

**DRAFT**  
**INTER-MUNICIPAL AGREEMENT FOR POLICE SERVICES  
BETWEEN THE TOWNS OF BERNARDSTON AND LEYDEN**

THIS AGREEMENT dated as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (this “Agreement”) is entered into by and between the Town of Leyden (“Leyden”) and the Town of Bernardston (“Bernardston”), each a “Town” or “Party” and collectively, the “Towns” or “Parties”, by and through their respective Select Boards.

WHEREAS, G.L. c. 40, § 4A authorizes the chief executive officer of a city or town to enter into agreements with one or more municipalities and other governmental units for, and to share costs of, that other unit’s services which the city or town is authorized to perform; and

WHEREAS, G.L. c. 41, § 97A authorizes the Select Board of a town to establish a police department under the supervision of an appointed Chief of Police; and

WHEREAS, the police department of any town is responsible for maintaining public order and safety, enforcing the law and preventing, detecting and investigating criminal activity; and

WHEREAS, the Select Boards in both Towns wish to provide for the provision of police services in Leyden by Bernardston’s police department and officers under an arrangement of coordination and cooperation including advice and consent by Leyden as provided for herein, but under the command of a single Chief of Police;

NOW, THEREFORE, the Towns, in consideration of the promises set forth above and the mutual covenants set forth below, and intending to be legally bound, hereby agree as follows:

- 1) PURPOSE: The purpose of the Agreement is for the Towns to participate in a shared costs and services arrangement pursuant to G.L. c. 40 § 4A, whereby Bernardston shall act as the “host municipality” and operate a police department as authorized by G.L. c. 41, §97A, subject to the terms of this Agreement, for the purpose of serving the policing needs of the Member Towns.
  - a) Without limiting the generality of the foregoing, the “host municipality” shall:
    - i) enter into contracts for goods and services necessary for the operation of a police department;
    - ii) employ all staff, including, without limitation, the Chief of Police and all subordinate personnel and other employees;
    - iii) maintain insurance in such coverage amounts and with such deductibles as it deems appropriate, and as required under Section 13 of this agreement, for the police services to be performed by Bernardston pursuant to this Agreement;
    - iv) apply for available grants and administer any grants awarded at the discretion of the Police Chief;
    - v) maintain appropriate records and submit all appropriate public safety data, reports, and other information to federal and state agencies as required by law; and

- vi) be responsible for, as necessary, any unforeseen incidental or other costs related to the provision of police services in and for Bernardston and, through this Agreement, in and for Leyden, subject to the right to be reimbursed for such costs related to services for Leyden, such Leyden costs to be determined after review and evaluation of the expenses by the Select Boards of the Towns and the Committee established pursuant to Section 4, below.
- 2) **TERM:** The term of this Agreement (the “Term”) shall be for a period of three (3) years commencing on July 1, 2023, provided that either Town may terminate this Agreement as set forth in Section 11, below. At the end of the initial three (3) year period, this agreement shall automatically renew for successive three (3) year periods unless provided for otherwise by amendment.
- 3) **ASSESSMENTS, COSTS AND SCOPE OF SERVICES:** Bernardston shall provide Leyden with police services as required by and consistent with the terms of this Agreement and shall make a monthly assessment for said services as set forth below and shall provide Leyden with monthly expenditure reports and quarterly revenue reports.
- a) Leyden shall afford to Bernardston police officers the same legal enforcement authority, powers and rights in Leyden as would be afforded to like officers serving in similar capacities in Leyden.
  - b) Bernardston shall provide the following services to Leyden under this agreement:
    - i) Respond and/or investigate all calls for police services, approximately 18 hours per day, 7 days per week, 365 days per year. The schedule of coverage for Leyden shall equal or approximately equal to that provided within Bernardston within the discretion of the Police Chief.
    - ii) Assist emergency responses provided by Leyden Fire Department and Emergency Medical Services when available and necessary.
    - iii) Attend Community Policing events, when staffing permits and budget allows, in a manner commensurate with that provided within the Town of Bernardston. Leyden acknowledges that prior notice of at least fourteen (14) days will be provided to the Police Chief. Should scheduling and staffing prohibit attendance at such an event, the Chief shall inform Leyden of any such conflict, including any additional charges that may be incurred to provide Police attendance. Any such additional charges shall be agreed to in writing by both parties.
    - iv) Conduct activities typical of community policing services, including visits to Town departments, senior center meetings, library events, church events, and other appropriate venues deemed necessary to establish a relationship between Police employees and Leyden residents. Such activities shall be at the discretion of the Police Chief.

- v) Provide patrol activities within the Town of Leyden at a maximum of twenty (20) hours per week, fifty-two week per year, unless otherwise determined necessary by the Police Chief. Leyden acknowledges that staffing and budgetary concerns may impact patrol activities and the patrol activity will be conducted in a manner determined by the Police Chief.
  - vi) Provide police services outside the normal functions described above to include traffic details, event security, and any other services at specialized events at the expense of the event organizer, and any such revenues from said services shall be paid to Bernardston and separate and apart from this agreement at a cost and/or rate determined by the Police Chief and agreed to in advance in writing by the event organizer.
  - vii) Provide a Mobile Mental Health Clinician for calls involving a crisis, addiction services, referrals to behavioral specialists, or similar related events. Mobile Mental Health Clinician services are provided on a pre-scheduled, 40-hour per week basis and will be evaluated annually. Leyden acknowledges that this service is funded through a grant, and if funding is discontinued, the program may be eliminated.
  - viii) Conduct radar and traffic enforcement throughout Leyden within the above mentioned twenty-hour per week maximum.
- c) For the services described in this section, Leyden shall pay Bernardston \$\_\_\_\_\_ monthly, or \$\_\_\_\_\_ annually.
  - d) The Advisory Committee, as described in Section 4, shall be responsible for monitoring, reviewing, and recommending changes to costs for services performed and other details of this section. The Committee shall submit any recommendations for changes to the Select Boards of each Town for review and approval, which approval shall be appended to this Agreement.
  - e) Leyden will pay Bernardston the assessment quarterly on or before the 1<sup>st</sup> of every third month beginning on July 1, 2023. Bernardston shall provide to Leyden not later than June 15<sup>th</sup> a statement detailing the quarterly payment amounts for the following fiscal year beginning on July 1<sup>st</sup> and ending June 30<sup>th</sup>. Leyden shall make such quarterly payments as detailed in said statement without requiring additional invoices or statements.
  - f) Both Towns acknowledge that this is a mutually beneficial agreement and further acknowledge that any unexpected or unforeseen expenditures requiring additional resources will be the responsibility of both Towns and such costs will be allocated as described in this section. In the event such an expenditure is not directly addressed in this agreement, it shall be the responsibility of the Committee to make a recommendation for cost sharing by each Town. In all such instances, the Chief of Police will be responsible for providing a timely and thorough explanation of said expenditures to the Select Boards of each Town; said expenditures are subject to all applicable laws pertaining to appropriation of funds.

