

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: September 19, 2022

Agenda Item: 5A	Prepared by: Chris Noury, City Attorney
Agenda Section: Consent: Resolution	Date: September 12, 2022
Subject: A Resolution to approve the Mutual Aid Agreement between Coastal Carolina University (CCU) and the City of North Myrtle Beach	Division: Legal

Background:

Attached is a Resolution to approve the Mutual Aid Agreement between Coastal Carolina University and the City of North Myrtle Beach. The agreement will continue in effect for two (2) years. The City will assist CCU's Department of Public Safety with law enforcement officers to provide professional, proactive safety, and protection to the University community.

Recommended Action:

Adoption of the Resolution

Reviewed by Division Head	Reviewed by City Manager	Reviewed by City Attorney
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Council Action:
Motion By _____ 2nd By _____ To _____

A RESOLUTION

**A RESOLUTION TO APPROVE MUTUAL AID AGREEMENT BETWEEN COASTAL CAROLINA UNIVERSITY
AND THE CITY OF NORTH MYRTLE BEACH AND TO AUTHORIZE THE CITY MANAGER TO SIGN
THE MUTUAL AID AGREEMENT ON BEHALF OF THE CITY.**

**NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH
MYRTLE BEACH, SOUTH CAROLINA:**

Section 1: The Mutual Aid Agreement referenced above is hereby approved.

Section 2: The City Manager is authorized to sign the Mutual Aid Agreement on behalf of the City.

Section 3: The Resolution shall become effective upon the date of passage.

Resolved this the Nineteenth Day of SEPTEMBER 2022.

Mayor Hatley

ATTEST:

City Clerk

Resolution: 22-08

MEMORANDUM OF UNDERSTANDING

Between

COASTAL CAROLINA UNIVERSITY

And

CITY OF NORTH MYRTLE BEACH

Mutual Aid Agreement

This agreement is made and entered by and between **Coastal Carolina University** (hereinafter referred to as "CCU") and the **City of North Myrtle Beach**, which may at times be referred to individually herein as a "Party" and collectively as the "Parties" and shall be effective on the date that the agreement has been signed by both parties and approved by their governing body, as shown below.

WHEREAS, CCU is a public comprehensive liberal arts institution of higher education in Conway, South Carolina; and

WHEREAS, pursuant to South Carolina Code of Laws §59-116-20, CCU is authorized to establish a campus safety department whose officers have all the powers of municipal and county police officers; and

WHEREAS, in order to provide the University community with professional, proactive safety and protection, CCU has established a Department of Public Safety which includes the Police Division, which is a full-service police department; and

WHEREAS, pursuant to South Carolina Code of Laws § 5-7-30, the City of North Myrtle Beach is granted broad authority to enact resolutions and ordinances relating to law enforcement and to exercise powers respecting any subject which appears to it necessary and proper for the security and general welfare of the municipality and to preserve health, peace and good order and is further granted express authority in South Carolina Code of Laws § 5-7-110 to create a police force consisting of as many officers as may be necessary for the proper law enforcement in the municipality; and

WHEREAS, sections 23-20-10 through 23-20-60 of the Code of Laws of South Carolina (1976) as amended, authorize law enforcement agencies to enter into contractual agreements with other law enforcement providers as may be necessary for the proper and prudent exercise of public safety functions. These sections specify contractual provisions and approvals that are required for such an agreement. The officers of a law enforcement provider under such an agreement have the same legal rights, powers, and the duties to enforce the laws of South Carolina as the law enforcement agency contracting for the services; and

WHEREAS, the parties hereto desire to enter into an agreement to promote public safety for the purpose of securing to each other the benefits of mutual aid; and

WHEREAS, it is the desire and intent of the parties to evidence their joint undertaking for the provision of mutual assistance in law enforcement matters by the temporary assignment of law enforcement officers between jurisdictions to the fullest extent as is allowed by law; and

WHEREAS, it is the intent of the parties to share jurisdiction under this written agreement to the fullest extent permitted under South Carolina law; and

WHEREAS, the purpose of this Agreement is to define the scope of such mutual aid and the responsibilities of the parties cooperating in providing such aid, thereto:

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. SCOPE OF SERVICES.

