

**MUTUAL AID AGREEMENT BETWEEN THE UNITED STATES CAPITOL POLICE
AND
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**

THIS MUTUAL AID Agreement (the “Agreement”) is made as of this ___ day of _____, 2022, by and between the United States Capitol Police (“USCP”), an entity of the United States of America, and the Maryland-National Park and Planning Commission (the “Commission”), a public body corporate and bi-county agency of the State of Maryland (the “Parties”) for the purpose of mutual aid by the Commission to USCP and for reimbursement of costs and expenses related thereto.

I. EXPLANATORY STATEMENTS

A. The United States Capitol Police is charged with protecting the Congress of the United States and for providing for the safety and general welfare of its Members, employees, visitors, and facilities – so it can fulfill its constitutional and legislative responsibilities in a safe, secure, and open environment. From time to time, USCP may benefit from access to additional law enforcement resources.

B. The Commission is a public safety agency in the National Capital Region and a law enforcement partner to the USCP. It is the mission of the Commission to safeguard Maryland’s parks and protect its users and visitors with the highest regard for the sanctity of human life. The Commission strives at all times to accomplish the mission with a focus on service, integrity, and fairness.

C. Pursuant to the authority set forth in 2 U.S.C. §§1970 and 1974, the Annotated Code of Maryland at Section 17-303 of the Land Use Article and at Section 2-105 of the Criminal Procedure Article, USCP and the Commission (collectively, the “Parties”) desire to make and enter into this Agreement for the purposes provided herein.

D. This Agreement defines the relationship between the USCP and the Commission with regard to occasions or events (“Events”) where the USCP requires assistance, utilization of resources, planning, timing, public relations, and media in order to maximize interagency cooperation and to achieve maximum coordination and cooperation in

bringing to bear combined resources to effectively implement measures to promote the safety of the public, visitors, and residents while allowing individuals and groups to exercise their legal rights (“Joint Law Enforcement Event” or “JLEE”).

Additionally, the parties will coordinate their activities and share information and coordinating investigative and law enforcement efforts which may result from any apprehensions originating from Joint Law Enforcement Events.

E. This Agreement has been authorized by the formal action of the Maryland-National Capital Park and Planning Commission taken on _____ by Resolution _____, a true and correct copy of which is annexed hereto at Exhibit A.

NOW, THEREFORE, in consideration of the mutual rights, duties, promises and obligations herein, the parties desire to set forth in writing the understanding reached between them concerning the manner in which police service is to be rendered within at the direction of the USCP, and therefore agree to the following:

II. AUTHORITY RESERVED.

Nothing contained in this Agreement is intended to cede, relinquish, or limit the respective legal authority or jurisdiction of either department under circumstances not addressed herein, and USCP and Commission, respectively, do hereby expressly reserve all such authority and jurisdiction to the fullest extent otherwise provided under the United States Code, Annotated Code of Maryland, or by any applicable laws, regulations, or ordinances.

III. ORGANIZATIONAL STRUCTURE

A. SUPERVISION

During a JLEE in which the Commission is assisting USCP, responsibility for the conduct of the officers, both personally and professionally shall remain within the Commission’s chain of command, subject to the provisions in the Liability section, *infra*.

B. UNILATERAL LAW ENFORCEMENT ACTION

There shall be no unilateral action taken on the part of any Commission officer, but all law enforcement action by the Commission officers must be coordinated and conducted in a cooperative manner except that unilateral law enforcement action may be taken in an emergency such as an imminent threat of death or serious bodily harm.

IV. PROCEDURES

A. PERSONNEL

Continued assignment of personnel to the JLEE will be based upon performance and will be at the discretion of the respective agency. The Commission will be provided with reports as necessary regarding the program, direction, and accomplishment of the JLEE.

B. DEPUTATION

All Commission officers designated to the JLEE will be sworn in as Capitol Police Special Officers pursuant to 2 U.S.C. §1974. This designation shall afford Commission officers protection under 28 U.S.C. §171 (The Federal Torts Claim Act).

Deputy Officers pursuant to this Agreement who suffer a disability or die as a result of personal injury sustained while acting within the course and scope of their official duties and assignments pursuant to this Agreement shall be treated as a federal employee as defined by Title 5 U.S.C. § 8101. Any such individuals who apply to the U.S. Department of Labor for federal workers' compensation under Section 3374 must submit a copy of this Agreement with his or her application. All applicants will be processed by the U.S. Department of Labor on a case-by-case basis in accordance with applicable law and regulation.