- g) Each year an evaluation of expended funds should take place in January, to make sure the Police Department has not spent significantly more than 50% of its budget. If the budget has been over expended, then a plan to either reduce services for the rest of the fiscal year so that the department stays within budget or to recover or make up for the over expended funds should be generated by the subsequent February 15<sup>th</sup>.
  - h) Bernardston shall be entitled to all revenues received from extra duty details, pistol permits, and any other Police services provided by Bernardston, regardless of the Town in which the payee resides or the services are provided. Bernardston will provide an accounting of all revenues as part of the reports described in Section 3, but in no way shall these revenues be considered as an offset against any cost sharing and assessments described in this Agreement.
  - i) Leyden agrees to set aside funds within its annual budget to provide for a replacement vehicle based on the vehicle replacement cycle determined by the Chief of Police in consultation with the Committee and such funds will be transferred from Leyden to Bernardston at or before the end of the replacement cycle. Leyden agrees to appropriate such funds into a dedicated account for Police capital equipment replacement within the Leyden's Police Stabilization Fund in accordance with all applicable laws pertaining to appropriation of funds.
- 4) POLICE SERVICES ADVISORY COMMITTEE: The Towns hereby establish a Police Services Advisory Committee (hereinafter the "Advisory Committee" or "Committee"), consisting of one (1) member of the respective Towns' Select Boards, one (1) member of the respective Towns' Finance Committees and one (1) Community Representative appointed by the Select Board in the case of Bernardston and one (1) members by the Town Moderator and one (1) member by the Select Board in the case of Leyden. In any case, the official size of this committee will be no more than seven (7) members unless new members join this agreement in the future through the process described in Section 9. Membership on the Committee shall be an odd number as required by G.L c. 43B § 20(c). The purpose of the Committee will be to establish, analyze, and update as needed, the terms for the police services provided pursuant to this Agreement.
- a) Purpose: Each Town may review, raise issues, and make comments or recommendations on all matters relating to the provision of police services under this Agreement, including:
    - i) Review quarterly assessments, including conducting an ongoing review of the underlying data and assumptions used in determining each Town's proportional share of the Police Department's expenditures. It is acknowledged that the assessments may change in the future and will be reviewed and reassessed as agreed upon by vote of the Committee, recommendation to the Towns, and affirmative vote of the Select Board. Should any additional appropriation be made necessary by such change in assessment, Town Meeting may be required to consider such appropriation.

- ii) Deliberate and make recommendations on the Police budget to aid in the annual budgeting process of each Town. It is acknowledged that such recommendations are advisory only and the Committee has no authority to approve or deny the Police budget.
  - iii) Work to resolve issues of mutual concern between the Towns and provide support and guidance to the Chief of Police when he or she may request the same.
  - iv) Develop terms and conditions for the admittance of any prospective member towns that desire to become a party to this Agreement in the future. This includes, at the discretion of the Committee, appointing subcommittees to study issues, costs and other impacts and considerations that may arise from the addition of new member towns, as well as the impact on the assessment considerations put forth in Section 3 of this Agreement.
- b) Operation: The Committee shall meet not less frequently than quarterly, to review matters pertaining to police services provided pursuant to this Agreement. Without limiting the generality of the foregoing, at such meetings the Committee shall review, discuss and, as appropriate, make recommendations on issues governed by this agreement except for those issues that are the responsibility of each Town's Select Board. Prior to these meetings, each Select Board may meet separately to establish that Board's position on any matters it wishes to discuss including those that are a matter of each board's distinct authority and those that are not, as if it were a matter purely within its own authority. As the appointing authority, Bernardston shall have the ultimate decision-making authority on any personnel matter raised by the Towns under this section. In instances where such issues, policies or procedures are the result of State or Federal mandates or otherwise deemed critical, in the exercise of reasonable discretion by the Chief of Police to maintain public safety, Bernardston shall maintain all decision-making authority. It is the mutual understanding of each Party that they share an interest in efficient provision of police services.
- 5) CAPITAL ASSETS, EQUIPMENT AND SUPPLIES: All vehicles, equipment, supplies and other accoutrements used in the provision of police services under this Agreement, regardless of which Town may be the original owner at the time of the execution of this Agreement, shall be considered the property of the Town of Bernardston. Bernardston shall be responsible for the maintenance and repair, as well as the retirement and replacement, of all such assets. The Towns will share the costs associated with vehicles, equipment and other assets, as determined pursuant to the process described in Section 3. Bernardston shall make a complete inventory of any and all property transferred to Bernardston, subject to confirmation by Leyden, and both Towns shall work in concert to formalize ownership of any assets requiring title transfers or other necessary actions. Such inventory shall be attached to this Agreement as Exhibit A or identified in subsequent amendments as appropriate.
- a) Assets or Equipment Acquired with Funds Provided under the State of Massachusetts Efficiency and Regionalization Grant (ERG): The Town of Leyden has been awarded a grant in the amount of \$187,000 under the State's ERG program, including funds to provide for the acquisition of a new patrol vehicle, renovations and improvements to the Leyden Police

Department offices (located in the Town Office Building), and other equipment and/or supplies necessary to effect and support the provision of police services by Bernardston within Leyden Town Limits. Except as authorized in writing by the grant administrator (the Massachusetts Department of Local Services), both Towns acknowledge such acquisitions cannot occur until the execution of this Agreement. All renovations and improvements to facilities located in Leyden shall remain the property of Leyden but shall be under the control of the Police Chief during the term of this agreement. In the case of vehicles, equipment and supplies acquired using ERG funds, such acquisitions shall be transferred to Bernardston. In the event of termination of this Agreement as provided for under Section 11, any assets, equipment, and supplies, or an equivalent or replacement item as the case may be, acquired under this section will be returned by Bernardston to Leyden. It shall be the responsibility of the Advisory Committee to work in good faith to effectuate return by Bernardston to Leyden of such items contemplated in this section.

