



CITY of NOVI CITY COUNCIL

Agenda Item C
April 9, 2012

SUBJECT: Approval to enter into intergovernmental agreement establishing the Oakland County Tactical Training Consortium (Oak - TAC).

SUBMITTING DEPARTMENT: Public Safety - Police 

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

Pursuant to the Oakland County Chiefs' meeting held on February 9, 2009, the Oakland County Law Enforcement – Tactical Training Consortium (Oak – TAC) was established to coordinate a countywide training initiative to prepare Oakland County in the event of a major incident requiring a mutual aid response. As this workgroup has progressed, we have had a dedicated group of state, county, and local officers coming together in this joint effort.

The first phase of combined training took place during the summer and early fall of 2009. Over 700 police officers from several Oakland County agencies received training in the standardized method of handling civil disorders and civil disobedience such as riot and crowd control. This training, in Small Squad Tactics – Mobile Field Force, was initially conducted by the Michigan State Police, with many local agencies providing officers that would serve as instructors in the follow up courses. This "Train-the-Trainer" model permitted the personnel expenses in conducting these classes to be shared by several agencies, while ensuring a standardized method of response.

The anticipated second phase of training will be the development of a protocol and coordination of training efforts of police officers in a standardized method of Rapid Deployment – Active Shooter Response. Additionally, this training group has brought together the leadership of several Oakland County SWAT teams, and we have been able to develop a resource list for manpower, equipment, and mutual aid. The Troy Tactical Support Team is currently sharing training resources with officers from the Ferndale, Royal Oak, Berkley, and Madison Heights police departments, as well as the Oakland County Sheriff's Office. Sharing these training resources has resulted in a cost savings for each of the agencies.

A proposed Interlocal Agreement formally establishing the Oakland County Tactical Training Consortium has been prepared by the Troy City Attorney's Office. Currently, the members of the committee are representatives from the Oakland County Sheriffs Office, and the police departments of Auburn Hills, Bloomfield Hills, Farmington Hills, Ferndale, Novi, Oak Park, Royal Oak, and Troy. Assistant Chief Victor Lauria is currently serving a Co-Chair of this committee.

Oak – TAC has secured grant funding that has permitted the purchase of equipment necessary to respond to any incident requiring a Small Squad Tactics – Mobile Field Force response. This equipment will be available to any agency that enters into the Interlocal agreement. Arrangements have been made to preposition half of this specialized equipment in the City of Troy, and the other half in the City of Pontiac, with the Oakland County Sheriffs Office.

Legal counsel has reviewed this agreement and opines there is no legal impediment which precludes the City of Novi from executing this agreement.

RECOMMENDED ACTION: Approval to enter into intergovernmental agreement establishing the Oakland County Tactical Training Consortium (TAC).

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Wrobel				

JOHNSON | ROSATI | SCHULTZ | JOPPICH

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Thomas R. Schultz
tschultz@jrsjlaw.com

March 12, 2012

Deputy Police Chief Tom Lindberg
Novi Police Department
45125 W. Ten Mile Road
Novi, MI 48375

RE: OAK-TAC Interlocal Agreement (Final Version 3.5.12)

Dear Deputy Chief Lindberg:

You asked us to look at the draft agreement between a number of communities in the area regarding the Oakland County Tactical Training Consortium (OAK-TAC). Apparently our office and a couple of other city attorneys for the various prospective members had comments on the draft version that first circulated. The Troy City Attorney's office was responsible for making changes in response to our various comments.

I received a copy of the amended "Interlocal Agreement Formally Establishing the Oakland County Tactical Training Consortium." As amended, we have no objection to any of the language in the agreement.

As you know, it relates only to the pooling of resources for tactical training. It establishes a board of directors, which would include a member from the City of Novi. It requires the establishment of a set of bylaws, which I have reviewed and have no objection to.

There is no funding obligation for the City of Novi with respect to OAK-TAC. The proposal is apparently to fund activities through grants primarily. No members of the board receive any sort of compensation and there is no membership fee.

With regard to termination of the agreement, any member can withdraw with thirty days' notice, with or without cause. Automatic termination occurs if there is only one remaining member or if there is a unanimous vote of all members. If there are any assets upon termination, they are equitably distributed between members.