- 1.1. Assistance. The assistance to be rendered pursuant to this Agreement shall solely involve the temporary transfer or assignment of law enforcement officers and/or equipment from each party's jurisdiction to the support and aid of the other party. When so transferred or assigned, such law enforcement officers shall have all rights, powers, authority, and duties to enforce the laws of South Carolina as a law enforcement officer employed by the respective jurisdiction to this agreement, and to which assignment is made.
- 1.2. Request for Assistance. The parties to the MOU may request law enforcement assistance from the other party to this Agreement, and such request may be made for assistance with public safety functions, which include traditional public safety activities which are performed over a specific period of time for investigations and intelligence sharing.
- 1.3. Primary Responsibility. It is agreed and understood that the primary responsibility of the parties hereto is to provide law enforcement services within the geographical boundaries of their respective jurisdictions. Therefore, it is agreed that the law enforcement agency whose assistance is requested shall be the sole judge as to whether or not it can respond and to what extent it can comply with the request for assistance.
- 1.4. Request. A request for assistance shall only be made by the Sheriff or Chief of Police, if available, and otherwise by the senior duty officer of the law enforcement agency who is requesting assistance. If the request is granted, the requesting law enforcement agency shall be immediately informed of the number of law enforcement officers to be furnished.
- 1.5. Reply. A reply to any request for assistance shall only be made by the Sheriff or Chief of Police, if available, and otherwise by the senior duty officer of the law enforcement agency whose assistance is requested. If the request is granted, the requesting law enforcement agency shall be immediately informed of the number of law enforcement officers to be furnished.
- 1.6. Officer-in-Charge. The personnel temporarily transferred or assigned by the assisting law enforcement agency shall report to their respective Chains of Command, and

Officer-in-Charge and shall be subject to orders and commands of that official. The assisting law enforcement officers shall exert their best efforts to cooperate with and aid the requesting law enforcement agency.

- 1.7. Release. The law enforcement officer temporarily transferred or assigned shall be released by the Officer-in-Charge when their services are no longer required or when they are needed to respond to a situation within the geographical boundaries of their own jurisdiction; provided, however, the assisting law enforcement officers shall use their best efforts to complete the requested service prior to being released.
- 1.8. Vesting of Authority and Jurisdiction. To the fullest extent permitted by the Constitution and statutes of this State, officers assigned under this agreement shall be vested with all authority, jurisdiction, rights, immunities, and privileges within the requesting jurisdiction for the purposes of investigation, arrest, or any other activity related to the purpose for which they were requested. Local ordinances adopted by a sending agency shall not be deemed extended into areas which are outside the territorial limits of the sending jurisdiction.
- 1.9. Radio Communications. Radio communications between the requesting law enforcement agency and the assisting law enforcement officers shall be maintained by use of the State regional radio channel system, unless a radio channel that is mutually shared by the parties hereto is otherwise available.
- 1.10. Records. The requesting law enforcement agency shall be primarily responsible to maintain records relating to the incident for which assistance has been requested. However, each law enforcement agency shall maintain records of activities of its personnel that it would generate if the activities had occurred in its own jurisdiction including, but not limited to, incident reports, records of application or execution of an arrest or search warrant, incident reports for arrests made by personnel, uniform traffic tickets issued, and use of force forms. Each party shall make these records available to the other party upon request and without cost.
- 1.11. Media and Freedom of Information Act ("FOIA") Requests. The requesting law enforcement agency shall be primarily responsible for responding to media requests relating to any incident for which assistance has been requested. However, each law enforcement agency that receives a request under FOIA, shall respond as it deems appropriate and proper by producing the responsive document(s) in its possession or asserting an applicable exemption.

2. TERM AND TERMINATION.

- 2.1. Term. This Agreement will continue in effect for **two (2) years** from the date of effectiveness of last signing below. Renewal shall be accomplished only by a written instrument duly approved by the governing body of each party.
- 2.2. Termination. This Agreement may be terminated by either party by providing written notice to the other party. Such notice becomes effective upon receipt of the notice by the other party.

3. COMPENSATION AND REIMBURSEMENT.

- 3.1. The temporary transfer or assignment of law enforcement officers made pursuant to this Agreement shall in no manner affect or reduce the compensation, pension, or retirement rights of such transferred or assigned officers, and such officers shall continue to be paid by the agency where they are permanently employed.
- 3.2. The parties agree that compensation and/or reimbursement for services provided hereunder shall be limited to the reciprocal provision of services of like kind, to include the ancillary benefits of increased investigation and prevention of narcotics and related offenses in their respective jurisdictions. Any other agreement for reimbursement between the parties must be written and executed in the same manner as this agreement.

