

**RESOLUTION RATIFYING AND AUTHORIZING EXECUTION OF
A MUTUAL ASSISTANCE AGREEMENT BETWEEN
FORSYTH COUNTY, THE CITY OF WINSTON-SALEM AND
THE TOWN OF KERNERSVILLE FOR TEMPORARY ASSISTANCE
IN ENFORCING THE LAWS OF NORTH CAROLINA
(FORSYTH COUNTY SHERIFF'S OFFICE)**

WHEREAS, pursuant to the provisions of N.C.G.S. 160A-288 and N.C.G.S. 90-95.2, the head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the laws of North Carolina in accordance with rules, policies, and/or guidelines officially adopted by the governing body of the city or county by which he is employed; and

WHEREAS, such assistance may include allowing officers of the agency to work temporarily with officers of the requesting agency (including in an undercover capacity); and

WHEREAS, while working with the requesting agency under the above legal authority, an officer shall have the same jurisdiction, powers, rights, privileges and immunities as the officers of the requesting agency in addition to those the officer normally possesses; and

WHEREAS, the City of Winston-Salem and the Town of Kernersville have agreed to enter into a Mutual Assistance Agreement with Forsyth County for temporary assistance by their respective law enforcement agencies;

NOW, THEREFORE, BE IT RESOLVED pursuant to the provisions N.C.G.S 160A-288 and N.C.G.S. 90-95.2, that the Forsyth County Board of Commissioners hereby ratifies participation by Forsyth County, through its Sheriff's Office, in a Mutual Assistance Agreement to provide temporary assistance in enforcing the laws of North Carolina with the City of Winston-Salem and the Town of Kernersville, by and through their respective police departments.

BE IT FURTHER RESOLVED that the Chairman and the Clerk to the Board are hereby authorized to execute the attached Mutual Assistance Agreement, on behalf of Forsyth County, with the City of Winston-Salem and the Town of Kernersville, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney. The original agreement is incorporated herein by reference.

Adopted this the 14th day of September, 2017.

MUTUAL ASSISTANCE AGREEMENT

This Mutual Assistance Agreement (“Agreement”) is made and entered into effective October 1, 2017, by and between the City of Winston-Salem on behalf of the Winston-Salem Police Department, the Forsyth County Sheriff’s Office and The Town of Kernersville on behalf of the Kernersville Police Department.

WHEREAS, North Carolina General Statutes § 160A-288 and § 90-95.2 provide that the heads of law enforcement agencies may temporarily provide assistance to other agencies in enforcing the laws of North Carolina, including specifically the North Carolina Controlled Substances Act; and

WHEREAS, from 2010 to 2015 the parties entered into an interlocal agreement establishing the Forsyth County DWI Joint Task Force pursuant to a grant received from the North Carolina Governor’s Highway Safety Program; and

WHEREAS, in 2015 and 2017 the TOWN has received a separate grant from the North Carolina Governor’s Highway Safety Program to fund an additional officer for the Forsyth County DWI Task Force; and

WHEREAS, beginning October 1, 2017 the parties have entered into a new interlocal agreement to reflect a new funding structure; and

WHEREAS, conditions of receipt of Task Force grant funds include that: (1) the Task Force conduct a minimum number of DWI checkpoint operations within Forsyth County during the grant period, which checkpoint operations will be operated within the entire geographic area of Forsyth County, at times requiring the CITY and TOWN police departments to operate outside of their municipal territorial jurisdiction in providing temporary assistance to the other parties; and that (2) outside of checkpoint operations, the members of the Task Force engage in general law enforcement activity targeting violators of the laws regarding driving while impaired, which law enforcement activity will occur within the entire geographic area of Forsyth County, at times requiring the CITY and TOWN police departments to operate outside of their municipal territorial jurisdiction in providing temporary assistance to the other parties.

WHEREAS, pursuant to the new interlocal agreement, the parties hereto wish to request and provide such temporary assistance to each other at appropriate times and under the terms and conditions of Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

"Assistance" may include the temporary assignment of personnel, equipment resources, materials and/or supplies and other resources.