- i) The ERG includes funding for the acquisition of a Patrol Vehicle to be used by Bernardston in providing services under this agreement. Both Towns acknowledge that this Patrol Vehicle may be used in either Town as needed at the discretion of the Police Chief, and Bernardston is under no obligation to track, monitor or account for its use specific to Leyden or performance under this contract. Upon execution of this Agreement, ownership of the Patrol Vehicle will be transferred to Bernardston. Bernardston agrees to accept transfer of said vehicle without cost and acknowledges that the vehicle is not subject to any warranty or guarantee except that which may be provided by the vehicle manufacturer. Bernardston shall maintain the vehicle as it would any other in its fleet. Should this Agreement be terminated, Leyden will resume ownership of said vehicle or subsequent replacement vehicle as the case may be, in whatever form it exists at the time of termination, and Bernardston shall cooperate in its return to Leyden and execute such documents as may be required to accomplish the same.
- b) Leyden Substation: The existing Police offices, a portion thereof, or an alternative space based on mutual agreement of the Police Chief and Leyden, located at the Leyden Town Offices, hereinafter the "Leyden Substation" or "Substation", shall be available for use by Bernardston for the purposes of providing Police services, and the Towns will execute a lease agreement ("the Lease Agreement"), attached hereto as Exhibit B contemporaneously with this Agreement and prior to Bernardston Police occupying the Substation.
  - i) Upon execution of the Lease Agreement, the Chief of Police shall have sole authority regarding access to and use of the Substation during the term of such lease.
  - ii) The ERG includes funding for renovations and improvements to the substation. Such renovations and improvements shall be contracted for and/or performed by Leyden in consultation with the Chief of Police. Any and all improvements shall remain the property of Leyden.

- c) Should this Agreement be terminated as provided for in Section 11, Bernardston shall return to Leyden those assets, or their subsequent replacements or equivalents listed in Exhibit A.
- 6) BUDGET: The budget for police services will be developed and managed by Bernardston with recommendations from Leyden pursuant to Section 4 of this Agreement. The annual budget, including all municipal assessments, shall be prepared in a timely manner by Bernardston in order to meet the financial evaluation and fiscal expectations of Leyden. The annual budget request shall be delivered to the Towns on or before February 1<sup>st</sup> of the preceding fiscal year so that each Town may review and provide any further comment or recommendations through their respective Finance Committees and Select Boards.
- a) Any remaining funds in the police services budget after an annual reconciliation of the costs of providing police services and the respective contributions of the Towns will be proportionately shared by the Towns as agreed to by the Parties. Such reconciliation will be performed by the Bernardston Town Accountant and/or Police Chief and, after review and evaluation by the Committee, provided to Leyden. Bernardston will “true up” annual billings at the end of the fiscal year by using actual services and expenditures and adjusting the cost up or down as appropriate.
  - b) Annual Report – On or before December 1<sup>st</sup> of each year, Bernardston shall deliver to Leyden an annual report describing the programs, operations, challenges, and opportunities pertaining to the police services provided under this Agreement (see Section 8c, reporting requirements from the Chief of Police). A budget summary for consideration by the Committee will be included.
- 7) FINANCIAL SAFEGUARDS: Under the provisions of M.G.L. Chapter 40, §4A, Bernardston shall provide to Leyden periodic financial statements that shall include: accurate and comprehensive records of the services performed under this Agreement; the costs incurred by Bernardston; and the reimbursements and contributions received. Such reports shall be compiled and distributed by the Chief of Police as required under this agreement. The financial and accounting records required by this Section shall be subject to and included within Bernardston’s municipal financial audit process. Excluding indemnification obligations hereunder, the maximum extent of each Town’s financial liability for provision of services and assessments for such services in connection with this Agreement shall not exceed the amount validly appropriated by, or available to, each Town for said purpose.
- 8) POLICE CHIEF POSITION DESCRIPTION, DEFINITION: The Chief of Police shall be responsible for organizing, directing, and supervising all operations of the Bernardston Police Department.
- a) The Chief of Police shall be appointed by and report to the Bernardston Select Board.
    - i) The Bernardston Select Board shall meet not less frequently than annually to conduct a performance evaluation of the Chief of Police.

- ii) In the event that, for any reason, Bernardston needs to hire a new Chief of Police, the Bernardston Select Board shall provide for the posting of notice of the vacancy and conduct such a search process as it determines to be appropriate. The Bernardston Select Board shall appoint a hiring/screening advisory subcommittee, whose members and composition shall be at the discretion of the Board, to screen candidates for the position in executive session or otherwise under the requirements of the Open Meeting Law, G.L. c. 30A, § 21(a)(8). Bernardston retains all authority in hiring, evaluating, and terminating the Chief of Police in accordance with the provisions of his or her contract.
  - b) The Bernardston Police Chief shall be the “licensing authority” for the Towns as defined in G.L. c. 140, § 121.
  - c) The Bernardston Police Chief shall also submit a monthly report of services and activities under this agreement to the Select Boards of both Towns and appear before said Boards if requested, when sufficient notice of at least 48 hours has been given to all interested parties. The Chief will also submit weekly summaries of daily logs to the Select Boards of both Towns. The Chief of Police shall be responsible for the administrative, technical, educational, and inspectional work of police services and for planning and managing a public safety program for both Towns.
  - d) The Chief of Police shall make recommendations to the Bernardston Select Board and the Chief will be available to meet with the Leyden Select Board at their request to discuss the operating budget and police services.
  - e) The Chief of Police may apply for and monitor grants for which Bernardston and Leyden may be eligible and shall comply with all requirements of the granting authority, whether public or private.
  - f) The Chief of Police shall monitor the work of the Committee and progress toward meeting established police services objectives, and report thereon to the Select Boards of the Towns.
  - g) The Chief of Police shall be responsible for the annual evaluations, if any, of all subordinate personnel, and will manage all such personnel. The Chief shall adhere to the applicable personnel policies of Bernardston. Subject to applicable law, any personnel actions shall be communicated to the Select Boards of each Town. The Chief will coordinate these duties and/or actions with the appropriate authorities in the Town of Bernardston and in the Town of Leyden in any case where police personnel have duties specific to meeting legal or other requirements for the Town of Leyden (e.g., Animal Control, Board of Health, Building Inspection, or enforcement).
- 9) **ADDITION OF NEW MEMBERS:** The addition of new member municipalities to the Agreement will require an affirmative vote of the Select Boards of each member Town to allow another town to participate in the Agreement. It shall be the responsibility of the Committee as described in Section 4 at the time of the request to determine the terms under which a prospective new member may join this Agreement, but in any event, the new member shall cover all costs and expenses associated with their entry to and participation in the Agreement.

