

# COUNTY OF ULSTER

P.O. BOX 1800

KINGSTON, NEW YORK 12402

**Office of the Comptroller**

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*Deputy Comptroller*

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## URGENT Program

### Report of Examination

March 1, 2007 through June 30, 2012

September 28, 2012

**Prepared By:**

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September 28, 2012

Dear County Officials:

One of the most important functions of the County Comptroller's Office is to identify areas where county departments and agencies can improve their operations and services to assist county officials in performing their functions. This includes the development and promotion of short-term and long-term strategies to reduce costs, improve service delivery, and account for and protect the County's assets.

The reports issued by this Office are an important component in accomplishing these objectives. These reports are expected to be a resource and are designed to identify current emerging fiscally related issues and provide recommendations for improvement.

The Ulster County Attorney's Office sought our assistance in examining the assets and expenditures attendant to the joint law enforcement initiative known as "URGENT", in order to consider whether a division of those assets was necessary. The County Attorney's request was prompted by the City of Kingston's request to unwind its relationship with URGENT.

If we can be of assistance to you, or if you have any questions concerning this report, please feel free to contact us.

Respectfully submitted,

Ulster County Comptroller

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## A. EXECUTIVE SUMMARY

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This Report is another step in a long history of concern by this office for the financial stewardship of the joint law enforcement initiative known as “URGENT.”

In June 2012, the City of Kingston requested that its relationship with “URGENT” be unwound, and the rights of the parties be established as to the division of the program’s expenses and seized assets. That request was delivered to Ulster County Attorney, Beatrice Havranek. In response, the County Attorney requested that our office conduct the necessary investigation and produce a report as to the finances of the program, and the possible nature and implications of any such division of expenses and seized assets.

Our office informed the City of Kingston that we were undertaking this investigation, to which no objection was raised.

The investigation required inquiry into multiple aspects of the program, including: (i) what document, if any, purported to govern the relationship of the program; (ii) how many law enforcement agencies participated in the program and when; (iii) where the assets and funding sources of the program were held; (iv) what processes were employed to expend program funds or recover the proceeds of its seizures; (v) whether any distribution of funds to participating agencies was ever made; (vi) if not, why not; and (vii) what procedures were in place to record the decisions of the program in each respect.

These areas of inquiry led to several early conclusions. First, the URGENT program appeared to have been operating under the auspices of a written agreement, periodically renewed, and referred to herein as the “Memorandum of Understanding” or “MOU.” The MOU is an intermunicipal agreement which appears to have been executed by chiefs or officers of participating agencies without the authority of the governmental bodies which govern them, including the County Legislature. The MOUs initial adoption pre-dates the Charter form of government, and thus the Comptroller and Executive’s Office, as well as the current County Attorney. The MOUs also seem to have been drafted and executed without being vetted through the typical contract review process, which would have included review by the County Attorney’s Office and County Comptroller’s Office, among others.

The questionable authority of the MOU was first raised by our office to the County Legislature in a memo dated June 20, 2011, in connection with our audit of confidential funds at the Sheriff’s Office. We noted with alarm many deficiencies in the MOU, but also noted “what we did not find,” namely, authorizing resolutions by governing authorities for this complicated law enforcement initiative, and a lack of internal controls. We cautioned at that time that the failure to adequately address the issues we raised might threaten the program, at the very least.

The MOU and its renewals are not always signed by the same participating members. The MOU was perceived by the participating members to be an operative document, but its procedural requirements, such as the requirement that a governing body of three participating members be

formed to make certain decisions, and the requirement that an accounting be made on a periodic basis, appear not to have been followed with any regularity, if at all. The MOU called for 35% of seized cash assets to be used for operating expenses, and 45% to be distributed equally among participating entities, a practice which appears never to have been followed.

The accounts associated with URGENT are held by the County of Ulster. They are an “Operating Account,” and a “Forfeiture Account” (into which seized cash returned from the federal government are deposited). Purchase Orders for URGENT expenses appear to have been run through both the Operating Account and the Forfeiture Account. There does not appear to be a written or formal policy for determining which account is utilized.

For the foregoing reasons, among others set forth herein, the ability of this office to precisely determine the fiscal implications of Kingston’s inquiry was severely compromised. And we note, parenthetically, that the deficiencies of the MOU and the administration of the program were known, or should have been known, to the Kingston Police Department while they participated in the program.

In the absence of a formal legal opinion of the County Attorney, or a judicial determination of the rights of the parties (a result we are hopeful this Report will help the parties avoid), the question of whether the MOU is to be used as a legal basis for any relationship or accounting among the parties remains open.

If the MOU is a legally binding document, it is beyond the scope of our authority or this Report to determine the implications of the fact that its terms appear not to have been followed by the participating agencies, including Kingston. If the MOU is *not* a legally binding document, it is equally beyond our authority and the scope of this Report to ascertain with certainty what common law principles should govern the parties’ relationship.

Notwithstanding our concerns expressed in June 2011, and the knowledge of the present investigation, a “new” version of the MOU has been circulated, which shared a great many of the infirmities of the earlier MOUs, and was nearly put to a vote by the legislature on September 19, 2012. We urged the legislature not to take action on the proposed MOU, citing the following fundamental concerns:

1. The proposed MOU purports to be “retroactive” and runs only through the end of the current year.
2. The MOU may not be enforceable if Kingston is not a party.
3. The question of who will constitute the “governing body” of URGENT, which in the present draft requires Kingston’s involvement, must be resolved.
4. The model for distribution of seized funds in the proposed MOU is inconsistent with actual practice, and appears to be inconsistent with the practice the D.A. and Sheriff’s Office expect to follow in the future. The MOU should conform to the practices anticipated.
5. The precise method of accounting for the use of forfeiture money should be established.

6. The proposed distribution model in the new MOU presents a risk in the resolution of the Kingston request.
7. The MOU should require that meetings of urgent have formal notice and minutes.
8. The MOU should specify wind-up or member withdrawal procedures.
9. The source of operating funds and the categorization of proper expenditures should be clarified.

Given the severe limitations of the MOU, and the lack of formal recordkeeping and protocol as to the decisions of the task force, we endeavored in this Report to provide the parties with a “snapshot” of the implications various potential models of accounting would have. These results range from there being no distribution due to any party, to Kingston being due as much as \$49,000 and the Ulster County Sheriff being owed substantially more. The impact of the various outcomes on the program could be detrimental. If the MOU is deemed to be of no force or effect, and/or the actions of the participating agencies in administering the program are nullified (an outcome which is possible whether the MOU was in effect or not), then the manner in which any accounting is to be conducted will be subject to either a compromise of the parties or a judicial determination. One of the potential outcomes would be the necessity to determine precisely what contributions each party made to the program in personnel, equipment, and administrative resources, etc., a model which would require extensive research of every participating agency’s records for the past five years, records which not all agencies may have, especially because under the MOU they thought they were living by, such recordkeeping was arguably not required.

Largely in response to the County Attorney’s directive to the program that the MOU required County Legislative approval, a revised MOU has been circulated by the Sheriff, and has been signed, apparently pursuant to governmental authority, by the participating members. However, as noted, we have cautioned the parties and the County Legislature that these issues must be addressed prior to adopting a new or (as is proposed), retroactive, MOU. The Sheriff’s Office and the District Attorney’s Office agreed with this position in writing, for which we commend and thank them, notwithstanding the Sheriff’s later comments on the floor of the legislature contradicting this written position. We trust the County Legislature and the other stakeholders are attempting to address the issues raised in a redrafted agreement, and we are hopeful that this Report will be of further assistance in their efforts.

In direct response to the City of Kingston’s inquiry and the County Attorney’s request for our review, we must state that our office cannot in good conscience authorize any distribution to any participating member on the facts available to us. Moreover, further investigation of the issues raised by Kingston’s withdrawal would be costly, and the parameters of that further inquiry might require judicial intervention.

Therefore, the parties are urged to view this Report as a tool in conforming the quality of the management of the URGENT program to the quality the program’s law enforcement. Nothing in our Report should be construed to challenge the intent of the participating agencies to discharge their duties effectively, or to disparage URGENT’s objectives or performance in the field.

We trust this Report will aid in accomplishing these goals.

## **B. AUTHORITY**

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The Office of the County Comptroller conducted this report in accordance with the Comptroller's authority as set forth in Article IX, Section 57, first paragraph, and Sections 57(A) and (G) of the Ulster County Charter, and all other applicable County and State laws, rules and regulations.

## **C. ASSUMPTIONS**

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Any factual information in this report is set forth in reliance upon information and documentation provided to us by the Ulster County Sheriff's Office ("UCSO"), the Kingston Police Department ("KPD"), the Ulster County District Attorney's Office ("D.A."), other County departments, and public records. We have assumed the accuracy of facts provided to us, unless otherwise noted herein. We do not warrant the accuracy of such information, and where appropriate, we note apparent inaccuracies, inconsistencies, and/or discrepancies.