"Authorized Representative" means the particular employee of a party who has been designated by the Sheriff and/or Police Chief to take actions appropriate and necessary for carrying out this Agreement.

"Provider" means the law enforcement agency which receives a request to provide, or is providing, temporary assistance to another agency pursuant to this Agreement.

"Recipient" means the law enforcement agency which is requesting and/or receiving temporary assistance from another agency pursuant to this Agreement.

2. Members of DWI Joint Task Force. The DWI Joint Task Force shall consist of seven members: four members to be officers of the Winston-Salem Police Department, one member to be a deputy of the Forsyth County Sheriff's Office and two members to be officers of the Kernersville Police Department. The current members of the DWI Joint Task Force and the dates of assignment to the Task Force are listed in Appendix A, attached hereto and incorporated herein by reference. Any change in the membership of the Task Force occurring during the term of this Agreement will be documented through an amendment to this Agreement in accordance with Section 17 herein.

3. Principle of Mutual Assistance; Limitations. The parties acknowledge and agree that their first responsibility is to their own citizens and that either may decline a request to provide assistance under this Agreement when doing so could jeopardize that agency's service to its own citizens. If an agency determines that it cannot provide assistance to a request due to its obligations to its own citizens, that agency shall so respond to the request for assistance.

4. Requesting Assistance. Requests for assistance under this Agreement should be made in writing to the Authorized Representative of the other agency; provided, however, that in the event of exigent circumstances, a verbal request for assistance may be made and followed with the written request within a reasonable time of the assistance having been provided. A request for assistance should specify in as much detail as possible the type of assistance needed, the anticipated length of time such assistance will be needed and the time, place and person to which assisting personnel of the Provider should report.

5. Responding to a Request for Assistance. An agency receiving a request for assistance shall evaluate its ability to provide such assistance, taking into consideration its obligations to its own citizens as outlined in Section 2, above. If the agency is not able to provide the assistance requested, the agency shall so notify the Recipient in writing. If the agency is able to provide the assistance requested, it shall respond in writing and include at least the following information: (1) the name of its

Authorized Representative; (2) a description of the assistance which is available to be provided; and (3) how long such assistance will be available. In the event of exigent circumstances, a verbal response that includes the information set out above shall be provided and followed with a written response within a reasonable time of the assistance having been provided.

6. Supervision of Assistance Personnel. For purposes of this section, Provider's personnel temporarily assigned to assist Recipient shall be referred to as "Assistance Personnel." Assistance Personnel remain employees of, and subject to the direct control and supervision of, the Provider at all times while such personnel are temporarily assigned to assist Recipient. While on duty with the Recipient, Assistance Personnel shall be subject to the lawful operational commands of superior officers of the Recipient. However, Assistance Personnel shall for personnel and administrative purposes remain under the control of the Provider, including for purposes of compensation. Whenever deemed necessary or appropriate, Provider will designate one or more members of such Assistance Personnel to act as supervisory personnel for the time such personnel are assigned to assist Recipient. Those supervisors will be responsible for coordinating efforts with Recipient, directing and monitoring the activities of the Assistance Personnel in support of Recipient, maintaining all paperwork in connection with the provision of assistance to Recipient, and performing such other supervisory functions as may be necessary or appropriate. Recipient agrees to provide Assistance Personnel with whatever credentials and/or access may be necessary in order for Assistance Personnel to carry out the purposes of this Agreement.

7. Recall of Assistance by Provider. Provider may recall any assistance being provided to Recipient by Provider under this Agreement when necessary in order for Provider to meet its obligations to its own citizens. Where possible, a Provider intending to recall assistance will provide Recipient with twenty-four, (24) hours' notice; otherwise, Provider shall give as much advance notice of recall as possible.

8. Authority of Assistance Personnel. Pursuant to N.C.G.S § 160A-288, whenever Assistance Personnel are rendering assistance pursuant to this Agreement, such Assistance Personnel shall have the same jurisdiction, powers, rights, privileges and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of Recipient, all in addition to those he/she normally possesses.