Most importantly, for the issues we raised, the liability provisions have been rewritten to be consistent with a typical Oakland County-drafted intergovernmental agreement – each member bears responsibility for its own actions and those of its employees or agents. There is no indemnification of the other members, and no waiver of governmental immunity.

March 12, 2012

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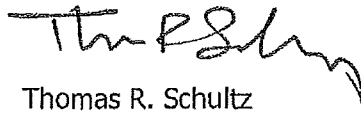
The agreement contemplates each of the members keeping their insurance coverages complete, and a copy of an insurance certificate for the City of Novi will need to be provided to the board.

Based upon the foregoing, and the limited nature of the agreement, we see no legal impediment to the City entering into this arrangement with these other area communities.

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

A handwritten signature in black ink, appearing to read "Thomas R. Schultz", with a stylized flourish at the end.

Thomas R. Schultz

cc: Clay Pearson, City Manager
David Molloy, Director of Public Safety
Victor Lauria, Assistant Police Chief
Victor Cardenas, Assistant City Manager
Maryanne Cornelius, City Clerk

**INTERLOCAL AGREEMENT FORMALLY ESTABLISHING THE OAKLAND
COUNTY TACTICAL TRAINING CONSORTIUM**

This Interlocal Service Agreement is made by and between the following governmental units, hereinafter referred to as "Members":

Oakland County
1200 N. Telegraph Road
Pontiac, Michigan 48341

City of Auburn Hills
1827 N. Squirrel Road
Auburn Hills, Michigan 48326

City of Bloomfield Hills
45 E. Long Lake Road
Bloomfield Hills, Michigan 48304

City of Farmington Hills
31555 W. Eleven Mile Road
Farmington Hills, Michigan 48336

City of Ferndale
310 E. 9 Mile Road
Ferndale, Michigan 48220

City of Novi
45175 W. 10 Mile Road
Novi, Michigan 48375

City of Oak Park
13600 Oak Park Blvd
Oak Park, Michigan 48237

City of Royal Oak
211 Williams Street
Royal Oak, Michigan 48067

City of Troy
500 W. Big Beaver Road
Troy, Michigan 48084

RECITALS

WHEREAS, the Michigan Constitution of 1963, Article 7, § 28, and the Urban Cooperation Act of 1967, Act No. 7 of the Public Acts of 1967, Ex. Sess., being MCL 124.501, et. seq. (the "Act"), permit governmental units to exercise jointly with other governmental units any power, privilege or authority which such governmental units share in common which each might exercise separately; and

WHEREAS, all Members have the authority to purchase equipment and engage in tactical training for their police personnel for certification, practice and maintaining proficiency of police officers for the protection of the public for their respective governmental unit only; and

WHEREAS, the Members have mutually agreed that this Agreement be entered into to allow the Members to establish and implement cooperative programs and activities on a continuing basis to train their police personnel in small squad tactics and use of weapons for specific situations such as, but not limited to, hostage situations, events requiring use of special weapons and tactics ("S.W.A.T."), terrorist situations and Homeland Security defense; to purchase and supply weapons and equipment; to train multiple agencies for large scale critical situations requiring trained police personnel on a county wide basis; and to develop protocol and procedures for communication between multiple agencies during such situations; and

WHEREAS, the prior to the execution of this Agreement, Member sheriff/police departments established an organization known as the "Oakland County Tactical Training Consortium", also known as "OAK-TAC", to provide for the common goal of training police personnel in multiple jurisdictions by a more efficient and cost effective use of training personnel and to insure standardization of communications and training and tactical techniques for governmental units; and

WHEREAS, the OAK-TAC participants desire to formalize their goals and objectives by entering into this Agreement ; and

WHEREAS, pursuant to resolution of each Member's legislative body, the Members each have the authority to execute this Interlocal Agreement for Formally Establishing the Oakland County Tactical Training Consortium to also be known as OAK-TAC ("Agreement") to allow each Member's sheriff/police department to participate in tactical training through and organization under the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, undertakings, understandings and agreements set forth above and in this Agreement, the Members agree to the following terms, conditions, representations, consideration and acknowledgements and mutually agree as follows:

1.Membership. Prior to the effective date of this Agreement, each Member's sheriff/police department has been a party to an organization known as the "Oakland County Tactical Training Consortium", also known as "OAK-TAC". Each Member shall remain a Member of OAK-TAC but only if the legislative body of the Member's governmental unit passes a resolution approving this Agreement and authorizing the appropriate signatory to execute this Agreement on behalf of the governmental unit and this Agreement is executed by the authorized signatories of the Member governmental unit.