Nothing herein shall be construed to limit the further determination of contrary facts or conclusions by this office or other authorities with jurisdiction as to the matters which are the subject of this report. Moreover, nothing herein shall be deemed, nor is offered, as legal counsel or opinion, and the findings and recommendations herein are limited by the accuracy of the factual information and the impact of legal determinations which would alter the application of facts subject to analysis.

## **D. IMPETUS FOR REVIEW**

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In March 2007 an undertaking between various law enforcement agencies operating within Ulster County was initiated, resulting in the creation of the Ulster Regional Gang Enforcement Narcotics Team ("URGENT"). URGENT's mission is to address drugs and gangs regionally by bringing different agencies under one roof to share information, resources, and manpower. This relationship was detailed in a Memorandum of Understanding ("MOU") which has been revised and signed in one or more iterations by a representative of most, but not all, of the participating entities.<sup>1</sup>

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<sup>1</sup>We note that there is significant doubt as to whether the MOU was at any point, an operative agreement by which the parties were, or are now, bound. In addition to the fact that some proposed (and, apparently, participating), signatories did not sign all versions of the MOU, there are indications in the public record that some of the signatories of the MOU may not have been duly authorized by the governing bodies (ie., Town Board) which have the power to authorize such execution. Absent a judicial determination or a legal opinion upon which to base our assumptions, our office has endeavored herein to provide insight into the financial assets and liabilities of URGENT under the assumption that the MOU is in effect and under the assumption that the MOU was not in effect, and we neither take nor offer a legal position in this respect.

Each of the versions of the MOU between March 2007 and the time of the conclusion of our field work (August 1, 2012) which we obtained in our investigation are attached hereto collectively as **Exhibit 1**. The City of Kingston purported to withdraw from URGENT in or about July, 2011. In a letter dated June 5, 2012 from the City's corporation counsel, the City of Kingston confirmed that it would "no longer be able to participate in the URGENT Program under the existing terms and conditions" and requested that an effort be undertaken to "unwind the relationship(s) that have been formed and resolve the disposition of any outstanding expenses and assets, including assets due from past operations" of URGENT. A copy of the Kingston letter is attached hereto in **Exhibit 2.1**. We offer no legal opinion as to whether any participating agency has the legal right to unilaterally withdraw. We have taken an approach which provides guidance on more than one reasonable interpretation of the "rights" of KPD in connection with the accounting requested. Upon receipt of the Kingston letter, the County Attorney requested that our office conduct the present review. A copy of that correspondence is also attached hereto in **Exhibit 2.2**.

Therefore, the initial impetus of this review was to examine the URGENT accounts and records to determine whether Kingston was entitled to any payment. In order to conduct that review, the rights and obligations of all participating agencies were necessarily subject to scrutiny.

#### **E. CONDUCT OF THE INVESTIGATION**\_\_\_\_\_

The investigation was commenced by conducting an initial interview with the UCSO, which provided the administrative infrastructure for URGENT, on June 29, 2012. Over the course of two days, our office worked with the UCSO, in the Ulster County Law Enforcement Center, reviewing records of the program and making inquiries as necessary. During the next several weeks, the information gathered was supplemented and weighed against records of the County of Ulster with respect to the accounts of URGENT, and a thorough study of the data was done. A Draft Report was created. The Draft Report was circulated to the UCSO, the D.A., the City of Kingston, and the County Attorney's Office on or about September 4, 2012, to allow them an opportunity to provide us with further information which might be beneficial in completing the Report. Next an interview was conducted on September 5, 2012, to discuss their questions or concerns and gather any additional information they might supply. On or before September 15, 2012 each office submitted written comments, which are attached as **Exhibits 3.1** through **3.4**. Our response to those comments is attached as **Exhibit 3.5**. Upon consideration of our record, the final Report of Examination (the "Report") was completed.

## F. OBJECTIVES

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The objectives of this report are to:

1. Provide guidance as to whether Kingston, or any other agency, has a claim to payment in any amount;
2. Identify the points relevant to the processing of funds seized in connection with URGENT which require further clarification, legal opinion, and potential compromise, in the interest of the taxpayers and the URGENT program. Since the entitlement to distributions, and the liabilities which might inure to the URGENT program as a whole and to its participating members, have widely variant potential outcomes, caution should be exercised in resolving the issues; and
3. Recommend measures which should be put in place in the operation of the URGENT program in the future.

## G. BACKGROUND INFORMATION

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The operations of URGENT were initially funded through the County of Ulster, and later by contributions from the City of Kingston, the Town of New Paltz, and the Town of Ulster. Initially, all URGENT funds, including funding from the County and other sources, seized funds, and expenditures, ran through an account established by the County as “Department 3189 (Drug Investigations)-1909 (Urgent Investigations Division)” in the County’s chart of accounts (referred to herein as the “Operating Account”). In 2010, in order to differentiate between funds seized in URGENT operations, and the funding monies, the County created a second account, “Department 3189 (Drug Investigations)-1907 (Urgent Forfeiture Division)”. This account was established to receive the return of federally processed seizure funds (referred to herein as the “Forfeiture Account”).<sup>2</sup>

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<sup>2</sup>It is our understanding that there is a legal requirement that seized funds and operating accounts be segregated. Although separate account line items were created in the County Budget for URGENT seized funds and URGENT operating funds, the cash is kept in the County’s general cash balance. As per the *Guide to Equitable Sharing* published by the U.S. Department of Justice (DOJ), Criminal Division, dated April 2009, the participating state and local law enforcement agencies must implement standard accounting procedures and internal controls. These procedures should address tracking share requests and receipts and electronically depositing shares into a separate revenue account to track the County’s equitable shared forfeiture monies. This publication goes on to say that this revenue account shall be used solely for funds received from the DOJ Equitable Sharing Program (i.e.: the forfeiture moneys received back to the County) and that no other funds may be included in this account. Our investigation confirmed that the County is using a designated separate revenue account (3189-1907-2626) and (3189-1907-2627) for the DOJ seizures and Treasury seizures, respectively. Once the receipt is identified as forfeiture funds it is recorded into one of the aforementioned revenue accounts. It is important to note that in many instances when the Federal government requires direct deposit of funds, they also request that one bank account be set up and used for multiple Federal agencies. It is also noteworthy that there is no requirement to set up a separate bank account, but rather a separate revenue account as indicated above. If it is the desire of the Sheriff, with agreement from the Finance Department, to set up a separate bank account they should contact the DOJ to ascertain that it is acceptable

As the program operated, there were seizures made of funds related to criminal activity. As the “entity” responsible for the operation which led to the seizure of such funds, URGENT was entitled to a portion of the seized funds. These seized funds were converted by UCSO into a bank check payable to the federal marshal. At some point thereafter, a form entitled the “Application for Transfer of Federally Forfeited Property,” commonly called the “DAG-71” was submitted by UCSO on behalf of URGENT.

The federal government typically retains approximately 20% of any seized funds. In addition to triggering the federal government’s retention of its share of the seized funds, the DAG-71 also triggers the federal government’s review of the operation to determine which law enforcement agencies were legitimately involved in the seizure operation, and thereby determine whether the remaining seized fund balance is to be returned to one agency, or split amongst more than one in accordance with their level of participation. Therefore, in a typical operation resulting in a seizure, any law enforcement agency involved in that operation may file a DAG-71 and claim the right to all, or a portion of, the seized funds.<sup>3</sup> With respect to URGENT’s operations, URGENT’s share was typically determined to be approximately 80%. This amount would be wired by the federal government directly into the County’s cash account and a revenue item would be recorded at that point in time to the Forfeiture Account.

## **H. THE MOU AND THE OPERATION OF URGENT**

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Our investigation produced four versions of the MOU which appear to have been viewed as operative documents by the participants. We note that one of the serious limiting factors of any review of the performance or finances of the URGENT program is the fact that no involved agency or record keeper can confirm whether all “operative” versions of the MOUs are in our possession. Attached hereto as Exhibit1 are versions of the MOU which our investigation uncovered and which reflect the most inclusive set of signatories:

1. The “2007” version, covering the period March 1, 2007 through December 31, 2007;
2. The “2008” version, signed by UCSO, KPD, Ulster County Probation, the Town of New Paltz, the Town of Ulster, and the D.A.;
3. The “2009 through 2010” version, signed by UCSO, the KPD, the Town of New Paltz, the D.A., the Town of Ulster, the Town of Saugerties and the Town of Woodstock;
4. The “2011 through 2012” version, signed by UCSO, KPD, the D.A., the Town of Plattekill, the Town of New Paltz, the Town of Saugerties, the Town of Woodstock, and the Town of Lloyd.

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to establish another account that accepts wire transfers from the Federal government and go through the standard County procedures in establishing this new bank account.

<sup>3</sup>As will be discussed below, in or around 2012, the Ulster County District Attorney’s Office began submitting its own DAG-71 forms with respect to URGENT seizures.

