RESOLUTION NO. 38 , 2011

A RESOLUTION AUTHORIZING THE *HAMILTON COUNTY, OHIO MUTUAL AID AGREEMENT FOR LAW ENFORCEMENT*

WHEREAS, R.C. § 737.04 authorizes the City to enter into agreements with other municipal corporations, townships, the county, and authorized law enforcement agencies to provide reciprocal police services across jurisdictional lines; and

WHEREAS, the City has participated in a Mutual Aid Agreement for law enforcement for many years throughout the county; and

WHEREAS, the participating agencies administering the contract have recommended updated revisions to the Mutual Aid Agreement and have requested all participating jurisdictions to reaffirm their participation in the Agreement; and

WHEREAS, the Police Department and Administration have recommended that Council accept the revised Mutual Aid Agreement, a copy of which is attached hereto.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The City Manager is hereby authorized to accept and execute the attached *Hamilton County, Ohio Mutual Aid Agreement for Law Enforcement* for and on behalf of the City. Further, the City Manager is authorized to execute any and all additional documentation to implement this revised Agreement

SECTION 2. This Resolution shall be in full force and effect from and after its passage.

PASSED: November 2, 2011

ATTEST: Susan J. Hamm
Susan J. Hamm, Clerk of Council

Gerri Harbison
Gerri Harbison, Mayor

APPROVED AS TO FORM:
Terrence M. Donnellon
Terrence M. Donnellon, Law Director

HAMILTON COUNTY, OHIO
MUTUAL AID AGREEMENT FOR LAW ENFORCEMENT

This agreement ("Agreement") is made and entered into by the undersigned parties as follows:

WHEREAS, Revised Code Section 737.04 allows the legislative authority of any municipal corporation to enter into contracts with one or more municipal corporations, townships, township police districts, county sheriffs, park districts, port authorities, or contiguous municipal corporations in an adjoining state, for the purpose of obtaining police protection or additional police protection, or to allow its police officers to work in multi-jurisdictional drug, gang, or career criminal task forces, upon any terms that are agreed for services of police departments, the use of police equipment, or the interchange of services of police departments or police equipment within the territories of the political subdivisions; and

WHEREAS, further authority for the participation of townships is set forth in Revised Code Sections 505.43 and 505.431, and further authority for the participation of park districts is set forth in Revised Code Sections 511.235 and 1545.131; and

WHEREAS, the undersigned parties intend to provide reciprocal police services across jurisdictional lines, consistent with the foregoing statutes, to enhance the capabilities of law enforcement for the protection of citizens and property throughout Hamilton County; and

WHEREAS, the undersigned parties intend to provide and exchange the full array of police services with any or all other parties without limitation, but generally in accord with the following guidelines; and

WHEREAS, the undersigned parties (individually, "Agency" and collectively, "Agencies") include the following participating jurisdictions: Hamilton County, Ohio; the City of Cincinnati; the

of Cincinnati; the Village of Addyston; the Village of Amberley Village; the Village of Arlington Heights; the City of Blue Ash; the City of Cheviot; the Village of Cleves; the City of Deer Park; the Village of Elmwood Place; the Village of Evendale; the Village of Fairfax; the City of Forest Park; the Village of Glendale; the Village of Golf Manor; the Village of Greenhills; the City of Harrison; the City of the Village of Indian Hill; the City of Lincoln Heights; the Village of Lockland; the City of Loveland; the City of Madeira; the Village of Mariemont; the City of Milford; the City of Montgomery; the City of Mt. Healthy; the Village of Newtown; the Village of North Bend; the City of North College Hill; the City of Norwood; the City of Reading; the City of Sharonville; the Village of St. Bernard; the Village of Silverton; the City of Springdale; the Village of Terrace Park; the Village of Woodlawn; the City of Wyoming; Anderson Township; Colerain Township; Columbia Township; Crosby Township; Delhi Township; Green Township; Harrison Township; Miami Township; Springfield Township; Sycamore Township; Symmes Township; Whitewater Township; the Hamilton County, Ohio Park District; Cincinnati State Technical and Community College; College of Mt. St. Joseph; the University of Cincinnati; Xavier University and Summit Behavioral Police.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. COOPERATIVE ENFORCEMENT WITHOUT REQUEST