4. EQUIPMENT AND FACILITIES.

Each party shall supply the equipment for its law enforcement officers and shall bear the risk of its damage or loss; provided, however, that if the equipment is damaged by the acts or omissions of employees of the other party, then the other party shall reimburse the damaged party for its loss. The host agency will provide the facilities for law enforcement operations and will designate its location at the time assistance is requested.

5. INSURANCE AND BOND.

It is agreed and understood that the parties hereto shall be solely responsible to maintain such insurance protection and workers compensation coverage on its employees as may be required by law or deemed advisable by the party. The bond, if any, for any officers operating under this agreement shall include coverage for their activity in the other jurisdiction covered by this agreement in the same manner and to the same extent provided by the bonds of regularly employed officers of that county or municipality.

6. EMPLOYMENT STATUS.

Nothing herein contained shall be construed or interpreted to imply that the law enforcement officers temporarily transferred or assigned in accordance with this agreement are employees of the law enforcement agency requesting such assistance.

7. NOTICE.

Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail to the **CITY OF NORTH MYRTLE BEACH** at:

North Myrtle Beach Police Department
Attn: Thomas Dennis, Chief of Police
1015 2nd Avenue South
North Myrtle Beach, SC 29582

With a copy to:
City of North Myrtle Beach
Attn: Chris, City Attorney
1018 2nd Ave South
North Myrtle Beach, SC 29582

to CCU at:

Coastal Carolina University
Department of Public Safety
Attn: David Roper, Director of Public Safety
255 University Blvd.
Conway, SC 29526

With a copy to:
Coastal Carolina University
Office of University Counsel
Attn: Carlos Johnson, Senior VP and University Counsel
PO Box 261954
Conway, SC 29528

8. LEGAL CONTINGENCIES.

Each Party agrees to and does hereby assume responsibility for its respective acts and omissions and the acts and omissions of its employees, agents, directors, or any other person, for whose acts the Parties may be held liable, which may give rise to any claim arising out of this agreement, subject to the limitations set forth in the South Carolina Tort Claims Act at S.C. Code Ann. Section 15-78-10. The liability obligations herein shall survive the termination and/or expiration of this agreement. No Party shall be liable for any claims, demands, expenses, liabilities, and losses (including reasonable attorneys' fees) which may arise out of any acts or failures to act by the other party, its employees, or agents, in connection with the performance of Services pursuant to this agreement.

9. NO INDEMNIFICATION OR THIRD-PARTY RIGHTS.

The parties shall be solely responsible for the acts and omissions of their respective employees, officers, and officials. No right of indemnification is created by the agreement and the parties expressly disclaim such a right. The provisions of this agreement shall not be deemed to give rise to or vest any rights or obligations in favor of any person or entity not a party to this agreement.

10. OTHER AGREEMENTS AND INVESTIGATIONS.

This agreement shall repeal and supersede any existing mutual aid agreements between the parties hereto. This agreement does not restrict in any way the normal cooperation between law enforcement agencies concerning ongoing criminal investigations.

11. GOVERNMENT IMMUNITY NOT WAIVED.

It is expressly agreed and understood between the Parties that nothing contained herein shall be construed to constitute a waiver or relinquishment by either Party of its right to claim such exemptions, privileges, and immunities as may be provided by law.

12. NONDISCRIMINATION ACKNOWLEDGMENT.

Both Parties agree to fully comply with all applicable federal, state, and local laws, rules and regulations including, but not limited to, the Civil Rights Act of 1964 (as amended in 1991), Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age of Discrimination in Employment Act of 1975, and the Americans with Disabilities Act of 1990.

13. CHOICE OF LAW.

The laws of the State of South Carolina and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this agreement.

14. MODIFICATION.

This agreement shall not be modified, amended, or changed in any manner except upon the express written consent of the parties hereto.

15. ENTIRE AGREEMENT AND COUNTERPARTS.

This agreement constitutes the entire agreement of the Parties hereto, and supersedes all prior understandings, whether oral or written, with respect to the subject matter hereof. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

16. ACKNOWLEDGEMENT.

The Parties acknowledge that they have read and understand this agreement, and that the provisions herein are reasonable and enforceable, and further agree to abide by this agreement and the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the dates shown below.

COASTAL CAROLINA UNIVERSITY

CITY OF NORTH MYRTLE BEACH

Approved for execution by the CCU
Board of Trustees

Approved for execution by the North Myrtle
Beach City Council

By: _____
Michael T. Benson, President

By: _____
Michael Mahaney, City Manager

Date: _____

Date: _____