The facts gathered by our investigation suggest a genuine understanding among the participating agencies that:

1. URGENT was a joint law enforcement effort in which each of the participating entities was cooperatively engaged;
2. The MOU was a guiding document governing the program and the processing of seized funds; *but*
3. The participating agencies had the authority to alter adherence to the MOU with respect to the use of seized funds by mutual assent of the participating agencies.

The materiality of Point (3) must be highlighted. It appears that while there was an assumption by the parties that the MOU was a legally significant document, certain of its requirements seem never to have been adhered to. Moreover, the record indicates, at least anecdotally, that all participating entities, including KPD, knowingly participated in deviations from the strict language of the MOU for what was perceived to be the benefit of the URGENT program. This practice appears to have been contemplated to some extent by the 2009 through 2010 MOU and the 2011 through 2012 MOU, in that where the distribution of seizure monies is set forth, these MOU's suggest that the parties may modify that distribution by "mutual agreement." (*see*, 2009 through 2010 MOU and 2011 through 2012 MOU, Section VI (D) (2) & (3)).

Complicating this inquiry is a lack of clarity as to the manner in which such "mutual agreement" was to be properly expressed. For instance, all versions of the MOU call for the formation of a "Governing Body" of three persons, one of whom must be a City of Kingston representative (MOU Section III). It appears the Governing Body was never constituted, and that decisions were instead made by mutual assent of the representatives who were present at URGENT meetings from the participating agencies. All of these issues are obscured by the fact that there were no formal minutes of the meetings of URGENT by which the will of the agencies can be determined with certainty.<sup>4</sup> And, the MOU language which allows for deviation from the distribution guidelines contemplates such decisions being made by the "advisory council," (MOU Section VI (D) (2) & (3)), a term not defined elsewhere in the MOU. This may, or may not, be a reference to the "Governing Body" contemplated by MOU Section III.

Further, the D.A. adopted a practice in 2012 of filing its own DAG-71 forms with respect to money seized by URGENT. Typically, any agency involved in a seizure may file a DAG-71 seeking a share of the proceeds. However, where, as here, that agency is also a member of a cooperative effort with a defined understanding of shared efforts and benefits, the propriety of a separate filing which results in a diminished return to the cooperative entity might well be questioned. At the very least, it is not contemplated by the MOU, and it is therefore noted.

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<sup>4</sup>Notwithstanding the lack of minutes and the questionable effectiveness of "mutual assent," it is telling that there appears to be no record of objection to the manner in which URGENT seizure funds were expended (rather than distributed). It may reasonably be asked whether a legal challenge to such decisions (or, as in the case of Kingston) a demand for distributions after the fact, may lie where the agencies raising such demands were present at meetings where those decisions were made. One would expect there to be a consistent record of objection or demand for payment by an agency which believed the URGENT money was being withheld without authority.

Whether or not the MOU is deemed a binding document, the practice of general assent as an effective means of foregoing distribution of seized funds could be questioned, as could the D.A.'s individual claim to URGENT money by virtue of its own DAG-71 filing.

Questions as to the binding nature of the MOU were raised by our office as early as June 20, 2011 (see, **Exhibit 3.6**), and followed up on by the County Attorney as early as July 5, 2011 (see Exhibit 3.4). This uncertainty is the basis for our development of more than one model for analyzing the issues. As a starting point for our discussion, we note that the MOU calls for *immediate* equal distribution of 45% of seized funds over \$5,000, to participating agencies once returned from the federal government. It appears that this was never done, and perhaps just as importantly, never *requested or demanded*, by any participating agency. Instead, the will of the participating agencies appears to have uniformly been to put forfeiture money back into the program to continue and improve its work.

There is therefore a legal question not only as to whether the MOU was effective at all, but also, if it was binding, whether the participating entities, acting by mutual assent, could alter its requirements.

As noted, the record we were able to compile reflects at least four versions of the MOU. The earliest in our possession (the 2007 MOU) is signed by all contemplated parties except the Town of Woodstock. Of the latter three versions, only UCSO, KPD, the D.A. and the Town of New Paltz signed all three. Other signatories at various points included the County of Ulster Probation Department, and the Towns of Ulster, Saugerties, Woodstock, and Plattekill. Ellenville is listed among the signatories on some versions of the MOU, and, although they did very briefly assign an officer to the program, the general consensus among participants seems to be that Ellenville was never a member of URGENT. The 2009-2010 version was signed by the Ulster Chief for both Ulster and Plattekill.

Our investigation reveals some discrepancies in the participation of the D.A.'s office in the program. The D.A. advises that their office at various times contributed money, information, equipment, and, most notably, an Assistant D.A. ("A.D.A.") who had an office in the UCSO building and handled all URGENT investigations and prosecutions. At our initial interview, the UCSO refuted the extent of this participation, including denying the active participation of an A.D.A. dedicated to the URGENT cases. At our draft Interview, the UCSO did not comment on the matter. In their written comments to our Draft Report (see Exhibit 3.2), the UCSO acknowledges the D.A.'s significant contribution. Whatever role the D.A.'s office played in particular URGENT investigations, prosecutions, and seizures, it is clear that some time in 2011 the D.A.'s office began filing its own DAG-71 forms with respect to URGENT seizures, resulting in diminished net proceeds of seizures to the URGENT Forfeiture Account by the federal government. Where prior to that practice URGENT generally received 80% of the seized funds, after that practice, URGENT received approximately 60%.<sup>5</sup>

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<sup>5</sup>The D.A.'s office advises that among the reasons for adopting this practice was the need to fund its own law enforcement and prosecution programs. The D.A.'s office does not repudiate their participation in URGENT or the

The participation of the agencies as set forth herein is detailed in **Appendix A Table 1**, as well as the dates agencies entered and exited the URGENT program, according to the Ulster County Sheriff Department's information – not, as mentioned above, according to whether the entity signed a particular version of the MOU. These dates are later used in our modeling of potential distribution of forfeiture money, since distribution is dictated by the number of participating entities at the time of the seizure.

## **I. INFORMATION OBTAINED**

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We obtained the following information for our review:

1. Copies of several versions of the MOU.
2. Printouts of general ledger activity for the Forfeiture Account and the Operating Account from March 1, 2007 through June 30, 2012.
3. Copies of the required annual filings of “Equitable Sharing Agreement and Certifications” to the Department of Justice, for the calendar years 2008, 2009, 2010, and 2011.
4. Copies of the backup schedules prepared by UCSO which tie into the above mentioned certifications.
5. Copies of all available DAG-71's.
6. Copies of all available Drug Enforcement Administration wire notifications by which seized funds were returned to URGENT.
7. Copies of all vehicle leases including the County's “Contract Review Summary” sheet for analysis of lease terms and payments.
8. Responses to specific inquiries of our Office to those of the UCSO, KPD, the D.A., and the County Attorney's Office.

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Report (Exhibit 3.3) they waive any such claim. We take no position on the legal implications of the D.A.'s present practice or position. But, it should be noted that the practice seems to run counter to the intent of the MOU to distribute all returned seized proceeds, and even if there were no distribution of such proceeds, the receipt of 20% of the seized funds by the D.A. diminishes the amount dedicated to the URGENT program.

## J. MODELS ANALYZED

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In order to calculate the amount that may be due to the City of Kingston three models were developed:

1. Model #1: The MOU is Not Binding, or it is Binding and it Allowed for Deviation from the Distribution of Seized Funds by Mutual Assent. Therefore, there is No Distribution to Be Made

As noted above, there is considerable doubt as to whether the MOU was ever a legally binding document. Even if it is deemed binding, it appears the formula for distribution of seized funds could be deviated from by the “advisory council” (*see*, MOU, VI (D) (2) & (3)). In either case, the question becomes what authority the participating agencies had, in the absence of the establishment of a Governing Body, to determine the use of seized funds by mutual assent.

2. Model #2: The MOU is Not Binding and Both Costs and Seized Funds Should be Shared Equally

Another approach, if the MOU is not binding, is to assume that all agencies ought to have borne the burden of the program’s expenses equally, and, rather than there being *no* distribution, the agencies should share equally in distribution of its seized assets. Under this Model, the presumption is that the agencies did *not* have the authority to put the proceeds of seized assets back into the program, but rather, should have allocated seized assets among the agencies. Of course this Model only makes sense if the costs are equally shared as well. **Appendix A Tables 2.1 & 2.2** show the outcome if this approach is utilized.<sup>6</sup>

3. Model #3: The MOU is Binding and Distribution Should Have Been made According to the MOU:

If the MOU is deemed to be binding, and it is determined that the participating agencies did not have the authority to deviate from the specific formula in the MOU, then the MOU formula should be applied. The formula calls for an immediate distribution of 35% of seized funds into the

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<sup>6</sup> We take no position on whether, in the absence of a binding agreement requiring such equal distribution, such distribution can be “forced” upon the agencies as a legal proposition. The Model is meant to reflect the results of an equal distribution since the purely legal outcomes appear to us to be unclear absent an opinion of counsel or a judicial determination. The difference between Table 2.1 and Table 2.2 is in the allocation of the expense of certain leased vehicles used by KPD and purchased/leased by the UCSO in connection with URGENT. Further explanation is provided below.