The Agencies recognize that criminal activities routinely occur across jurisdictional lines, and that cooperation between Agencies can increase the effectiveness of law enforcement throughout Hamilton County. Any Agency or Agencies may proceed without request from a cooperating Agency generally according to the following guidelines:

A. In-Progress Crime Assistance Without Request

1. Whenever an on-duty law enforcement officer from one jurisdiction views or otherwise has probable cause to believe a criminal offense has occurred outside the officer's home jurisdiction but within the jurisdiction of a cooperating Agency, the officer may make arrests according to law and take any measures necessary to preserve the crime scene. Control of any arrested persons, evidence and the crime scene shall be relinquished to the first available officer from the jurisdiction within which the crime took place. The arresting officer may immediately transport or relocate any arrested persons or evidence if the officer determines that remaining at the crime scene could endanger the officer or others, or threaten the preservation of evidence.

2. Whenever an on-duty law enforcement officer from one jurisdiction views or otherwise has probable cause to believe that a serious traffic offense has occurred within the jurisdiction of another cooperating Agency, the law enforcement officer may stop, arrest or cite the suspected violator according to law. Under this Agreement, a serious traffic offense is one which jeopardizes public safety and/or constitutes a misdemeanor of the fourth degree or a higher offense. The traffic violator shall be turned over to the first available officer from the cooperating Agency for completion of all necessary processing. The initiating officer shall provide any further assistance to the extent necessary for subsequent court proceedings.

B. Investigations Outside Original Jurisdiction

On-duty officers from one Agency may, without request or prior notice, continue to conduct investigations that originate within their home jurisdiction into the jurisdiction of any cooperating Agency. If enforcement action is anticipated, the location and nature of the investigation shall be reported to the appropriate cooperating Agency as soon as practicable. Subsequent arrests, search warrant service or similar police actions shall be coordinated between affected Agencies.

C. Independent Police Action

The police department of any cooperating Agency may provide temporary police protection service to any cooperating Agency without request.

II. COOPERATIVE ENFORCEMENT UPON REQUEST

The Agencies recognize that special public safety incidents occasionally occur that require the services of additional law enforcement personnel. Such additional services may be provided by or to any cooperating Agency generally according to the following guidelines:

A. Dangerous Criminal Activity

Whenever one Agency reports criminal activity, and that Agency is unable to provide the immediate response necessary to prevent death, serious physical harm or substantial property loss as a result of a said criminal activity, the Agency may request police services of any nature from any other Agency.

B. Searches for Fugitive or Wanted Person

.When one Agency is conducting a search for a fugitive person whose presence is reasonably believed to be within the Agency jurisdiction, and immediate police assistance is reasonably necessary to apprehend or prevent the escape of the fugitive or to protect the safety of persons and property from imminent danger related to said fugitive, the Agency may request police services from any other Agency.

C. Traffic Control Assistance

1. Whenever a traffic accident involving suspected injuries, a driver under the influence (OVI) or other serious traffic violation is reported to the jurisdiction in which the accident occurred, and the Agency is unable to provide the immediate response necessary to render aid to the injured, prevent further injury, prevent serious property loss, or arrest a suspected OVI violation, the Agency

may request assistance from any other Agency. The cooperative effort may include necessary first aid, traffic control, accident scene protection, property protection, and detention of any suspected OVI or serious traffic violators as soon as possible.

2. Hazardous Traffic Conditions Assistance

a. In a situation where automated traffic control devices located within the jurisdictional boundaries of one Agency have malfunctioned and a traffic accident is imminent unless control is established immediately, assistance from another cooperating Agency may be provided upon request of the affected jurisdiction.

b. Where an incident occurs on or near a roadway creating the imminent danger of a traffic accident, assistance from a cooperating Agency may be provided upon request of the affected jurisdiction.

D. General Police Service

1. Any incident may form the basis for the request of police services from one or more cooperating Agencies when police assistance is reasonably necessary to protect the safety of persons and property.