2.Time Limit for Obtaining Resolution and Executing Agreement. Governmental units listed on this Agreement shall have until April 1, 2012 to obtain a resolution from its governing body approving the Agreement and authorizing appropriate signatories to sign the Agreement. Any of the governmental units listed on this Agreement who fail to obtain a resolution and signed the Agreement by April 1, 2012 shall not be accepted into OAK-TAC without complying with the requirements of Paragraph 7, New Members.

3.Purposes. Members mutually agree that the general purpose of OAK-TAC is to establish and implement cooperative programs and activities on a continuing basis to train police personnel in small squad tactics and use of weapons for specific situations such as, but not limited to, hostage situations, events requiring use of special weapons and tactics ("S.W.A.T."), terrorist situations and Homeland Security defense; to purchase and supply weapons and equipment; to train multiple agencies for large scale critical situations requiring numerous trained police personnel on a county wide basis; and to develop protocol and procedures for communication between multiple agencies during such situations.

4.Board of Directors. The Sheriff or Chief of Police or his/her designee, of each Member shall hold one (1) seat on the OAK-TAC Board of Directors. Each Member, through its Sheriff or Chief of Police, or his/her designee, shall have one (1) vote on any motion of the OAK-TAC Board of Directors.

5.Powers of Board of Directors. OAK-TAC, through its Board of Directors, shall have the power and duty to establish policies and procedures for meetings and to elect officers; to determine the topics of training; to implement training programs; to select training instructors and personnel; to provide for equipment, protective gear and venues for training; to set dates and times for training; to establish the criteria for those eligibility for specific training; to establish communication protocol between multiple agencies and to establish committees and sub-committees as set out in the OAK-TAC Bylaws to assist with these duties.

6.First Meeting and Adoption of Bylaws. The first meeting of the Board of Directors shall occur no later than six (6) months after the execution of this Agreement by at least two (2) governmental entities whose legislative bodies have approved and authorized the execution of the Agreement. At the first meeting, the Board of Directors shall adopt By Laws, a sample of which is attached hereto as Exhibit A.

After initial adoption, the Board of Directors may amend, alter, revise, delete provisions or add provisions to the By Laws upon a two-third (2/3) vote of the total number of Board of Directors and any amendments, alteration, revision, deletion or addition shall not be effective for a period of thirty (30) days following approval by the Board.

7. New Membership. The OAK-TAC Board of Directors shall have the power to determine if a non-member police department should be allowed to join OAK-TAC but only if that police department is a governmental unit of Oakland County, Michigan and has petitioned the Board of Directors for membership. The Board of Directors may approve membership for the petitioning governmental unit conditioned upon the governmental unit obtaining a certified resolution of its legislative body which approves this Agreement and authorizes the appropriate signatory to execute the Binder Agreement attached hereto and incorporated herein as Exhibit B. Execution of that Binder Agreement results in the acceptance of all terms and conditions set out in this Agreement. The certified resolution and an executed copy of the Binder Agreement shall be presented to the Board of Directors for vote to determine if the Board of Directors authorizes the President and Secretary to execute the Binder Agreement on behalf of OAK-TAC. If the Petitioning Member has been conditionally approved for membership but the OAK-TAC Board of Directors is not given a certified resolution and an executed copy of the Binder Agreement within six (6) months after the date of conditional approval, the conditional approval becomes null and void and a Petitioning Member must file a new request for membership. A two-third (2/3) vote of the total number of Members is required to authorize the President and Secretary to execute the Binder Agreement and accept the petitioner as a Member of OAK-TAC. Membership will become effective after execution of the Binder Agreement by the authorized representatives of the new Member and OAK-TAC.