Operating Account, and 45% distributed equally among the agencies. **Appendix A Tables 3 & 4** reflect the outcome if this Model is used.

4. Model #4: The “Quantum Meruit” Model; The MOU is Not Binding and Allocations of Cost and Distributions of Seized Funds Should be Made According to the Pro Rata Contributions of the Member Agencies:

In their comments to our Draft Report, the UCSO, the City of Kingston, and the County Attorney, each suggested that there were other expenses of the program not properly assessed in our analyses. They suggest that in one form or another, the relative value of each and every contribution of every member agency as well as the County of Ulster itself, should be calculated and proportionate, not equal, weight be afforded to each agency in calculating both its share of the costs and the its share of a distribution. We did not conduct this detailed analysis because there is no precedent for that approach in either the MOU or the actual practice of the member agencies during the 5 year history of the program.

#### **K. DETAILED MODEL ANALYSIS**

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Model #1: The MOU is Not Binding, or it is Binding and it Allowed for Deviation from the Distribution of Seized Funds by Mutual Assent. Therefore, There is No Distribution to Be Made

It may be determined that the MOU was never effective, in which case there is no written mechanism by which to compel distribution. It may also be determined that the MOU was effective, but that the language of the MOU permitted the agencies to mutually assent to forego distribution in favor of funding the program. Under either premise, it is reasonable to conclude that the decision to utilize seized funds by putting them back into the URGENT program to ensure its continued operation and success was perfectly appropriate given the “joint” nature of the initiative, and no agency, including Kingston, is due any distribution.

The County Attorney has previously offered informal opinion, in writing, to the Sheriff, that the MOU may not be effective due to the failure to have it approved as an intermunicipal agreement by the County Legislature. The MOUs questionable enforceability creates many questions. There is a question as to whether the failure by certain agencies represented in the MOU and participating in URGENT can be bound when they did not sign the MOU. There is a question whether agencies which signed were duly authorized to sign by their own governing bodies. If the MOU is not binding, we are not aware of any mechanism by which distribution of seized funds could be compelled; in which case, using the funds to fund the program might be the best, and indeed only, proper outcome. Moreover, even if the MOU is binding, it is not necessarily the case that distribution of 45% of the seized funds (as is contemplated by the MOU) can be compelled. There is a question whether the program ever appointed the “Governing Body” contemplated by the MOU, and whether, if they failed to do so, the participating agencies had the right to put seized funds back into the program rather than distribute the funds. Or, if they did

constitute the Governing Body, whether that entity is the same entity referred to as the “advisory council,” which appears to have been expressly authorized to make such a determination.

If neither the “Governing Body” nor the “advisory council” was duly constituted, there remains the question whether the participating agencies could forego distribution and put the funds back into the program. But it certainly seems to be among the possible legal outcomes to determine that the agencies had this right. We are advised by the Sheriff’s office that in reality, meetings of representatives of the participating agencies, including KPD, were regularly held. We were further advised that at these meetings, the membership consistently agreed not to distribute the seized funds, but, rather, to put the seized funds into use for the benefit and continued operation of the URGENT program.

This “Model” must not be discounted. We do not offer a legal opinion as to the enforceability of the MOU, or of any “decision” rendered by the participating agencies at these regular meetings. But if those decisions have legal or equitable merit, then it may be that no distribution is, or should be, forthcoming. It may be determined that the MOU was never effective, in which case there is no written mechanism by which to compel distribution.

**Model #2: The MOU is Not Binding and Both Costs and Seized Funds Should be Shared Equally**

If the MOU is not a binding agreement, then it might be argued that the joint nature of the initiative, the point of which was to pool resources for the mutual benefit of law enforcement across municipal lines. Make an equal sharing of its proceeds the proper model. Without any guiding document to establish different terms for different agencies, an equal allocation of costs and seized fund distribution could be applied to arrive at each agency’s “entitlement.”

For this Model, we reviewed each cash receipt and cash disbursement date and applied them evenly to each agency that was in URGENT at that point in time. For these purposes, the following assumptions have been made.

1. If a receipt (other than a seizure) was clearly indicated as belonging to a specific agency we applied it accordingly. A significant expense in this analysis was a number of vehicles leased by the County, at County expense, for the specific benefit of KPD. See **Appendix B** for further information as to these leases. There is some question as to whether the vehicles were used generally by KPD, for both URGENT operations and its own purposes (in which case the value of the leases should be charged against KPD only), or whether they were used exclusively in URGENT operations by KPD (in which case the value of the leases should be borne equally by all participating agencies). Therefore, in this Model, the lease expense has been considered alternatively as an expense distributed equally against the entire URGENT program (Table 2.1), and as an expense charged only against KPD (Table 2.2);
2. Seizures that were pre-URGENT were allocated to the UC Sheriff;

3. We prepared a schedule of seizures and the respective receipts from the DAG-71's filed with the Federal government, by seizure date. These receipts were then traced back to the general ledger and any differences were accounted for;
4. All expenditures, regardless of which account they were posted to (The Forfeiture Account or the Operating Account), were analyzed and allocated to the ten agencies as per the transaction date on the general ledger reports.

The summary of these results can be found in Table 2.1 and Table 2.2 in Appendix A.

As Table 2.1 reflects, under this Model, the UCSO, City of Kingston, and the Town of New Paltz are due back \$205,611, \$49,620, and \$4,693, respectively with the other agencies owing \$130,084 collectively back to URGENT.

If, however, the expense of the leases is charged to KPD only, the result reflected on Table 2.2 is that the City of Kingston and the UCSO are dueback \$269 and \$98,229, respectively. The Town of Woodstock would owe back to URGENT \$12,024 while the remaining agencies would be due back \$43,366.

**Model #3: The MOU is Binding and Distribution Should Have Been Made According to the MOU**

Because the MOU may be held to be legally binding and because agencies appear to have assumed it was an operative document, our third model assumes its terms should be applied. We reviewed the MOU, specifically Part VI, Section D, regarding forfeitures and the distribution of the same. Pursuant to the MOU, the initial "step" in determining how seized funds would be handled was to segregate the accounts according to whether they were over or under \$5,000.

1. Amounts under the \$5,000 threshold were allocated to the "Operating Fund" (MOU Section IV (D.5)).
2. Amounts over the \$5,000 threshold were further broken down as follows:
3. 35% was allocated to this "Operating Fund" (MOU Section IV (D.2)), and the remaining.
4. 45% was allocated to the "Funds to be Distributed" (MOU Section IV (D.3))

This segregation between the "Operating Fund" and "Funds to be Distributed" is detailed in Appendix A Table 3, and indicates that the amount to be distributed would be \$204,990.

In this Model, the City of Kingston would be owed \$23,900, as indicated by Appendix A Table 4. But, under this Model, *every* participating agency is entitled to a significant distribution payment. For instance, the UCSO would be owed \$24,602.

**Model #4: The "Quantum Meruit" Model; The MOU is Not Binding and Allocations of Cost and Distributions of Seized Funds Should be Made According to the Pro Rata Contributions of the Member Agencies:**

In the MOU, determining proportionate shares for distribution based on actual contributions to the program is only referenced if the amount of seized funds exceeds an aggregate higher than it ever actually reached. If the Forfeiture Account balance was below that value, proceeds were to be distributed *equally*. Moreover, even under the MOU provisions which contemplated the potential for a proportionate share of distributions, the MOU did *not* suggest a proportionate share of the *cost* burden. And, if the MOU is deemed not to have been effective, or if it was effective but never followed, the actual practice of the agencies does not support any understanding of the parties (including Kingston) that the costs or distributions were to be shared in accordance with actual contributions to the program. Rather, it reflects that the seized funds were regularly put back into working capital for the program and not distributed at all. Furthermore, the level of such an inquiry exceeds the scope of the present report, since it would require knowledge and records of every participating agency in order to determine the proportional share. We consider it an irresponsible expense to the taxpayers to conduct such a review absent a judicial determination that the *quantum meruit* argument is the appropriate model. At the very least, we would not conduct that inquiry without a formal opinion of the County Attorney that that model was to be applied. Ideally, the parties would consent to the model, allowing us to conduct any necessary inquiry in furtherance of a settlement. Absent a judicial decision, a formal opinion of counsel, or the consent of the parties, we cannot properly address this potential model and have not done so herein.

Also incorporated into the Model 2 calculations are URGENT seizures which have been submitted to the federal government under the cover of DAG-71 forms, which have not yet been returned to Ulster County. As noted above, the Federal government typically processes the seized assets and wires the remittance into the County's account at approximately 80% of the seized amount. As also previously noted, this amount is now diminished by an additional 20% because the D.A. files its own DAG-71s on URGENT seizures.

Therefore, in order to calculate the Account Receivable at June 30, 2012, we took the full seized amount of the DAG-71's that were filed in which we have not received any amount from the Federal government and applied a 60% recovery factor. We allocated the Accounts Receivable evenly to the agencies that existed at the seizure date.