- a) New member towns shall be entitled to representation on the Advisory Committee as defined in Section 4 with said representation recommended by the Committee.

10) AMENDMENTS: This Agreement may not be revised, modified, or amended except in writing by both Towns when duly authorized by their respective Select Boards.

11) TERMINATION: Either Town may terminate this Agreement upon one (1) year's written notice to the other Town, or as otherwise provided in Section 21 of this Agreement. Such notice must be signed by a majority of the Select Board and need not state any cause. The shall endeavor in good faith prior to the expiration of such one-year period to determine a fair and equitable manner for dividing any joint assets not otherwise provided for herein. Following termination, the terminating Town shall be solely responsible for the provision of its police services. Such termination shall not relieve the terminating Town from any obligations that may have arisen hereunder prior to such termination, nor from any financial obligations that may extend beyond the termination date. Upon such termination, Bernardston shall prepare a full statement of outstanding unpaid financial obligations under this Agreement and present the same for payment within thirty (30) days thereafter. Bernardston shall continue providing services up until the effective termination date.

12) LIABILITY: Pursuant to MGL c. 40, s. 4A, each party to this Agreement shall be liable only for the acts and omissions of its own employees and not for the employees of any other party in the performance of this Agreement to the extent provided by the Massachusetts Tort Claims Act, M.G.L. c. 258. The respective Towns shall hold each other harmless from any and all claims related to employment or employee benefits, to the extent permitted by law, collectively bargained or otherwise, made by persons under their employ prior to the commencement of operations under the Agreement and arising from the establishment hereof. By entering into this Agreement, none of the parties has waived any governmental immunity or limitation of damages which may be afforded to it by operation of law.

13) INSURANCE: The Town of Leyden shall maintain insurance coverage for the Substation building as required under Article Six of the Lease Agreement. The Town of Bernardston shall maintain Personal Property insurance for vehicles, equipment and other materials located within the Substation. The Town of Bernardston shall maintain Special Risk Accident Insurance for Public Safety personnel. Each Town shall maintain General Liability insurance in the amounts of \$1,000,000 each occurrence and \$3,000,000 general aggregate, including police liability insurance. Each Town shall provide a certificate of insurance stating the aforementioned coverages and further naming the other Town as additionally insured. All said policies or certificates shall provide for a minimum of ten (10) days' notice to either Town, as the case may be, in the event of cancellation or material change thereof.

- 14) **ASSIGNMENT:** Neither Town shall assign or transfer any of its rights or interests in or to this Agreement, or delegate any of its obligations hereunder, without the prior written consent of the other.
- 15) **SEVERABILITY:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, or if any such term is so held when applied to any particular circumstance, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and the Agreement shall remain valid and shall be enforced to the extent permitted by law so long as the Agreement continues to allow for each Party to receive the benefit of its bargain under the Agreement.
- 16) **WAIVER:** The obligations and conditions set forth in this Agreement may be waived only by a writing signed by the Party waiving such obligation or condition. Forbearance or indulgence by a Party shall not be construed as a waiver, nor limit the remedies that would otherwise be available to that Party under this Agreement or applicable law. No waiver of any breach or default shall constitute or be deemed evidence of a waiver of any subsequent breach or default.
- 17) **APPLICABLE LAW:** The Parties agree to comply with all applicable local, state, and federal laws, regulations and orders relating to the performance of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts. Any action brought pursuant to this Agreement shall be brought in the Commonwealth courts of Franklin County. Trial by jury is waived by both Parties.
- 18) **DISPUTE RESOLUTION:** No suit upon any claim or cause of action upon, or for damages upon, by reason of, or growing out of, this Agreement or its non-performance or faulty performance, shall be filed or maintainable by any party unless notice of such claim or cause of action be first given to the other party at its above-noted address not less than sixty (60) days prior to filing. In the event any dispute of any kind should arise between the Towns concerning the construction of this Agreement or the breach thereof, such dispute may, if the parties agree in writing to do so, be submitted to an arbitrator selected by the American Arbitration Association. The proceedings before said arbitrator shall be governed by the rules and regulations of said Association, and the award and determination of said arbitrator shall be binding and conclusive upon the Towns and they herewith agree to abide thereby. Any costs associated with arbitration shall be split evenly between the Towns. The Towns may also mutually agree in writing to use other forms of alternative dispute resolution, including mediation, to address disputes arising under this Agreement. Notwithstanding the above, the Towns reserve the right, either in law or equity, and without advance notice to file suit with a court of competent jurisdiction in the nature of specific performance or other proceeding to enforce or compel performance of any or all terms and conditions herein.