8. Funding. OAK-TAC is also authorized under this Agreement to pursue grant funding for OAK-TAC for programs, equipment, gear and non-member training personnel. No Member match shall be authorized, except upon approval of the Board. The Treasurer of OAK-TAC shall be custodian and sole depositor of the funds of OAK-TAC and shall only disburse funds as authorized by the Board of Directors. If OAK-TAC is successful in obtaining grant funding and if the grant so allows, the Board of Directors may approve, by a majority vote, reimbursement of costs incurred by any specific Member for training and equipment utilized exclusively by or for OAK-TAC. Any equipment, gear or other property purchased by grant or otherwise by OAK-TAC shall remain the property of OAK-TAC.

9. Compensation. No member of the Board of Directors, including its elected officers, shall receive compensation from OAK-TAC for the performance of their duties. A Member may be reimbursed for costs to that Member incurred for OAK-TAC business meetings or other expenses, if such costs and/or expenses are approved by motion of the Board of Directors.

10. Non-Exclusive Training. No Member's sheriff/police department is obligated under this Agreement to use OAK-TAC exclusively for training and is expressly allowed to seek other training programs or to train internally on an as needed basis without violating this Agreement.

11. Membership Fee. There shall be no fee to any Member to participate in this Agreement unless fees are adopted under the terms set out in the OAK-TAC Bylaws.

12. Removal of Members. A Member may be removed for just cause upon a two-thirds (2/3) vote of the total number of Members.

13. Termination of Agreement. Regardless of the terms of the Agreement, any Member may withdraw from OAK-TAC for any reason or no reason upon a minimum thirty (30) days written notice. The termination and withdrawal of any Member shall not terminate or have any effect upon the provisions of the Agreement as long as there are two (2) remaining Members to this Agreement, including Members who have executed Binder Agreements.

14. Termination of OAK-TAC. This Agreement shall continue until terminated as follows:

(a) There is only one remaining Member; or

(b) A unanimous vote of termination by all the Members.

15. Assets Upon Termination. Upon termination of this Agreement, any expenses or outstanding liability shall be paid first through any remaining assets of the consortium and thereafter, any remaining assets shall be distributed to the Members on an equitable basis as determined by the Board.

16. Compliance with Law. Members represent to each other that its police personnel shall comply with all federal, state and local ordinances.

17. No Employer-Employee Relationship. The Members agree that at all times and for all purposes under the terms of this Agreement, there is no employer-employee relationship between the Members. No liability, right or benefit associated with any employer-employee relationship shall be implied by the terms of this Agreement or service performed under this Agreement.

18. Permits and Licenses. Each Member shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations for its employees and agents necessary to perform all its obligations under this Agreement. Upon request by the OAK-TAC Board of Directors, a Member shall furnish copies of any permits, licenses, certificate or government authorization to the Board of Directors.

19. Liability for Member's Employees. Each Member agrees to be liable for disability and workers' compensation benefits, including derivative benefits, dependent benefits or other benefits related to disability and workers' compensation benefits, for its own employees.

20. Liability. Each Member shall be responsible for any claims made against that Party and for the acts of its employees or agents.

In any claims that may arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation including attorney fees.

Except as otherwise provide in this Agreement, no Member shall have any right under any legal principle to be indemnified by the other Members or any of their employees or agents in connection with any claim.

This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional statutory, and/or other legal right, privilege, power, obligation, duty or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity for any Member.

21. Insurance. Within ten (10) days from the execution of this Agreement, each Member shall provide a Certificate of Insurance, acceptable to the other Members, demonstrating that general liability coverage is available for any and all claims for personal injury or property damage which are or might be caused by training of Members under this Agreement. Each Member agrees to keep said insurance coverage in full force and effect for the term of this Agreement or any renewals thereof. Each Member shall submit to the other Members, prior to the expiration of any insurance coverage, the new Certificate(s) of Insurance acceptable to the other Members. Any Certificate(s) of Insurance shall name the other Members as an additional insured and contain the following cancellation notice:

“Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days written notice to the certificate holder.”

Any Member may request a copy of said insurance certificate at any time during this Agreement. Failure to produce a certificate of insurance within twenty (20) days of a request by a Member shall allow the requesting Member to petition the OAK-TAC Board of Directors to terminate the Agreement as to that specific Member.