This account receivable, as of June 30, 2012, is estimated to be approximately \$6,814, and is incorporated in Appendix A Table 2.1 & 2.2.

## L. FINDINGS

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The results of our report are broken into the above mentioned models as recapped underneath:

Model #1 Under this Model, no distribution is owed to any agency, and no agency has any liability to make payments into the URGENT program.

Model #2.1 In this case the City of Kingston would be owed \$49,620. It should be noted, however, that under this Model, the County Sheriff would be entitled to distribution of \$205,611, and the Town of New Paltz would be entitled to a distribution, as well. At least as important, the rest of the participating entities would be required to repay a large sum of money in order to fund this re-distribution. The wisdom of enforcing this result has to be seriously examined.

Model #2.2 Applying this model, we would back out the lease payments that were paid under Model 1 (\$23,323) and apply their direct lease costs (\$71,673). In this case the City of Kingston would be owed \$270 while the UCSO would be owed \$98,229. The other participating agencies balances can be seen in Table 2.2 in the Appendix. The same caveat as to the wisdom of pursuing this result must be considered.

Model #3 In this case the City of Kingston would be owed \$23,900. But, under this Model, every participating agency is entitled to a significant distribution. Again, we question whether it is prudent to seek enforcement of this Model, as it would likely have a detrimental impact on the URGENT program, and run counter to what appears to have been a mutual understanding of the agencies that putting seized funds back into the program made the most sense in terms of fulfilling URGENT's goals.

## M. RECOMMENDATIONS

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The following are our recommendations based on the foregoing findings:

1. In direct response to the City of Kingston's inquiry and the County Attorney's request for our review, we must state that our office could not in good conscience authorize any distribution to any participating member on the facts available to us. Moreover, further investigation of the issues raised by Kingston's withdrawal would be costly, and the parameters of that further inquiry might require judicial intervention.

2. If URGENT is to continue, a valid and binding agreement as to its operation should be entered into, and executed by participating agencies, each with the requisite authority to do so. It is our recommendation that the new agreement should not be retroactive unless Kingston is a signatory. It is our understanding that such an agreement has been circulated and is under consideration by the County Legislature. The Legislature and the County Attorney's office are cautioned to consider its terms in light of some of the ambiguities and recommendations made herein to determine whether modifications are appropriate. Among these considerations is provision for dissolution of the URGENT program or withdrawal of member agencies, to avoid this issue in the future. Further recommendations are contained in our September 17, 2012 memo to the legislature, attached hereto as **Exhibit 4.1**.
3. Meetings of the URGENT participating agencies should be noticed and minutes should be taken. Actions of URGENT should be taken in accordance with the new agreement.
4. If the District Attorney is to remain a participating agency, its practice of filing its own DAG-71 forms and receiving 20% of the seized proceeds should be memorialized in the new MOU so it is clear that the D.A.'s Office is not a participant in any sharing agreement, and so no member agency can claim not to have knowledge of the practice should a dispute arise.
5. There should be written procedures which specify when an expenditure is considered an URGENT expenditure as opposed to an ordinary operating expense. Our investigation revealed no policy or protocol for making this determination, which led to expenses being drawn from both the Operating Account and the Forfeiture Account without clear delineation.
6. If the parties cannot amicably reach an accord on whether, and if so, how much, must be distributed to Kingston (and, by implication, other participating agencies), then the County Attorney should issue a formal legal opinion as to whether the MOU was legally binding on the parties during the time when KPD was a participant, if so, what the contractual obligations require in terms of the application of a model of distribution, and, if not, what common law principles apply to the determination of cost and disbursement allocations for all parties, so that a detailed examination of all expenditures, contributions, seizures, and ancillary expenses and funding sources may be properly analyzed under the prescribed model.
7. The County Legislature should adopt a formal policy which states unequivocally that all intermunicipal agreements, and any document by which any agency, department, or office of the County is proposed to be bound, must be vetted through the contract review process in place for all other contracts, which includes, among others, review by the County Attorney's Office, the County Executive's Office, and the County Comptroller's Office.

## N. CONCLUSION

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There appear to be significant questions of fact and law with respect to the operation of URGENT and the use of seized funds. Given the uncertainties which might follow from a judicial determination of the matter, it seems to this office most prudent that the interested parties engage in discussion as to resolving the existing request by Kingston in a manner which does no harm to the program, or any of its other participating agencies.

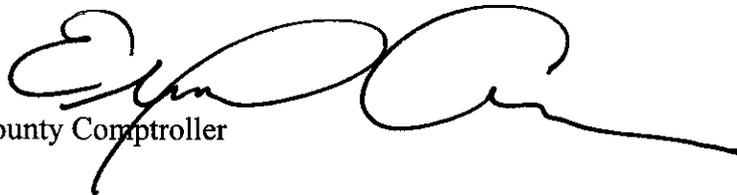
In light of the ambiguities noted, this report makes certain assumptions which could, themselves, be challenged, and the precise dates of participation, or the appropriate models of distribution, could be subject to change based on a detailed examination of every participating agencies' books and records, a level of inquiry deemed beyond the scope of this report without a legal opinion or judicial determination of the exact rights and obligations of the stakeholders. Indeed, it seems likely to our office that many of the participating agencies will not be able to produce that level of recordkeeping, as it was not contemplated by the MOU under which they believed they were operating.

This Report is therefore issued with the caveat that if the interested parties are unable to resolve the inquiry based on the guidance and recommendations offered herein, we will request a formal legal opinion of the County Attorney on the legal points raised herein in order to inform a further and more detailed investigation of the parties and the program, and conduct a new report in accordance with those legal opinions. We reserve the right to make this request. The possible results of a formal legal inquiry range from no distribution at all, to significant re-distribution in a manner which might well do damage to other agencies and threaten the continuation of the program.

We wish to thank the Sheriff's office and its staff, the Ulster County D.A.'s office, and the City of Kingston, and the County Attorney's Office for their help with gathering the needed items in order to complete this report.

Respectfully submitted,

Ulster County Comptroller

A handwritten signature in black ink, appearing to be 'E. J. ...', written over the printed name of the Ulster County Comptroller.

# **APPENDIX A**

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**TABLE 1**

**Table #1:****Agency Recap with Dates per UC Sheriff**

<b>Agency Name</b>	<b>In Date</b>	<b>Out Date</b>	<b>Re-Enter</b>
<b><u>Deemed to be in URGENT:</u></b>			
UC Sheriff	03/01/07	N/A	N/A
City of Kingston Police Department	03/01/07	07/15/11	N/A
Town of Saugerties	03/01/07	N/A	N/A
Town of New Paltz	03/01/07	07/15/10	N/A
Town of Woodstock	03/01/07	08/15/09	03/15/11
Town of Lloyd	03/01/07	N/A	N/A
Ulster County Probation	03/01/07	N/A	N/A
Town of Ulster	03/01/07	06/15/10	N/A
Town of Plattekill	10/15/08	N/A	N/A
UC District Attorney	03/01/07	N/A	N/A
<b><u>Not Deemed to be in URGENT:</u></b>			
Village of Ellenville	Was only in a couple of days		

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## **APPENDICES 2.1 & 2.2**

**Table #2.1 Model #2 (Equal Sharing of Receipts and Disbursements including the KPD Leases)**

	UC Sheriff	City of Kingston	Town of Saugerties	Town of New Paltz	Town of Woodstock	Town of Lloyd	UC Probation	Town of Ulster	Town of Pottskill	UC District Attorney
<b>Total</b>										
<b>Receipts:</b>										
Agency Contributions	\$ 170,277.25	\$ 65,000.00	\$ -	\$ 4,500.00	\$ -	\$ -	\$ -	\$ 10,136.87	\$ -	\$ 1,050.00
Forfeiture of Seizures	481,114.74	37,418.46	38,366.21	36,018.48	12,355.91	38,366.21	38,366.21	35,838.48	31,066.07	38,366.21
Interest	1,416.88	133.98	186.69	38.83	91.05	186.69	186.69	32.86	186.69	186.69
Estimated A/R @ 6/30/12	6,814.20	-	947.74	180.00	947.74	947.74	947.74	-	947.74	947.74
<b>Total Receipts</b>	<b>\$ 652,808.87</b>	<b>\$ 102,552.44</b>	<b>\$ 38,532.90</b>	<b>\$ 40,557.31</b>	<b>\$ 12,446.96</b>	<b>\$ 38,552.90</b>	<b>\$ 38,552.90</b>	<b>\$ 46,008.20</b>	<b>\$ 31,252.76</b>	<b>\$ 39,602.90</b>
<b>Expenditures:</b>										
Forfeiture Account (#1907)	\$ 138,277.87	\$ 14,475.11	\$ 15,722.11	\$ 2,214.81	\$ 12,966.84	\$ 15,722.11	\$ 15,722.11	\$ 14,288.44	\$ 15,722.11	\$ 15,722.11
Operations Account (#1909)	384,690.95	38,457.15	43,396.68	33,649.76	27,846.14	43,396.68	43,042.13	37,510.96	30,598.10	43,396.68
<b>Total Expenditures</b>	<b>\$ 522,968.82</b>	<b>\$ 52,932.26</b>	<b>\$ 59,118.79</b>	<b>\$ 35,864.57</b>	<b>\$ 40,812.99</b>	<b>\$ 59,118.79</b>	<b>\$ 58,764.24</b>	<b>\$ 51,799.39</b>	<b>\$ 46,320.21</b>	<b>\$ 59,118.79</b>
<b>Amount of Surplus (Deficit)</b>	<b>\$ 129,840.05</b>	<b>\$ 49,620.18</b>	<b>\$ (20,565.89)</b>	<b>\$ 4,692.74</b>	<b>\$ (28,366.03)</b>	<b>\$ (20,565.89)</b>	<b>\$ (20,211.34)</b>	<b>\$ (5,791.19)</b>	<b>\$ (15,067.45)</b>	<b>\$ (19,515.89)</b>