- 19) **NON-DISCRIMINATION:** The Parties shall not discriminate against any person in their activities under this Agreement, including employees or applicants for employment, because of race, color, creed, national origin, age, sex, sexual orientation, sexual identity, disability, veteran status, ancestry, or any other legally protected status. With respect to their exercise of all rights and privileges herein granted, the Parties shall undertake such affirmative action as is required by Federal and State laws, rules, and regulations pertinent to civil rights and equal opportunity, unless otherwise exempted therefrom.
- 20) **TERMINATION DUE TO LACK OF FUNDING:** Each Party acknowledges that both Parties are political subdivisions of the Commonwealth of Massachusetts established pursuant to law and that they are funded in large part through Federal, state, and local monies. The maximum extent of each Town's financial liability in connection with this Agreement shall not exceed the amount validly appropriated by, or available to, each said Town for said purposes. Notwithstanding any other provision in this Agreement, both Parties shall have the right, exercised in each Party's discretion, to terminate this Agreement on less than one year's notice, but not less than forty-five (45) days' notice, by written notice to the other in the event a lack of appropriation makes it impossible for the terminating Party to perform its obligations under the Agreement. The termination notice shall include documentation of the funding insufficiency.
- 21) **HEADINGS:** The paragraph headings herein are used for convenience only, are not part of this Agreement and shall not affect the interpretation of this Agreement.
- 22) **NOTICE:** Any notice permitted or required hereunder to be given or served on any Municipality shall be in writing signed in the name of or on behalf of the Municipality giving or serving the same. Notice shall be deemed to have been received at the time of actual receipt of any hand delivery, upon the date of verified delivery by courier or package delivery service, or three (3) business days after the date of any properly addressed notice sent by mail as set forth below:

For: Town of Bernardston  
Chair, Select Board  
Bernardston Town Hall  
38 Church Street  
Bernardston, MA 01337

For: Town of Leyden  
Chair, Select Board  
Town of Leyden  
7 Brattleboro Road  
Leyden, MA 01301

23) COMPLETE AGREEMENT: This Agreement, and all exhibits referenced herein and attached hereto, constitute the entire agreement between the Parties concerning the subject matter hereof, superseding all prior agreements and understandings. There are no other agreements or understandings between the Parties concerning the subject matter hereof. Each Party acknowledges that it has not relied on any representations by the other Party or by any person for whose actions the other Party is responsible, other than the express, written representations set forth herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first written above.

TOWN OF BERNARDSTON

By its Select Board

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TOWN OF LEYDEN

By its Select Board

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

List of Exhibits

Exhibit A – Inventory of Assets Contributed by Leyden

Exhibit B – Lease Agreement between Bernardston and Leyden

Exhibit C – Cost of Services

DRAFT

Exhibit A - Inventory of Assets Contributed by Leyden



**BERNARDSTON POLICE DEPARTMENT**

*James E. Palmeri*  
Chief of Police

256 South Street, P.O. Box 194  
Bernardston, MA 01337

Dispatch: (413) 625-8200  
Station: (413) 648-9208  
Fax: (413) 648-0244

**Leyden Property Inventory**

**Firearms:**

- 1). (1) Glock 19 Pistol, Serial #1ERU9215
- 2). (1) Glock 17c Pistol, Serial # EDL34OUS
- 3). (1) M&P-15 Rifle, Serial #55640
- 4). (1) M&P-15 Rifle, Serial #ST99487
- 5). (2) Mossberg 12Ga. Shotgun Model 500A (no serial # found)
- 6). (1) Mossberg 12 Ga. Shotgun 500A, Orange (less lethal) Serial # R704324
- 7). (1) Mossberg 12 Ga. Shotgun 500A. Orange (less lethal) Serial # R690903
- 8). (1) Ruger 10/22 cal. Serial # 0008-86106
- 9). (1) Remington Shotgun, Model 1100, Serial # M376275V
- 10). (1) Colt M16A1, Serial # 4372835 (Held for Gov't return)

**Police Radios, Portables and Mobiles:**

- 1). (4) Motorola APX4500 Mobile Radios (NOTE: (1) being used by Sgt. Richardson, 5<sup>th</sup> cruiser)
- 2). (8) Motorola APX4000 Portable Radios (Leyden Station)

A	B	C	D	E	F	G	H	I	J	
DON'T FILL					PICK FROM DROP DOWN LIST WILL ONLY SHOW AVAILABLE IDs	DON'T FILL	DON'T FILL			
1	Agency	Radio Type (Mobile, Portable, Base)	Radio Brand	Radio Model Nam	Radio S/N	ID (Dec)	ID (Hex)	Alias	Template	Assignment
794	Leyden Police	Mobile	Motorola	APX 4500	527C0X2760	63111	F687	LEYDEN-PD-63111	POL COUNTY yesDVR noENC	LEY-PD-25
795	Leyden Police	Mobile	Motorola	APX 4500	527C0X2753	63112	F688	LEYDEN-PD-63112	POL COUNTY yesDVR noENC	LEY-PD-26
796	Leyden Police	Mobile	Motorola	APX 4500	527C0X2750	63113	F689	LEYDEN-PD-63113	POL COUNTY yesDVR noENC	LEY-PD-27
797	Leyden Police	Mobile	Motorola	APX 4500	527C0X2762	63114	F68A	LEYDEN-PD-63114	POL COUNTY yesDVR noENC	LEY-PD-28
798	Leyden Police	Portable	Motorola	APX 4000	426C0X2459	63115	F68B	LEYDEN-PD-63115	POL COUNTY yesDVR noENC	LEY-PD-29
799	Leyden Police	Portable	Motorola	APX 4000	426C0X2464	63116	F68C	LEYDEN-PD-63116	POL COUNTY yesDVR noENC	LEY-PD-30
800	Leyden Police	Portable	Motorola	APX 4000	426C0X2472	63117	F68D	LEYDEN-PD-63117	POL COUNTY yesDVR noENC	LEY-PD-31
801	Leyden Police	Portable	Motorola	APX 4000	426C0X2481	63118	F68E	LEYDEN-PD-63118	POL COUNTY yesDVR noENC	LEY-PD-32
802	Leyden Police	Portable	Motorola	APX 4000	426C0X2485	63119	F68F	LEYDEN-PD-63119	POL COUNTY yesDVR noENC	LEY-PD-33
803	Leyden Police	Portable	Motorola	APX 4000	426C0X2470	63120	F690	LEYDEN-PD-63120	POL COUNTY yesDVR noENC	LEY-PD-34
804	Leyden Police	Portable	Motorola	APX 4000	426C0X2474	63121	F691	LEYDEN-PD-63121	POL COUNTY yesDVR noENC	LEY-PD-35
805	Leyden Police	Portable	Motorola	APX 4000	426C0X2476	63122	F692	LEYDEN-PD-63122	POL COUNTY yesDVR noENC	LEY-PD-36
2503										

- 3). Misc unused Motorola Radios, old system (Leyden station)

### **Medical Supplies:**

Misc at Leyden Station. To be turned over to EMS/EMD whenever needed.

