shall maintain and be responsible for all employee compensation, personnel benefits, insurance and other incidental benefits of employment except as provided herein. It is further understood and agreed by the Parties that no municipal employee assigned or appointed pursuant to this Agreement shall be deemed to be an employee of the County of Lackawanna or the Commonwealth of Pennsylvania except as provided in Act 100 of 1989.

3. **Term.**

The term of this Agreement shall begin on March 3, 2021 and the Municipality agrees that it may periodically be requested to enter into subsequent, superseding agreements in order to update and/or revise Agreement terms as shall be deemed necessary by the District Attorney for Lackawanna County for the effective and efficient management of LUDET.

4. **Liability.**

Each party shall be an independent contractor and responsible for its own employees and for the acts of its employees under this Agreement pursuant to law. Each party shall provide such public liability and other insurance as appropriate to protect against any claims arising out of that party's performance under this Agreement and not otherwise provided. All Parties to this Agreement shall have all rights and liability protection as found in Act 100 of 1989. Nothing in this Agreement shall be construed to limit the Commonwealth of Pennsylvania's rights, claims or defenses which arise as a matter of law or pursuant to any provision of this Agreement. Nothing in this Agreement

4

shall be construed to limit the sovereign immunity of the Commonwealth of Pennsylvania.

5. **Municipal Agreements.**

Each Municipality entering into an Agreement to support LUDET activities shall exercise its best efforts to have and maintain in effect a mutual aid agreement by which the employees of each Municipality are authorized to carry out their duties in all other participating Municipalities within the LUDET operating area. Upon completion, each Municipality shall submit copies of such mutual aid agreements upon request to LUDET. All such agreements under this paragraph shall be executed pursuant to and in compliance with the Pennsylvania Intergovernmental Cooperation Act, 53 Pa. C.S. §2303 (formerly 53 P.S. §483) and ratified by mutual ordinance pursuant to 53 Pa. C.S. §2305 (formerly 53 P.S. §485).

6. **Termination.**

a. Any party may terminate its participation in LUDET by giving 30 days prior written notice to the other Parties to this Agreement.

b. The LCDAO reserves the right to terminate the operation of LUDET if the LCDAO determines that it is in the interests of the Commonwealth to do so.

7. **Duties Upon Termination.**

Upon termination or expiration of this Agreement, a party shall return to the Commonwealth and/or the District Attorney of Lackawanna County as overall LUDET administrator any and all materials, documents, equipment or other items or property owned by the Commonwealth and held by any party for the purposes of this Agreement.

All parties shall assist in bringing to an orderly conclusion all aspects of LUDET activity if and when LUDET has been concluded.

8. **Overtime.**

a. The LCDAO agrees to reimburse the Municipality for overtime incurred by duly-appointed LUDET members performing official LUDET duties. No reimbursement for overtime will be made unless the LUDET Commander (Chief County Detective of Lackawanna County) or his/her designee has given prior approval to the employee to work the overtime hours.

b. Reimbursement for overtime will be made in accordance with the procedures set forth in the LUDET Guidelines and Standard Procedures referenced at Paragraph 1, supra.

9. **Appointment of Task Force Officers (TFOs).**

a. The Municipality agrees all LUDET Task Force Officers (including those designated as Street Supervisors) shall be appointed by the Lackawanna County District Attorney, or his/her designee, upon the consent and approval of the chief of police of the subject officers' employing municipality/ies. Task Force Officer appointments are subject to periodic review and may be suspended or revoked for cause by the Lackawanna County District Attorney or his/her designee. All duly-appointed Task Force Officers shall execute an Acceptance of Appointment outlining expectations associated with LUDET participation.

10. **Asset Forfeiture.**

6

a. The process of distribution of assets or proceeds of assets forfeited under the Pennsylvania Controlled Substances Forfeitures Act or any other statute providing for forfeiture shall be based upon the principle of equitable sharing of resources and proceeds.

b. LCDAO will include PA-OAG as an eligible recipient in any request by petition to a court for awards of LUDET seizures of real or personal property.

c. LCDAO shall have sole authority to authorize Federal intervention regarding seizure and prosecution only after all avenues offered by the Commonwealth have been exhausted.

d. If Federal sharing is authorized, each participating party shall submit the appropriate federal form and/or Federal Sharing Request to the appropriate United States Attorney's Office.

7

11. **Funds Availability.**

LUDET is funded by an allocation from PA-OAG's Municipal Drug Task Force Program. LCDAO's obligations under this Agreement are therefore contingent upon the appropriation and availability of funds by PA-OAG for LUDET purposes. It is the sole responsibility of LCDAO to determine the percentage of total LUDET funding available which is to be allocated to each participating Municipality.