**Table #2.2 Model #3 (Equal Sharing of Receipts and Disbursements according to either KPD or UCSD)**

	UC Sheriff	City of Kingston	Town of Saugerties	Town of New Paltz	Town of Woodstock	Town of Lloyd	UC Probation	Town of Ulster	Town of Pottskill	UC District Attorney
<b>Total</b>										
<b>Receipts:</b>										
Agency Contributions	\$ 170,277.25	\$ 65,000.00	\$ -	\$ 4,500.00	\$ -	\$ -	\$ -	\$ 10,136.87	\$ -	\$ 1,050.00
Forfeiture of Seizures	481,114.74	37,418.46	38,366.21	36,018.48	12,355.91	38,366.21	38,366.21	35,838.48	31,066.07	38,366.21
Interest	1,416.88	133.98	186.69	38.83	91.05	186.69	186.69	32.86	186.69	186.69
Estimated A/R @ 6/30/12	6,814.20	-	947.74	180.00	947.74	947.74	947.74	-	947.74	947.74
<b>Total Receipts</b>	<b>\$ 652,808.87</b>	<b>\$ 102,552.44</b>	<b>\$ 38,532.90</b>	<b>\$ 40,557.31</b>	<b>\$ 12,446.96</b>	<b>\$ 38,552.90</b>	<b>\$ 38,552.90</b>	<b>\$ 46,008.20</b>	<b>\$ 31,252.76</b>	<b>\$ 39,602.90</b>
<b>Expenditures:</b>										
Forfeiture Account (#1907)	\$ 138,277.87	\$ 20,738.80	\$ 5,573.67	\$ 2,214.81	\$ 2,818.40	\$ 5,573.67	\$ 5,573.67	\$ 4,139.99	\$ 5,573.67	\$ 5,573.67
Operations Account (#1909)	384,690.95	81,543.87	31,222.51	23,954.45	21,652.50	31,222.51	30,867.96	25,336.79	21,665.04	31,222.51
<b>Total Expenditures</b>	<b>\$ 522,968.82</b>	<b>\$ 102,282.67</b>	<b>\$ 36,796.18</b>	<b>\$ 26,169.27</b>	<b>\$ 24,470.90</b>	<b>\$ 36,796.18</b>	<b>\$ 36,441.63</b>	<b>\$ 29,476.78</b>	<b>\$ 27,238.71</b>	<b>\$ 36,796.18</b>
<b>Amount of Surplus (Deficit)</b>	<b>\$ 129,840.05</b>	<b>\$ 269.77</b>	<b>\$ 1,756.72</b>	<b>\$ 14,388.04</b>	<b>\$ (12,023.95)</b>	<b>\$ 1,756.72</b>	<b>\$ 2,111.27</b>	<b>\$ 16,531.42</b>	<b>\$ 4,014.06</b>	<b>\$ 2,806.72</b>

**TABLE 3**

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**Table #3: Breakout of Seizures based on the MOU**

	<b>NET PROCEEDS FROM FED</b>	<b>OPERATING FUNDS</b>	<b>FUNDS TO BE DISTRIBUTED</b>
<b>Forfeitures seized under \$5,000</b>		<b>@100%</b>	
2007	\$ 10,358.81	\$ 10,358.81	
2008	4,991.08	4,991.08	
2009	6,189.02	6,189.02	
2010	2,135.44	2,135.44	
2011	1,670.58	1,670.58	
Est. A/R @ 6/30/12	3,814.20	3,814.20	
	<u>\$ 29,159.13</u>	<u>\$ 29,159.13</u>	
<b>Forfeitures seized over \$5,000</b>			
2008	\$ 71,573.02	\$ 25,050.56	\$ 46,522.46
2009	25,708.77	8,998.07	16,710.70
2010	204,118.20	71,441.37	132,676.83
2011	10,969.30	3,839.26	7,130.05
Est. A/R @ 6/30/12	3,000.00	1,050.00	1,950.00
	<u>\$ 315,369.29</u>	<u>\$ 110,379.25</u>	<u>\$ 204,990.04</u>
<b>Totals:</b>	<u><b>\$ 344,528.42</b></u>	<u><b>\$ 139,538.38</b></u>	<u><b>\$ 204,990.04</b></u>

**TABLE 4**

Table #4.0 Distribution Among Agencies (As per Percentage of Time in the Program by Year)

	UC Sheriff	City of Kingston	Town of Saugerties	Town of New Paltz	Town of Woodstock	Town of Lloyd	UC Probation	Town of Ulster	Town of Plettskill	UC District Attorney
2008 \$	46,522.46	\$ 5,052.21	\$ 5,052.21	\$ 5,052.21	\$ 5,052.21	\$ 5,052.21	\$ 5,052.21	\$ 5,052.21	\$ 1,052.54	\$ 5,052.21
2009	16,710.70	1,736.18	1,736.18	1,736.18	1,085.11	1,736.18	1,736.18	1,736.18	1,736.18	1,736.18
2010	132,676.83	16,584.60	16,584.60	8,983.33	-	16,584.60	16,584.60	7,601.28	16,584.60	16,584.60
2011	7,130.05	526.65	972.28	-	769.72	972.28	972.28	-	972.28	972.28
Estimated A/R @ 6/30/12	1,950.00	-	257.14	150.00	257.14	257.14	257.14	-	257.14	257.14
Distribution Amount \$	204,990.04	\$ 23,899.64	\$ 24,602.42	\$ 15,921.72	\$ 7,164.19	\$ 24,602.42	\$ 24,602.42	\$ 14,389.67	\$ 20,602.75	\$ 24,602.42

## **APPENDIX B**

## APPENDIX B

### The KPD Vehicle Leases

It was important to account for vehicles that Ulster County leased on behalf of KPD and segregate the cost and allocate specifically to KPD. During the course of this co-operative operation specific equipment was necessary to aide in accomplishing the mission of the program. In respect to this, several vehicles were leased by Ulster County and turned over to KPD for their needs.

In 2008, the first leases commenced for three Jeep Grand Cherokee Laredos, one Toyota Camry, and use of one Chrysler Town and Country.

- The three Jeeps were paid monthly from February 2008 through January 2011, and totaled \$38,419.
- The Camry was paid monthly from February 2008 through February 2011, and totaled \$10,832.
- The Town and Country was calculated at a 50/50 split between the Ulster County Sheriff department and KPD as it was used as an URGENT take down vehicle that was used solely by these two agencies from February 2008 thru February 2011. KPD's responsibility amounted to \$6,011.

In 2011, four more vehicles were leased on behalf of KPD by Ulster County. These were two Honda Accords, one Honda Pilot, and one Nissan Altima.

- The 2011 leases were paid in full at the commencement of the leases and therefore to calculate the amount KPD was responsible for, we estimated a monthly fee per vehicle and multiplied that by the amount of time KPD had possession of each vehicle.
- We were informed that the vehicles were returned to Ulster County's fleet April 3<sup>rd</sup>, 2012.
- The Pilot: March 2011 thru April 2012 and totaled \$4,498.
- Two Accords: March 2011 thru April 2012 and totaled \$7,640.
- The Altima: February 2011 thru April 2012 and totaled \$4,274.

The value of the leases totaled \$71,673. In Model 2.1, this cost is allocated equitably to all participating agencies. In Model 2.2, it is attributed to KPD only.

**EXHIBIT 1**

**EXHIBIT 1.1**

2007

**Ulster Regional Gang Enforcement Narcotics Team  
U.R.G.E.N.T.**

**MEMORANDUM OF UNDERSTANDING**

The City of Kingston Police Department, the Ulster County Sheriff's Office, the Ulster County Probation Dept., Ulster County District Attorneys Office, the town and village police departments in the county of Ulster, the ATF, the DEA, the FBI and the NYS Division of Parole in connection with the Ulster Regional Gang Enforcement Narcotics Team (URGENT), are executing this Memorandum of Understanding (MOU). The above listed agencies jointly and separately agree to abide by the terms and provisions of this MOU throughout the duration of this joint operation.