9. Communications Between Provider and Recipient Personnel
Operational communications between personnel from the Provider and Recipient agency will be accomplished with a common or shared radio frequency. Should Provider agency personnel not have the capability to communicate with Recipient agency personnel on a common or shared radio frequency, then the Recipient agency will either provide compatible radio equipment or pair personnel from the Provider agency with personnel that have the capability to communicate on a common or shared radio frequency.

10. Equipment and Supplies. The Recipient may request of the Provider Agency the temporary lending of equipment and supplies. Equipment and supplies will

be loaned to the Recipient as determined by the head of the Provider Agency. All loaned supplies and equipment must be returned to the Provider Agency within thirty (30) days from the date of loan in as good condition as when loaned, normal wear and tear excepted. Any equipment and supplies which are depleted through use or damage must be replaced within one hundred and eighty (180) days from the date of original loan. Extensions to these time limitations may be granted by the head of the Provider Agency.

11. Reimbursement to Provider Agency. The Provider Agency may request that the Recipient Agency reimburse the Provider Agency for all costs incurred as a result of sending an officer or officers to assist the Recipient Agency, except as normal base salary, including:

- a. All travel, food, and lodging costs incurred during the period the officer(s) is assigned to the Recipient Agency.
- b. Any later costs arising out of events occurring while assigned to the Recipient Agency such as, but not limited to, testifying in court.

12. Workers' Compensation. Assistance Personnel shall be entitled to Workers' Compensation and the same benefits when acting pursuant to this agreement to the same extent as though he or she were functioning within the normal scope of his/her duties. The parties agree that each County/Municipality shall be responsible for payment to its own respective employees of benefits under the North Carolina Workers' Compensation Act, Chapter 97 of the North Carolina General Statutes, due to personal injury or death occurring during the period of time such employees are engaged in the rendering of assistance under this Agreement.

13. Immunity. All activities performed under this Agreement are hereby declared to be governmental functions which are covered by governmental immunity. While acting in compliance with, or while reasonably attempting to comply with this Agreement, the parties shall not be liable for the death or injury of any person nor damage to property occurring as a result of such actions.

14. Hold Harmless. Each party agrees to protect, defend, indemnify and hold the other party and its officers, elected officials, employees, representatives and agents, free and harmless from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees, and other expenses or liabilities of every kind and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of that party's negligent acts, errors and/or omissions; **except** to the extent that those acts, errors and/or omissions were the direct result of orders given by the Recipient Agency to the Assistance Personnel. Each party further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto. To the extent that immunity does not apply, each party shall bear the risk of its own actions and shall determine for itself which kinds of insurance, and in what amounts, it should carry. Each party understands and agrees

that any insurance protection obtained shall in no way limit the responsibility to indemnify, keep and save harmless the other party to the Agreement.

15. Term of Agreement. The initial term of this Agreement shall be one (1) year from its effective date. This Agreement will automatically renew for additional one-year terms unless notice of intent not to renew is provided to the other party in writing at least thirty days prior to the expiration of the then-current term.

16. Rules, Policies, Etc. This Mutual Assistance Agreement shall constitute the rules, policies, guidelines, conditions and restrictions officially adopted by the governing body of each party hereto.

17. Miscellaneous. This Agreement is the entire agreement between the parties as to the subject matter herein, and may only be amended by a writing signed by all parties. This Agreement shall be governed by and construed according to the laws of the State of North Carolina, without regard to its choice of law principles.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date first above written.

FORSYTH COUNTY SHERIFF'S OFFICE

William T. Schatzman, Sheriff

Date

J. Dudley Watts, Jr.

Date

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date first above written.

WINSTON-SALEM POLICE DEPARTMENT

Barry D. Rountree, Chief of Police

Date

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date first above written.

TOWN OF KERNERSVILLE

Tim R. Summers, Chief of Police

Date

Appendix A

Winston-Salem Police Department

Sergeant Michael McDonald
Officer Tim Hanks
Officer Charles Mathews
Corporal Joshua Wray

Kernersville Police Department

Officer Michael Pearson
Officer Samuel P. Johnson

Forsyth County Sheriff's Office

Deputy Jacob T. Williams