C. LAW ENFORCEMENT ACTIVITIES

Since it is anticipated that almost all cases originating from any JLEE arrests will be prosecuted at the federal or local (District of Columbia) level, the law enforcement method employed by the Commission shall conform to the requirements of the relevant federal or local statutory or common law pending a decision as to a change of venue for prosecution.

D. PROSECUTION

The criteria for determining whether to prosecute a particular violation in federal or state court will focus upon achieving the greatest overall benefit to law enforcement and the community. Any question which arises pertaining to prosecutorial jurisdiction will be resolved by the United States Department of Justice.

V. ADMINISTRATIVE

A. RECORDS AND REPORTS

All records and reports generated by JLEE members shall be forwarded to USCP which shall be responsible for maintaining custody and proper dissemination of said records and reports as it deems appropriate and in accordance with any applicable law or regulation. The Freedom Of Information Act, 5 U.S.C. §552 (“FOIA”), is not applicable to the USCP and any requests to the Commission for records that either originated with the USCP or contain information pertaining to the USCP should not be provided pursuant to a FOIA request without prior, written approval of the USCP.

B. STAFF BRIEFINGS

Periodic briefings on JLEE law enforcement actions will be provided to the directors of the participating agencies or their designees. Statistics regarding accomplishments will also be provided to the participating agencies as available.

C. MEDIA

All media releases pertaining to JLEE law enforcement activity and/or arrests will be coordinated by USCP. No unilateral press releases will be made by the Commission without the prior approval of the USCP. No information pertaining to the JLEE itself will be released to the media without USCP approval.

VI. EQUIPMENT

A. VEHICLES

The Commission, subject to availability and agency policy, agrees and authorizes JLEE members to use vehicles, when available, as owned or leased by the Commission in connection with JLEE law enforcement operations. The Commission agrees to be responsible for any negligent act or omission on the part of its agency or its employees, and for any liability resulting from its operation of its, as well as any damage incurred to those vehicles as a result of any such negligent act or omission on the part of the Commission or its employees, subject to the provisions of the Liability section provided, *infra*.

Commission vehicles may be used during JLEE are subject to funding, availability, and are provided at the discretion of the Chief(s) of the Commission. Commission vehicles may be used only by JLEE members. Non-Commission employees which are also USCP Officers may use vehicles provided by the Commission in accordance with Commission policies, however other JLEE members may only use the Commission vehicle during working hours and will not be used for transportation to and from work by non-Commission JLEE members or used for any other non-JLEE purpose.

The Commission will provide maintenance and upkeep of their vehicles consistent with its practices/policy. Vehicles provided as pool vehicles for JLEE use may be parked at the end of each shift at a designated location as mutually agreed upon by authorized representatives of the Commission and USCP. When the particular JLEE is concluded, all Commission vehicles used in the particular JLEE will be returned to the full custody and control of the Commission.

B. OTHER EQUIPMENT

Other equipment furnished by the Commission for use by USCP participating personnel shall be returned to the Commission upon termination of the particular JLEE or this Agreement.

VII. FUNDING

The Commission agrees to provide the full-time services of its respective personnel for the duration of this operation, and will pay all personnel costs for their JLEE representatives including salaried, overtime payments, and fringe benefit consistent with their Commission policies and procedures. Reimbursement for the cost of such personnel will be made by USCP to the Commission.

VIII. LIABILITY

Unless specifically addressed by the terms of this Agreement, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees. Liability for JLEE employees' acts or omissions undertaken outside the terms of this Agreement are the sole responsibility of the respective employee or agency involved.

IX. DURATION

This Agreement shall remain in effect until revoked in writing by either party, and once all reimbursement has been paid. The Parties may withdraw from this Agreement at any time by providing a seven-day written notice of its intent to withdraw to the other party. Upon the termination of the Agreement, all equipment will be returned to the Commission and all outstanding or unpaid claims for reimbursement will be paid.

X. RETROACTIVE APPLICATION OF THIS AGREEMENT

This Agreement shall be retroactively applied to any JLEE events occurring on or after September 18, 2021.

XI. MODIFICATIONS

The terms of this Agreement may be modified at any time by written consent of all parties. Modifications to this Agreement shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

XII. LIMITATION

Nothing in this Agreement is intended to, or shall be construed to create enforceable rights in third parties.