**I. Purpose**

The purpose of these guidelines is to outline the mission of the Ulster Regional Gang Enforcement Narcotics Team. Additionally, these guidelines will formalize relationships between the participating agencies with regard to items such as policy guidance, planning, training, public relations, reimbursements, funding, and media coordination in order to maximize interagency cooperation.

**II. Mission**

The mission of URGENT is to achieve maximum coordination and cooperation, and bring to bear the combined resources of member agencies to primarily investigate gang members and affiliates involved in criminal enterprises as well as low and mid level narcotic related offenses utilizing both state and federal laws.

**III. Organization, Supervision and Chain of Command**

URGENT will be comprised of a combined enforcement body of members from the above named agencies. The policy, program, involvement and direction of URGENT shall be joint responsibility of the chief administrators of the respective agencies. These administrators agree to establish a governing body consisting of a representative from the Kingston Police Department, the Ulster County Sheriff's Office and a member chosen from a Town or Village Police Department, to oversee the administrative functions and concerns of URGENT. The Kingston Police Department will assign one Det. Lieutenant and the UCSO will supply one Detective Sgt. as the commanders of URGENT. In the absence of the Det. Lt. or Det. Sgt., 3 members will be designated as Officers in Charge (OIC). All members assigned to URGENT will be cross-designated by the Ulster County Sheriff's Office and will take an oath of office.

#### **IV. Personnel**

It is understood and agreed that occasionally exigent circumstances affecting the mission of the member agencies may require the diversion of the above resources, including technical equipment, away from URGENT for a reasonable period of time.

Member agencies with personnel assigned to URGENT, that remove their personnel for non-exigent circumstance, must replace them within 60 days, or after that time are no longer eligible for asset forfeiture sharing.

#### **V. Expenditures**

##### **A. Overtime**

Overtime will be paid by the officer's respective agency. All overtime must be pre-approved by a URGENT supervisor.

##### **B. Equipment**

The member agencies agree to provide the necessary property, goods and equipment that they respectively already own. Member agencies will separately purchase equipment when necessary. If URGENT ceases operations, it shall deliver to the appropriate procuring agency any equipment and/or property purchased under this agreement. All equipment will be marked for identification and inventoried by the procuring agency. Any purchases made prior to this agreement are the responsibility of the purchasing agency.

##### **C. Office Equipment**

The member agencies, to the extent possible, agree to provide necessary office equipment and needed supplies to carry out the administrative operation of URGENT.

##### **D. Office Space**

The UCSO shall agree to provide office space for URGENT at the Ulster County Law Enforcement Center.

#### **E. Technical expenses**

The member agencies agree that technical expenses related to pens and eavesdropping investigations will be paid for with asset forfeiture monies.

#### **F. Evidence Fund**

The member agencies agree that the evidence fund will be funded with asset forfeiture monies.

#### **G. Cellular Phones and Pagers**

The member agencies agree to supply their representative(s) with a Nextel cellular phone with point to point and group activation.

#### **H. Miscellaneous Expenses**

The member agencies agree that miscellaneous expenses such as training, rental cars, investigative travel, etc. will be funded with asset forfeiture monies.

### **VI. Procedures**

#### **A. Selection of Personnel**

Prior to being assigned to URGENT, a prospective member must undergo a formal review by his/her Departmental command staff to insure an exemplary disciplinary record with no integrity concerns. The prospective member must then participate in a selection process with the command staff of URGENT that will make a recommendation to the chief administrator of the prospective member's department.

#### **B. Investigations**

All cases will be jointly investigated. Members from participating agencies will staff each URGENT investigation. It is, therefore, agreed that no member agency will act unilaterally.

#### **C. Media**

All media releases and statements will be mutually agreed upon and jointly handled within existing member agencies guidelines. Under no circumstances will a member agency make any statements to the media about any URGENT investigation and/or arrest without the prior clearance from the URGENT commanders. The Commanding Officer and Sergeant of URGENT are authorized to make media

releases on routine arrests and seizures. All media releases will include notification and/or participation of the chief administrator in the jurisdiction of occurrence.

#### D. Forfeitures

Any properties or funds confiscated, with a value greater than \$1000.00, which are a direct result of a criminal investigation will be processed by the URGENT Asset Forfeiture Officer pursuant to forfeiture regulations of the United States Department of Justice and/or the Ulster County District Attorney's Office agree to the following division of funds:

1. 20% of the forfeiture will be designated for the mandatory federal asset forfeiture administrative fees
2. 35% of the forfeitures will be earmarked for the URGENT fund. This fund will be utilized for operating expenses outlined in section V of this MOU. Once the fund has reached one and one half times the amount of the projected annual budget, no additional monies will be added to this account and all monies will be dispersed per section VI. D.3. of this MOU until it reaches the level of the annual budget.
3. 45% of the forfeitures will be divided equally between the participating agencies starting in a fiscal year of January 1<sup>st</sup> to December 31<sup>st</sup> and will be pro-rated monthly thereafter. Once the participating agencies have each received \$25,000.00 during the fiscal year, the division of funds will then be computed on a percentage based upon personnel assigned. Each person assigned shall be given an equal percentage and the Ulster County District Attorney's Office will receive consideration of two people assigned to the task force. In the event an agency joins during the fiscal year a portion of the \$25,000.00 base funds will be pro-rated on a monthly basis, based upon number of months the agency participates that fiscal year.
4. The operating budget for URGENT during the fiscal year March 2007/December 2007 is currently undetermined but should be available to sustain itself through contributions of agencies involved for the that period. Each fiscal year shall be from January 1<sup>st</sup> through and including December 31 and will be a budget item for 2008/2009.
5. Seizures of less than \$5000.00 will be fully deposited in the URGENT fund, minus the 20% federal administrative fee, regardless of the fund balance.
6. When a non-URGENT member of a participating agency within URGENT

seizes US currency, or property of value, that agency will be individually responsible for and entitled to, the entire seizure of the money or property of value.

7. In the event that URGENT processes an asset forfeiture for any agency, participating or not, there will be a 10% administrative charge which shall be earmarked for the URGENT fund. More "routine" assistance does not make that case an URGENT investigation. All agencies are encouraged to contact URGENT staff for intelligence purposes and or follow up assistance as needed.
8. Any seizure not specified in this MOU will be clarified by the three appointed members of the governing board.

#### E. Evaluation

The agencies involved agree to monitor the progress and effectiveness of this effort. An evaluation of the nature and result of URGENT investigations will be conducted by the chief administrators, by way of a quarterly report and meeting with the URGENT commanders. The criteria for evaluation will include but not be limited to the number of investigations completed, number of arrests, and amount of seizures and impact on the community. Modifications or adjustments to this mission will be implemented when necessary. In addition to a quarterly report all records kept in the course of normal business shall be available upon request for inspection by a representative of each of the participating agencies.

#### F. Firearms Training/Qualification and Related Training

All investigative personnel assigned to URGENT shall continue routine firearms training and qualification as provided and required by their respective agencies in addition to any training that might be provided by URGENT.

#### G. Use of Vehicles

If it is determined to be operationally necessary, the member agencies hereby agree and authorize members of URGENT to use vehicles from all agencies for the furtherance of the mission of this unit. Vehicles shall be used in compliance with existing member agency policy.

In regards to vehicles, each party hereby agrees to defend, indemnify and save harmless the other party against any and all liability, loss damage, suit, charge attorney's fees and expenses of whatever kind or nature which the other party may directly or indirectly incur, or be required to pay by reason or in consequence of the intentionally wrongful or negligent act or omission of the party, its agents, employees or contractors. If a claim or action is made or brought against either party and for which the other party may be responsible hereunder in whole or in

URGENT 3/2007 - 12/2007 M.O.U.

Executive Officers Signatures

*Paul J. VanBlarcum*

Sheriff Paul VanBlarcum - Ulster Co. S.O.

*Gerald Keller*

Chief Gerald Keller - Kingston PD

*Phil Mattricion*

Chief Phil Mattricion - V/Ellenville PD

*Robert Sudlow*

Robert Sudlow - Ulster County Probation

Chief Harry Baldwin - T/Woodstock PD

*Ray Zappone*

Chief Ray Zappone - T/New Paltz PD

*Paul Watzka*

Chief Paul Watzka - T/Ulster PD

*Donald A. Williams*

Donald Williams - Ulster County District Attorney's Office

*John Howe*

NYS Division of Parole representative

*Howe Ball*

✓ CHIEF GREGORY M. HULBERT - T/Saugerties PD

*Gregory M. Hulbert*

**EXHIBIT 1.2**

2008

**Ulster Regional Gang Enforcement Narcotics Team  
U.R.G.E.N.T.**

**MEMORANDUM OF UNDERSTANDING**

The City of Kingston Police Department, the Ulster County Sheriff's Office, the Ulster County Probation Department, the town and village police departments in the County of Ulster, the ATF, the DEA, and the Ulster County District Attorneys Office in connection with the Ulster Regional Gang Enforcement Narcotics Team (URGENT), are executing this Memorandum of Understanding (MOU). The above listed agencies jointly and separately agree to abide by the terms and provisions of this MOU throughout the duration of this joint operation.