12. **Public Availability of Information and News Media Inquiries.**

a. The Parties agree to fully comply with any requests LCDAO may make in order to comply with Federal or state requirements relating to the availability to the public

of identifiable records or other documents used in the municipal drug task force program, pursuant to applicable law. This provision shall not be construed to require disclosure of information expressly made confidential or exempt from disclosure by any state or Federal statute.

b. LUDET operates under a "one-voice" policy with regard to inquiries from news media. Any/all news media inquiries, requests for information, et cetera concerning LUDET activities shall be immediately referred to the Lackawanna County District Attorney for appropriate response and coordination with the Pennsylvania Office of Attorney General and chief of police of the subject municipality. Individual LUDET Task Force Officers are not authorized to communicate with the news media regarding LUDET activities unless expressly authorized to do so by the Lackawanna County District Attorney.

8

13. **Reports.**

Each Municipality and Task Force Officer shall submit such reports as LCDAO and PA-OAG shall require to satisfy state and/or Federal reporting requirements to promote the orderly administration of LUDET activities.

14. **Inspection and Audit.**

The Municipality agrees to provide information to LCDAO and/or PA-OAG and access to records and facilities necessary for LCDAO and/or PA-OAG to carry out any audit(s) it is obligated to perform pursuant to state or Federal law.

15. **Contract Subject to Law.**

The Parties shall be bound by all applicable Federal, state and local laws in carrying out the work of this Agreement.

16. **Amendments.**

No changes or modifications to the terms of this Agreement shall be valid or binding unless made in writing agreed to and signed by the Parties.

17. **Assignment.**

No part of this Agreement or any duty hereunder is assignable.

18. **Governing Law.**

This Agreement will be construed in accordance with Pennsylvania law.

19. **LDCAO/LUDET/PA-OAG Not Bound by Collective Bargaining**

Agreements

No part of this Agreement shall be construed to bind LCDAO, LUDET or PA-OAG to any term of any collective bargaining agreement between the Municipality and any employee thereof.

20. **Controlling Version of Agreement.**

The instant Agreement is controlling and shall supersede any/all prior Agreement(s) concerning the Municipality's participation in LUDET or any other iteration of the PA-OAG Municipal Drug Task Force Program as administered by the Lackawanna County District Attorney on behalf of PA-OAG.

21. **Nondiscrimination Clause.**


"Attachment I", concerning nondiscrimination, is hereby incorporated by reference into and made part of this Agreement. This is the standard nondiscrimination provision required for Commonwealth contracts. Reference in Attachment 1 to "Contractor" shall be construed to mean any party to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date

first above written.

MUNICIPALITY CHIEF OF POLICE

Christopher YARNJ
Name (printed)


Signature

3/5/21
Date

DISTRICT ATTORNEY, LACKAWANNA COUNTY

MARK POWELL
Name (printed)

Signature

Date

11

MUNICIPALITY AFFIRMATION

A resolution to become a signatory of the foregoing Agreement to be a participating Municipality of the Lackawanna United Drug Enforcement Team was presented at a Regular Council (Regular/Special)

meeting of The Borough of Clarks Summit, LACKAWANNA COUNTY,
(municipality name)

Commonwealth of Pennsylvania, on March 3, 2021. A motion to enter into said
(date)

Agreement was made by Councilman David Jenkins,
(Name and Title)

seconded by Councilwoman Kathleen Simrell,
(Name and Title)

and supported by: Council members Roni Lopez, Josh Mitchell, Bob Shiels III and Council
President Germaine Carey
(Name and Title)

APPROVED:




Mayor

Chairperson, Board of Supervisors



President of Council



Municipal Solicitor

Municipality seal:

Original to: LUDET
Copy to: Municipality Recording Secretary

LCDAO Standard Form 3600 (2-17-2021)

ATTACHMENT I

NONDISCRIMINATION CLAUSE

During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. Contractor shall take affirmative action to ensure that applicants are employed, and that employee or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age or sex. Such affirmative action shall include, but is not limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

2. Contractor shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age or sex.

3. Contractor shall send each labor union or workers' representatives with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment

13

regularly utilized by Contractor.

4. It shall be no defense to a finding of a noncompliance with Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this nondiscrimination clause that contractor had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under the Contract compliance Regulations issued by the Pennsylvania Human Relations Commission or this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

6. Contractor shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 PA Code Chapter 49 and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the non-discrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies

14

invoked as provided by the Contractor Compliance Regulations.

7. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with the provisions of the Contract Regulations, pursuant to § 4935 of this title (relating to information concerning compliance by contractors). If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.

8. Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.

9. Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.

10. The terms used in this nondiscrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 PA Code Chapter 49.

11. Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania, or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which said goods are actually produced.

15