XIII. PURPOSE

The purpose of this Agreement is to set forth the terms by which the USCP will reimburse Commission for continuing mutual aid and participation in training as mutually agreed upon related to post-January 6, 2021 events including such mutual aid and training provided under the agreements described in Section 7302 of Public Law 108-458 and Metropolitan Washington Council of Government's Police Mutual Aid Operations Plan (COG MAOP).

This Agreement is an agreement between the Parties and is not intended and should not be construed, to create or confer any other person or entity any right or benefit, substantive or procedural, enforceable at law or otherwise against Commission, USCP, or any state, locality, or other sponsor under whose auspices a party is participating in the COG MAOP.

XIV. RESPONSIBILITIES OF COMMISSION UNDER THIS AGREEMENT

A. INVOICING OBLIGATIONS

The Commission agrees to provide the USCP with a summary of expenses for reimbursement by USCP to the Commission for costs or expenses incurred in connection with the JLEE to including, but not limited to, law enforcement services, equipment and resources utilized on behalf of the USCP. This summary will be consistent with the format for record keeping provided by the USCP and will be submitted within 30 days of each mutual aid event covered by this agreement. Any expenses incurred for the period of January 1, 2021 to the date of the execution of this Agreement shall be invoiced by the Commission to USCP within 30 days after the full execution of the Agreement by all Parties.

B. CONTINUED COOPERATION AND TRAINING

The Commission will continue to provide such mutual aid as requested by the USCP and agreed to by Commission, and agrees to participate in ongoing training from time-to-time as available in an effort to ensure continued law enforcement interaction and readiness.

XV. RESPONSIBILITIES OF USCP UNDER THIS AGREEMENT

A. FUNDING FOR REIMBURSEMENT

In addition to the obligations otherwise stated herein, the USCP agrees to provide the necessary funds on a reimbursable basis, subject to availability of funds, to ensure continued mutual aid and joint training between Commission and USCP law enforcement officers, consistent with Congressional intent and federal appropriations law.

B. OWN COSTS

The USCP agrees to bear its own costs in relation to this Agreement. No provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

XVI. SEVERABILITY

Nothing in this Agreement shall be construed to conflict with current law. If a term of this Agreement is inconsistent with such authority, that term shall be invalid to the extent of the inconsistency. The remainder of that term and all other terms of this Agreement shall remain in effect.

XVII. NOTICE

The following individuals are the contact points for each Party under this Agreement:

Sean P. Gallagher
Acting Chief of Police for Uniformed Operations
United States Capitol Police

119 D Street, NE
Washington, DC 20510
(C) 202-384-8720

Chief Daryl McSwain
Maryland-National Capital Park Police,
Montgomery County Division
12751 Layhill Road
Silver Spring, Maryland 20906
Daryl.McSwain@mncparkpolice.org
301-962-1660

Chief Stanley Johnson
Maryland-National Capital Park Police,
Prince George's County Division
8100 Corporate Drive #350
Hyattsville, Maryland 20785
Stanley.Johnson@pgparks.org
301-459-9088

The Parties will provide notification of any changes to the contact points.

XVIII. MODIFICATIONS

The terms and conditions of this Agreement may be modified only upon prior written agreement by the Parties.

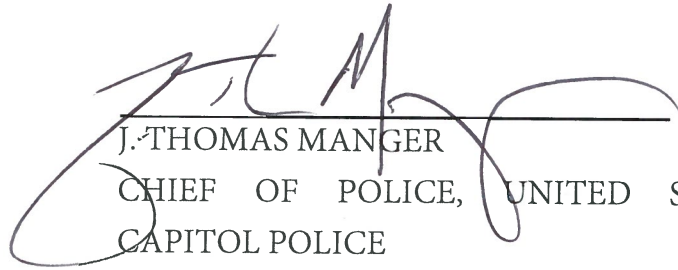
XIX. MISCELLANEOUS

The Parties shall comply with all applicable laws, rules, and regulations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as follows:

UNITED STATES CAPITOL POLICE:

Date: 4/20/22


J. THOMAS MANGER
CHIEF OF POLICE, UNITED STATES
CAPITOL POLICE

MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Attest:

Gavin Cohen
Secretary-Treasurer

BY: _____
Asuntha Chiang-Smith
Executive Director

Approved for Legal Sufficiency for M-NCPPC

Elizabeth Adams