2. Police services, including but not limited to routine patrol services, may be requested and supplied by cooperating Agencies for limited-time special events or for extended time periods based on need. Such services may include the facilitation of personnel by their employing Agency for the provision of police protection to a requesting Agency for voluntary, special event details performed while such personnel are not on duty for the employing Agency ("Off-Duty Details"). No Agency is required to facilitate or otherwise provide volunteer personnel for Off-Duty Details. Moreover,

any Agency may prohibit its personnel from engaging in such Off-Duty Details to the extent allowed by law.

III. GENERAL TERMS AND PROCEDURES

A. A request for police services may be made by the commander of the law enforcement Agency, or his designee. The designee must be of supervisory rank or the senior shift officer when no supervisor is present.

B. A cooperating Agency may provide police services only to the extent that the personnel and equipment are not required for the adequate protection of that Agency's jurisdiction. The commander of the law enforcement Agency, or his designee, shall have the sole authority to determine the amount of personnel and equipment, if any, available for assistance.

C. Whenever employees of one cooperating Agency provide police services in or to another cooperating Agency pursuant to the authority set forth in this Agreement, other legislative authority or state law, such employees shall have the same powers, duties, rights and immunities as if taking action within the territory of their employing Agency. Revised Code Chapter 2744 shall apply to the extent specified in Revised Code Section 737.04 or as otherwise provided by law. Moreover, participation in any indemnity fund established by the employer, and all rights under Revised Code Chapter 4123, shall apply to the extent set forth in Revised Code Section 737.04 or as otherwise provided by law.

D. Whenever employees of one cooperating Agency provide police services to another cooperating Agency, they shall be under the lawful direction and authority of the commanding law enforcement officer of the Agency to which they are rendering assistance. Officers shall be subject to the code of ethics, policies, and rules and regulations of their employing Agency at all times.

E. Police services may be initiated by any on-duty officer who has probable cause to believe a crime is in progress. Such police services may also be initiated by on-duty officer who becomes aware of a traffic accident, the need for traffic control, a suspected OVI, a serious traffic violator or other circumstance requiring law enforcement intervention in another cooperating Agency jurisdiction. The officer must contact his immediate supervisor to enable that supervisor to authorize and direct actions taken by the employee.

F. An on-duty officer initiating police services shall notify a law enforcement officer from the affected cooperating Agency as soon as possible. As appropriate, the assisted cooperating Agency shall relieve the officer as soon as possible.

G. All wage and disability payments, pension, worker's compensation claims, medical expenses or other employment benefits for employees performing pursuant to this Agreement shall be the responsibility of the employing Agency to the same extent as if the employee were providing service for the employing agency, unless the requesting Agency is reimbursed for such costs from another source. Additionally, except as specifically provided in this Agreement, each Agency shall be responsible for the negligence or wrongdoing of its employees to the extent provided by law. Except as specifically provided herein, nothing in this Agreement shall impose any greater duty or obligation on an employing agency than provided by law, including as to Off-Duty Details.

H. Each cooperating Agency shall be responsible for any costs arising from the loss of or damage to the Agency's equipment or property while providing police assistance services within any other cooperating Agency.

IV. SPECIALIZED LAW ENFORCEMENT OPERATIONS

A. In addition to the law enforcement services described above, parties to this Agreement may request Specialized Law Enforcement Operations, defined as a Special Weapons

and Tactics Team ("SWAT"), underwater search and recovery operations, or any other operation involving a task force, multi-jurisdictional team, or substantially similar operation of a specialized or unique nature. As used in this Section IV, "Initiating Agency" means the political subdivision requesting Specialized Law Enforcement Operations, and "Assisting Agency" means any political subdivision furnishing Specialized Law Enforcement Operations (including participating personnel) at the request of an Initiating Agency.