### **Bullet Resistant VESTS:**

Several Used Personal Vests (Stored at Leyden Station)

### **Desktop Computers:**

- 1). Several in Leyden Station, not inventoried yet.
- 2). (1) Panasonic HR-12 Laptop

### **From Cruisers (Mostly Impala):**

- 1). Stalker Radar, 2-head Unit
- 2). (2) Panasonic HR-12 Laptops (1-Impala, 1-Tahoe)
- 3). Custom Hand Held Radar (old, not usable)
- 4). (1) VIZUCP Cruiser Camera System
- 5). (1) Motorola Mobile Radio, CDM750 (Old system, not usable for PD)
- 6). (1) Light Control Switch (Not usable for PD)
- 7). (3) Misc Cruiser Gun Racks (Not needed, but would keep)
- 8). Emergency Lighting (misc), Visor Lights, Deck Lights, and Exterior Light Bar (Not usable for PD)
- 9). Laptop Stand (Not usable, but would keep)

### **Being Used by BPD:**

- 1). (2) Patrol Rifles (Items 3&4 under "Firearms")
- 2). (1) Vest Heavy Duty Plate Carrier with Plates and Attachments (4-3 using)
- 3). (1) Cruiser Duty Bag (Used by 4-3)
- 4). (2) Medical Bags, Green, with supplies and O2 (Used by 4-4)
- 5). (2) Law Books, 2020 editions (Used by 4-3)
- 6). (5) Sets of Handcuffs (At BPD. 1-being used by 4-4)
- 7). (2) Canisters of OC Spray (At BPD)

**Exhibit A**  
**Police Substation Lease between Town of Leyden and Town of Bernardston**

This lease ("Lease") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the Town of Leyden, Massachusetts, with an address of 7 Brattleboro Road, Leyden, MA 01301 (hereinafter "Leyden" or "LESSOR"), a municipal corporation and political subdivision of the Commonwealth of Massachusetts, hereinafter called LESSOR, which expression shall include successors and assigns where the context so admits, and the Town of Bernardston, Massachusetts, with an address of 38 Church Street, Bernardston, MA 01337 (hereinafter "Bernardston" or "LESSEE"), a municipal corporation and political subdivision of the Commonwealth of Massachusetts, hereinafter called LESSEE, which expression shall include successors and assigns where the context so admits. Leyden and Bernardston may be referred to individually as a "Party" or "Town" and collectively as the "Parties" or "Towns."

In consideration of the mutual covenants herein, Leyden does hereby lease to Bernardston and Bernardston hereby leases from Leyden, on the terms and conditions set forth herein, the property described below and located at 7 Brattleboro Road Leyden, MA.

**ARTICLE ONE**

- (A) DESCRIPTION OF LEASED PREMISES: The "Leased Premises" consist of one (1) office room and adjoining common, restroom and circulation spaces within Leyden's Town Offices Building, as well as a dedicated parking space, as more fully described in Exhibit A attached hereto. So long as LESSEE is not in default hereunder, LESSEE shall have exclusive use and possession of the Leased Premises as herein described subject to the terms of this Lease, all matters of record and other agreements to which this Lease is or may hereafter be subject.
- a) Leyden Substation, Scope of Use and Parties' Responsibilities: The "Leyden Substation" or "Substation" shall be available for use by Bernardston for the purposes of providing Police services in accordance with the Intermunicipal Agreement for Police Services between the Parties dated the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the "Agreement").
- i) The Parties acknowledge that a grant has been awarded for renovations and upgrades to the Substation under the Commonwealth of Massachusetts Division of Local Services Efficiency and Regionalization program (the "Grant"), and a Grant agreement was executed on June 23, 2021. The renovations and upgrades shall be jointly managed by the Towns, with the division of responsibilities as follows: Bernardston will be responsible for administering any and all procurement contracts for the work, including work funded by the Grant. Leyden, through its Building Inspector and with the assistance of the Bernardston Chief of Police, as necessary, will be responsible for the oversight and inspection of construction activities, including construction-related communications with the contractor(s) and ensuring compliance with any and all

applicable building, health and safety codes promulgated by the Commonwealth of Massachusetts and other governmental authorities. This includes compliance with the 2010 ADA Standards for Accessible Design and regulations of the Architectural Access Board at 521 CMR (2006 ed.), as amended.

- ii) Leyden shall be responsible for all operating, maintenance, janitorial, and repair costs and future capital costs for the Leyden Substation, including costs for propane/natural gas, water, sewer, electricity, telephone and other utilities. Leyden shall be responsible for providing broadband internet service meeting the requirements of Bernardston, to the extent available to the Leased Premises. Cleaning and maintenance supplies, including paper supplies (toilet paper, paper towels, etc...), shall be paid for by Leyden. These costs for the Leyden Substation shall be separate and apart from the assessment described in Section 3 of the Agreement.
- iii) The Towns must execute this Lease prior to Bernardston Police occupying the Substation for the purposes described under the terms of the Agreement.
- iv) Upon execution of this Lease, the Bernardston Chief of Police shall have sole authority regarding access to and use of the Substation during the term of the Lease.
- v) Insurance:
  - (1) Leyden shall be responsible for insuring the Leased Premises and providing general property liability insurance as per the Agreement.
  - (2) Bernardston shall be responsible for insuring the contents stored, used or otherwise located in and on the Leased Premises as per the Agreement.