A lapse in the insurance coverage required under the Agreement shall be considered a material breach of this Agreement and the Agreement shall become null and void automatically as to that Member only at any time such a lapse in coverage exists.

The Members agree that they shall promptly deliver to the other Members written notice and copies of any claims, complaints, charges, or any other accusations or allegations of negligence or other wrongdoing, whether civil or criminal in nature that the other Member becomes aware of and which involves training or any program or activity under this Agreement. Unless otherwise provided by law and/or the Michigan Court Rules, the Members agree to cooperate with one another in any investigation conducted by any other Member regarding any acts or performances of any services under this Agreement.

22. Continuing Obligation. The Members agree that all promises, waivers of liability, representations, insurance coverage obligations, liabilities, payment obligations and/or any other related obligations provided for in this Agreement with regard to any acts, occurrences, events, transactions, or claims, either occurring or having their basis in any events or transaction that occurred before termination of this Agreement, shall survive the termination.

23. Notice. Any written notice required or permitted under the Agreement shall be considered delivered to a Member as of the date that such notice is deposited, with sufficient postage, with the U.S. Postal Service. Unless specifically otherwise set out in the Agreement, all writing sent to each Member shall be sent to the address set out for each Member at the beginning of this Agreement or to an updated address provided to the OAK-TAC Board of Directors.

24. No Waiver of Governmental Immunity. All of the privileges and immunities from liability, and exemptions from laws, ordinances and rules which apply to the activities of parties, officers, agencies, and employees of any governmental agency when performing its functions, shall apply to the same degree and extent to the performance of such functions and duties under the provisions of this Agreement. No provision of this Agreement is intended, nor shall any provision of this Agreement be construed, as a waiver by any Member of governmental immunity as provided under law.

25. Entire Agreement. This Agreement sets forth the entire Agreement between the Members. The language of this Agreement shall be construed as a whole according to its fair meaning and not constructed strictly for or against any Member. The Members have taken all actions and secured all approvals necessary to authorize and complete this Agreement.

26. Severability of Provisions. If a Court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, then that provision shall be deemed severed from the Agreement. The remainder of this Agreement shall remain in full force.

27. Governing Law. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret or decide any claim arising under this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan or the United States District Court for the Eastern District of Michigan, Southern Division as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.

28. Recitals. The Recitals shall be considered an integral part of this Agreement.

29. No Implied Waiver. No fact, failure or delay by a Member to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by any Member shall subsequently affect its right to require strict performance of this Agreement.

30. Counterpart Signatures and Record Keeping of Original. This Agreement may be signed in counterpart. A copy of each original signature page for each Member all be filed for record keeping with the Secretary of OAK-TAC.

IN WITNESS WHEREOF, this Agreement is executed by the Member on the date set out on the signature line for each Member. This Agreement becomes effective when at least two (2) Members have affixed their signatures affixed hereto and an executed copy is sent by first class mail to the Michigan Secretary of State and the Oakland County Clerk.

WITNESSES:

OAKLAND COUNTY

By: _____

By: _____

Dated: _____

CITY OF AUBURN HILLS

By: James McDonald, Mayor

By: Peter Auger, City Manager

Dated: _____

CITY OF BLOOMFIELD HILLS

By: Michael Zambricki, Mayor

By: Jay W. Cravens, City Manager

Dated: _____

CITY OF FARMINGTON HILLS

By: Barry Brickner, Mayor

By: Pam Smith, City Clerk

Dated: _____

CITY OF FERNDALE

By: David Coulter, Mayor

Dated: _____

CITY OF NOVI

By: Robert Gatt, Mayor

By: Maryanne Cornelius, City Clerk

Dated: _____

CITY OF OAK PARK

By: Marion Meisner McClellan, Mayor

By: Tonni Bartholomew, City Clerk

Dated: _____

CITY OF ROYAL OAK

By: Jim Ellison, Mayor

By: Melanie Halas, City Clerk

Dated: _____

CITY OF TROY

By: Janice Daniels, Mayor

By: Aileen Bittner, City Clerk

Dated: _____