B. Notwithstanding any other provision of this Agreement, and only as to Specialized Law Enforcement Operations, to the extent that any Assisting Agency or its participating personnel may be liable for damages or other relief to any third party for acts or omissions occurring during Specialized Law Enforcement Operations, whether liability arises under Ohio Revised Code Chapter 2744, common law, or any other state or federal statutory law, the following allocation of liability shall apply:

1. All personnel providing Specialized Law Enforcement Operations shall, for purposes of allocation of liability to third parties only, be deemed to be acting under the direction and control of the Initiating Agency and not under the direction and control of the Assisting Agency. Except as otherwise provided in this Section IV, the Initiating Agency shall assume the risk of any liability to third parties arising from the conduct, acts and omissions of personnel engaged in Specialized Law Enforcement Operations.

2. The time period during which the Initiating Agency assumes the risk of liability to third parties shall commence at the time (date, hour, and minute) the applicable Specialized Law Enforcement Operations personnel arrive at the requested location and report to the Initiating Agency's Chief of Police or

other Officer-in-Charge (collectively, "OIC") and shall end at the time the personnel are dismissed by the Initiating Agency's OIC.

3. Each party agrees that with respect to any Specialized Law Enforcement Operations in which it acts as an Initiating Agency, it will protect, indemnify, hold harmless and defend each Assisting Agency, as well as all participating personnel, against any claim, loss, damage, cause of action, expense, attorney fees, costs of defense, or other liabilities only to the extent that funds are subsequently properly appropriated and certified for this purpose, provided, however, that such obligation shall not apply to the extent that the Assisting Agency or its personnel act outside the scope of lawful orders issued by the police authorities of the Initiating Agency or its designee, or to the extent that any such Assisting Agency or its personnel willfully and maliciously cause injury or damage to person or property.

4. As a condition of the obligations set forth in Paragraph 3 above, the Assisting Agency must provide prompt written notice to the Initiating Agency of any threatened or asserted third-party claim, including any lawsuit served so that a timely answer may be filed. If any Initiating Agency challenges its duty to indemnify and defend against any claim or action, it shall give prompt written notice to the Assisting Agency from which such claim or action arose, that it will defend under a reservation of rights until it is decided whether the Initiating Agency owes a duty to indemnify and/or defend.

5. In the event of any third party claim or action arising under circumstances to which this section applies, and whether or not a reservation of rights is made,

any Assisting Community, as a condition to defense and indemnification, shall give its full cooperation to any community or communities assuming the defense of such claim or action.

6. Any Initiating Agency or Assisting Agency may bring an action for declaratory judgment in the Common Pleas Court of Hamilton County, Ohio to determine the scope of indemnification and/or defense owed as to Specialized Law Enforcement Operations. In such litigation, the prevailing party or parties shall be entitled to an award of reasonable attorney fees and other costs of litigation against the non-prevailing party or parties.

7. This Agreement concerns only the allocation of liability as to third parties, and does not alter or modify the responsibilities of the undersigned parties to each other, whether provided by agreement or by law, as to any other matter.

V. ADDITIONAL PROVISIONS

A. The terms of this contract shall be in continuous effect for each participating Agency from the date the authorized signature for such Agency is affixed hereto. Any Agency may revoke its future contractual obligations hereunder only upon sixty (60) days written notice to each of the other participating Agencies by certified mail or other means of delivery for which a receipt is available.

B. This Agreement is intended solely to set forth certain arrangements for the provision of mutual aid where practicable. Therefore, the parties do not intend for any third party to rely on the provisions of this Agreement, and specifically disclaim intent to create any third party beneficiary with rights under the Agreement. Moreover, there shall be no liability whatsoever upon any Agency arising out of this Agreement, whether to other Agencies, third parties, or otherwise, for

the Agency's failure to fully or partially respond to a call for assistance, whether due to the Agency's equipment and/or employees being otherwise engaged, exigent circumstances, or for any other reason.

C. The Reading Police Department shall serve as the depository for this Agreement unless otherwise agreed by the parties in writing or by custom and practice.

D. Parties may be added or deleted from this Agreement, and other terms may be modified, by written addendum without restating the entire Agreement.

E. This Agreement may be executed in counterparts.

Only signatures to follow.

Executing Agency: City of Montgomery

By: _____

Printed Name: Wayne S. Davis

Its: Acting City Manager

Date: _____