## ARTICLE TWO

- (A) TERM: The initial term of this Lease shall be a period of three (3) years, commencing on \_\_\_\_\_ unless earlier terminated as hereinafter provided. The LESSEE shall have the option to extend this Lease for up to five additional terms of three years each by written notice to the LESSOR not less than ninety (90) days prior to the expiration of the then current term. For avoidance of doubt, the option to extend shall be exercised one extension term at a time, with each extension term subject to LESSEE'S notice to LESSOR.
- (B) TERMINATION: If not extended as provided above, this Lease shall terminate at the end of the initial term or upon termination of the Agreement. If LESSEE shall be in possession of the Premises after the termination date and with the consent or permission of LESSOR, the tenancy under this Lease shall become month-to-month, terminable by either Party on thirty (30) days notice.
- (C) TERMINATION BY LESSEE OR LESSOR: LESSEE or LESSOR may terminate this Lease by giving one year's Notice to the other Party.

- (D) **TERMINATION DUE TO LACK OF FUNDING:** LESSOR and LESSEE acknowledge that both Parties are political subdivisions of the Commonwealth of Massachusetts established pursuant to law and that they are funded in large part through Federal, state and local monies. Notwithstanding any other provision in this Lease, both Parties shall have the right, exercised in each Party's discretion, to terminate this Lease on less than one year's notice, but not less than forty-five (45) days' notice, by written notice to the other in the event a lack of governmental funding makes it impossible for the terminating Party to perform its Lease obligations for a full year prior to termination. The termination notice shall include documentation of the funding insufficiency.

### **ARTICLE THREE**

- (A) **RENT:** For exclusive use of the Leased Premises, LESSEE shall pay to the LESSOR rent as follows:
- (1) During the entire term rent shall be paid at the rate of One Dollar (\$1.00) per year, paid annually prior to July 1, of each year.
- (B) **PAYMENT OF RENTS:** All payments shall be made to LESSOR or agent, c/o the Town of ADDRESS, Leyden, ZIP or at such other place as LESSOR shall from time to time in writing designate.
- (C) **LATE CHARGES:** There shall be no late charges or interest on rental payments.

### **ARTICLE FOUR**

- (A) **ATTORNEY'S FEES:** Each Party will be responsible for its own attorney's fees and costs incurred in connection with the performance of this Lease.

### **ARTICLE FIVE**

#### **USE OF THE PREMISES**

- (A) **GENERAL USES:** Use of the Leased Premises shall, at all times, be conducted in an orderly manner consistent with the purposes of a Police Department Substation and in accordance with the Agreement.

### **ARTICLE SIX**

- (A) **INSURANCE:** LESSOR agrees to have in full force and effect during the entire term of this Lease the following insurance with limits of coverage not less than the amounts hereinafter set forth:
- (i)

General Liability:	\$3,000,000 General Aggregate;
Bodily Injury and Property Damage:	\$1,000,000 Each Occurrence
Fire Damage and Casualty Loss for the Substation building:	Replacement cost of building
Building:	Limit on replacement cost valuation

Any additional insurance required by the Agreement between the Parties.

LESSEE agrees to have in full force and effect during the term of this Lease property insurance for all personal property of the Bernardston Police Department within the Substation, and any additional insurance required by the Agreement.

Insurance hereunder shall be with responsible and solvent companies licensed to do business in the Commonwealth of Massachusetts.

- (ii) Certificates / Policies: A copy of each insurance policy or certificate thereof for the insurance required herein shall be delivered to the LESSEE and LESSOR by each other prior to the execution of the Lease. All said policies or certificates shall provide for a minimum of ten (10) days' notice to the LESSEE or LESSOR, as the case may be, in the event of cancellation or material change in the terms thereof. All policies shall include the LESSEE or LESSOR, as the case may be, as additional named insured.

**ARTICLE SEVEN**

(A) REPAIRS AND MAINTENANCE.

- (i) REPAIR OF DAMAGE, MAINTENANCE: LESSOR agrees to maintain the Leased Premises so as to keep them, as near as reasonably possible, in the same condition as at the commencement of the term, normal wear and tear, authorized improvements and damage by fire or other casualty only excepted. LESSEE will properly deposit all waste created in connection with use of the Leased Premises in appropriate receptacles. LESSOR and LESSEE shall not cause the area surrounding the Leased Premises to be in other than a neat and clean condition. LESSEE shall (to the extent it controls such activities) not permit the Leased Premises to be overloaded, damaged, stripped or defaced, nor suffer any waste, and will not keep animals within the Leased Premises, except for police canines. LESSOR shall provide for sufficient heat to the Leased Premises for occupancy, and to prevent freezing of pipes or other damage.
- (ii) LIGHTING: LESSOR shall, at its expense, repair and replace, as may be required, all incandescent bulbs or fluorescent tubes or lighting devices located within the Leased Premises.

- (iii) JANITORIAL AND CLEANING SERVICES: LESSOR shall provide janitorial and cleaning services, at its expense, for the Leased Premises, and LESSEE shall conduct its operations on the Leased Premises so as to keep the same in a clean and neat condition at all times. LESSOR may repaint the interior of the Substation building when it deems it necessary.

(B) CAPITAL REPAIRS AND IMPROVEMENTS

- (i) LESSOR shall be responsible for all capital repairs and improvements to the Leased Premises during the term of the Lease, after the initial capital investment to the Leased Premises by Lessee under the Grant. Such capital repairs and improvements shall be determined in LESSOR'S reasonable discretion.

**ARTICLE EIGHT**

- (A) ALTERATIONS: LESSEE shall be receiving approximately seventy thousand dollars (\$70,000) under the Grant to renovate the Substation building into a police substation and may make structural alterations and changes provided LESSOR consents thereto. All such initial allowed alterations shall be at LESSEE'S expense and shall conform to LESSEE'S specifications and LESSOR'S approval in writing. LESSEE shall not permit any mechanics' liens, or similar liens, to remain upon the Leased Premises in connection with work of any character performed or claimed to have been performed at the direction of LESSEE and shall cause any such lien to be released or removed without cost to LESSOR. Any alterations or improvements shall become part of the real estate of the Leased Premises and the property of LESSOR. Any alterations completed by LESSEE shall be done in conformance with all applicable codes and regulations.
- (B) APPROVAL OF ALTERATIONS: Approval of alterations conforming to first quality construction and/or generally accepted industry standards will not be unreasonably denied by LESSOR. Alterations must be performed in accordance with any and all laws and codes of the Town of Leyden and the Commonwealth of Massachusetts. LESSEE shall, at its own expense, obtain all licenses and permits required by reason of any of its maintenance, repairs, construction, or use of the Leased Premises authorized or approved hereunder.

**ARTICLE NINE**

- (A) REAL ESTATE TAXES: N/A

**ARTICLE TEN**

- (A) SIGNS: LESSEE may install at the Leased Premises signs for the purpose of identification or information, at its cost and expense. The size, type, design, style, and location of such signs shall be subject to any applicable local by-laws and regulations.

#### **ARTICLE ELEVEN**

The Parties are each Massachusetts municipalities and, as such, are protected by M.G.L. c. 258, the Tort Claims Act.

(A) To the extent permitted by law, and except as otherwise provided in the Agreement, Leyden shall indemnify Bernardston from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts agreements, damages and any and all claims, demands and liabilities whatsoever of every name and nature both in law and in equity on account of injury to person or property or loss of life resulting from Leyden's performance under this Lease but only to the extent and in an amount Leyden would otherwise be liable pursuant to the Massachusetts Tort Claims Act, M.G.L. c. 258.

(B) To the extent permitted by law, and except as otherwise provided in the Agreement, Bernardston shall indemnify Leyden from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages and any and all claims, demands and liabilities whatsoever of every name and nature both in law and in equity on account of injury to person or property or loss of life resulting from Bernardston's use of the leased premises under this Lease but only to the extent and in an amount Bernardston would otherwise be liable pursuant to the Massachusetts Tort Claims Act, M.G.L. c. 258.

(C) By entering into this Lease the Parties have not waived any governmental immunity or limitation of damages which may be extended to them by operation of law.

#### **ARTICLE TWELVE**

(A) QUIET ENJOYMENT: The LESSOR agrees that if the LESSEE shall pay the rent as aforesaid and perform the covenants and agreements herein contained on its part to be performed, the LESSEE shall peaceably hold and enjoy the Leased Premises without hindrance or interruption by the LESSOR or by any other person or persons acting under or through the LESSOR.

#### **ARTICLE THIRTEEN**

(A) ACCESS TO PREMISES BY LESSOR: LESSEE shall permit LESSOR, its agents, employees and contractors to enter the Leased Premises, and all parts thereof, during business hours and at all reasonable times to inspect the same and to enforce or carry out any provision of this Lease.

#### **ARTICLE FOURTEEN**

- (A) SURRENDER: LESSEE shall, at the expiration or other termination of this Lease, remove all of LESSEE'S goods and effects from the Leased Premises. LESSEE shall deliver to LESSOR the Leased Premises and all keys, locks, and other fixtures and equipment connected therewith, and all alterations, additions and improvements made to or upon the Leased Premises, including but not limited to any offices, partitions, floor coverings (including computer floors), plumbing and plumbing fixtures, air conditioning equipment and ductwork of any type, exhaust fans or metal shelving, and all electrical work including but not limited to lighting fixtures of any type, wiring, conduit, distribution panels, outlets and disconnects. LESSEE shall deliver the Leased Premises broom clean and in the same condition as it was at the commencement of the term, or as it was modified with LESSOR'S approval during the term, reasonable wear and tear and damage by fire or other casualty only excepted.

#### **ARTICLE FIFTEEN**

- (A) COMPLIANCE WITH LAWS: In all of its activities hereunder and in its occupancy of the Leased Premises, LESSEE shall comply with all applicable Federal, state and local laws, regulations and bylaws. The LESSOR, in any activities related hereto, will comply with all applicable law.
- (B) NON-DISCRIMINATION: The Parties shall not discriminate against any person in their activities on the Leased Premises, including employees or applicants for employment, because of race, color, creed, national origin, age, sex, sexual orientation, sexual identity, disability, veteran status, ancestry or any other legally protected status. With respect to their exercise of all rights and privileges herein granted, the Parties shall undertake such affirmative action as is required by Federal and State laws, rules and regulations pertinent to civil rights and equal opportunity, unless otherwise exempted therefrom.
- (C) If any term or provision of this Lease shall be judged invalid and unenforceable by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law so long as the Lease continues to allow for each Party to receive the benefit of its bargain under the Lease.
- (D) This Lease shall be governed by, construed, and interpreted in accordance with the laws of the Commonwealth of Massachusetts. Any action brought pursuant to this lease shall be brought in the courts of Franklin County, MA. Trial by jury shall be waived.
- (E) GRANT TERMS AND CONDITIONS: The operation and improvement of the Leased Premises is being funded in part with grants from the Division of Local Services, Commonwealth of Massachusetts; therefore, this Lease is subject to the terms of the financial assistance contracts between and among the LESSOR, LESSEE and the Commonwealth of Massachusetts. The Parties agrees to abide by all terms and conditions

of said contracts and to provide whatever documentation of compliance as may be required by either Party or the Commonwealth of Massachusetts.

**ARTICLE SIXTEEN**

(A) ASSIGNMENT or SUBLEASING: The Leased Premises shall not be sublet or assigned.

**ARTICLE SEVENTEEN**

NOTICE: Any notice required under this Lease or relating to the Leased Premises, or to the occupancy thereof, shall be deemed duly served if sent by certified mail, return receipt requested, postage prepaid, addressed to LESSEE or LESSOR, as applicable, at the addresses below or to any other address designated in writing by one Party to the other Party:

**To: Leyden**                      Town of Leyden  
    7 Brattleboro Road  
    Leyden, MA 01301  
    Att: Municipal Assistant/Select Board

**To: Bernardston**                Town of Bernardston  
    38 Church Street  
    Bernardston, MA 01337  
    Att: Town Administrator/Select Board

(B) LESSEE and LESSOR represent, warrant and covenant that the execution, delivery, and performance of this Lease and the transactions contemplated herein are within the power, and authority of LESSEE and LESSOR and the person or persons executing this Lease on their behalf have been duly authorized to do so.

IN WITNESS WHEREOF, LESSOR AND LESSEE have hereunto set their hands and seals and intend to be legally bound hereby this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

LESSOR: \_\_\_\_\_

LESSEE: \_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

## ATTACHMENTS

EXHIBIT A: Description of Premises---Waiting on drawing.

**EXHIBIT A**

**DESCRIPTION OF PREMISES**