**I. Purpose**

The purpose of these guidelines is to outline the mission of the Ulster Regional Gang Enforcement Narcotics Team. Additionally, these guidelines will formalize relationships between the participating agencies with regard to items such as policy guidance, planning, training, public relations, reimbursements, funding, and media coordination in order to maximize interagency cooperation.

**II. Mission**

The mission of URGENT is to achieve maximum coordination and cooperation, and bring to bear the combined resources of member agencies to primarily investigate gang members and affiliates involved in criminal enterprises as well as low and mid level narcotic related offenses utilizing both state and federal laws.

**III. Organization, Supervision and Chain of Command**

URGENT will be comprised of a combined enforcement body of members from the above named agencies. The policy, program, involvement and direction of URGENT shall be joint responsibility of the chief administrators of the respective agencies. These administrators agree to establish a "Governing Body" which shall consist of a representative from the Kingston Police Department, the Ulster County Sheriff's Office, a member chosen from a Town or Village Police Department, and a member of the Ulster County District Attorney's Office, to oversee the administrative functions and concerns of URGENT. The Kingston Police Department will assign one Detective Lieutenant and the UCSO will supply one Detective Lieutenant. as the commanders of URGENT. In the absence of the Detective Lieutenant, 3 members will be designated as Officers in Charge (OIC).

**IV. Personnel**

It is understood and agreed that occasionally exigent circumstances affecting the mission of the member agencies may require the diversion of the above resources,

including technical equipment, away from URGENT for a reasonable period of time.

Member agencies with personnel assigned to URGENT, that remove their personnel for non-exigent circumstance, must replace them within 60 days, or after that time are no longer eligible for asset forfeiture sharing.

## **V. Expenditures**

### **A. Overtime**

Overtime will be paid by the officer's respective agency. All overtime must be pre-approved by a URGENT supervisor.

### **B. Equipment**

The member agencies agree to provide the necessary property, goods and equipment that they respectively already own. Member agencies will separately purchase equipment when necessary. If URGENT ceases operations, it shall deliver to the appropriate procuring agency any equipment and/or property purchased under this agreement. All equipment will be marked for identification and inventoried by the procuring agency. Any purchases made prior to this agreement are the responsibility of the purchasing agency.

### **C. Leasing of Vehicles, Equipment, Office Equipment and Office Space**

The three appointed members of the Governing Body will decide when the leasing of vehicles, equipment, office equipment and office space is necessary for the continuous and proper administration of URGENT. Ulster County, through the Purchasing Agent or the Chairman of the Legislature, will have the authority to sign off on such lease agreements, as per proper Ulster County procedure, upon the final decision of the Governing Body.

### **D. Office Equipment**

The member agencies, to the extent possible, agree to provide necessary office equipment and needed supplies to carry out the administrative operation of URGENT.

### **E. Office Space**

The UCSO shall agree to provide office space for URGENT at the Ulster County Law Enforcement Center.

#### **F. Technical expenses**

The member agencies agree that technical expenses related to pens and eavesdropping investigations will be paid for with asset forfeiture monies, if available.

#### **G. Evidence Fund**

The member agencies agree that the evidence fund will be funded with asset forfeiture monies, if available.

#### **H. Cellular Phones and Pagers**

The member agencies agree to supply their representative(s) with a Nextel cellular phone with point to point and group activation.

#### **I. Miscellaneous Expenses**

The member agencies agree that miscellaneous expenses such as training, rental cars, investigative travel, etc. will be funded with asset forfeiture monies, if available.

#### **J. Unspecified Expenditures**

Any expenditure not specified in this Memorandum of Understanding, will be clarified by the three appointed members of the Governing Body.

### **VI. Procedures**

#### **A. Selection of Personnel**

Prior to being assigned to URGENT, a prospective member must undergo a formal review by his/her Departmental command staff to insure an exemplary disciplinary record with no integrity concerns. The prospective member must then participate in a selection process with the command staff of URGENT that will make a recommendation to the chief administrator of the prospective member's department.

#### **B. Investigations**

All cases will be jointly investigated. Members from participating agencies will staff each URGENT investigation. It is, therefore, agreed that no member agency will act unilaterally.

### **C. Media**

All media releases and statements will be mutually agreed upon and jointly handled within existing member agencies guidelines. Under no circumstances will a member agency make any statements to the media about any URGENT investigation and/or arrest without the prior clearance from the URGENT commanders. The Commanding Officer and Sergeant of URGENT are authorized to make media releases on routine arrests and seizures. All media releases will include notification and/or participation of the chief administrator in the jurisdiction of occurrence.

### **D. Forfeitures**

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3. 45% of the forfeitures will be divided equally between the participating agencies starting in a fiscal year of January 1<sup>st</sup> to December 31<sup>st</sup> and will be pro-rated monthly thereafter. Once the participating agencies have each received \$25,000.00 during the fiscal year, the division of funds will then be computed on a percentage based upon personnel assigned. Each person assigned shall be given an equal percentage and the Ulster County District Attorney's Office will receive consideration of two people assigned to the task force. In the event an agency joins during the fiscal year a portion of the \$25,000.00 base funds will be pro-rated on a monthly basis, based upon number of months the agency participates that fiscal year.
4. The operating budget for URGENT shall be on a fiscal year, from January 1<sup>st</sup> through and including December 31.
5. Seizures of less than \$5000.00 will be fully deposited in the URGENT fund, minus the 20% federal administrative fee, regardless of the fund balance.
6. When a non-URGENT member of a participating agency within URGENT

seizes US currency, or property of value, that agency will be individually responsible for and entitled to, the entire seizure of the money or property of value.

7. In the event that URGENT processes an asset forfeiture for any agency, participating or not, there will be a 10% administrative charge which shall be earmarked for the URGENT fund. More "routine" assistance does not make that case an URGENT investigation. All agencies are encouraged to contact URGENT staff for intelligence purposes and or follow up assistance as needed.
8. Any seizure not specified in this MOU will be clarified by the three appointed members of the Governing Body.

#### **E. Evaluation**

The agencies involved agree to monitor the progress and effectiveness of this effort. An evaluation of the nature and result of URGENT investigations will be conducted by the chief administrators, by way of a quarterly report and meeting with the URGENT commanders. The criteria for evaluation will include but not be limited to the number of investigations completed, number of arrests, and amount of seizures and impact on the community. Modifications or adjustments to this mission will be implemented when necessary. In addition to a quarterly report all records kept in the course of normal business shall be available upon request for inspection by a representative of each of the participating agencies.

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#### **G. Use of Vehicles**

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Each party hereby agrees to defend, indemnify and save harmless the other party against any and all liability, loss damage, suit, charge attorney's fees and expenses of whatever kind or nature which the other party may directly or indirectly incur, or be required to pay by reason or in consequence of the intentionally wrongful or negligent act or omission of the party, its agents, employees or contractors. If a claim or action is made or brought against either party and for which the other party may be responsible hereunder in whole or in part, then the other party shall

be notified and shall handle or participate in the handling of the defense of such matter.

Participating agencies also agree to provide fuel, routine maintenance and repairs for their respective vehicles. Inter-agency use of vehicles is to be closely monitored by supervisors.

#### **H. Informants**

All informants, either compensated or contractual, must be formally processed in accordance with URGENT's written informant policy prior to being actively utilized. The written informant policy will also govern the management of informants.

#### **I. Report and Evidence Policy**

All reports and evidence will be processed and maintained in accordance with the written policies of the Kingston Police Department and the Ulster County Sheriff's Office. KPD reports and evidence procedures will be utilized for investigations that are initiated within the City of Kingston. UCSO reports and evidence procedures will be utilized for all investigations occurring outside of the City of Kingston.

#### **J. Personnel Complaints**

Citizen and internal complaints against an officer or officers assigned to URGENT will be forwarded to the Commanding Officer of URGENT. If the complaint cannot be resolved or is in violation of the member's departmental policies and procedures or of URGENT's policies and procedures, the complaint will be forwarded to the member's agency. The Department agency head or designee will conduct a joint investigation, with the commanding officer of designee from URGENT. Nothing in this section precludes any citizen from going directly to an officer's department to file a complaint.

#### **K. Modification and Determination**

This agreement may be modified at any time by written consent of the agencies. Any participating agency may terminate its participation in URGENT under this MOU by delivering a written notice of termination to the other participating agencies. This agreement will be in effect from 01/01/2008 – 12/31/2008.

URGENT 01/01/2008 – 12/31/2008 M.O.U.

Executive Officers Signatures

*Paul VanBlarcum*

Sheriff Paul VanBlarcum – Ulster Co. S.O.

*Gerald Keller*

Chief Gerald Keller – Kingston PD

Chief Phil Mattrieion – Y/Ellenville PD

*Robert Sudlow*

Robert Sudlow – Ulster County Probation

Chief Harry Baldwin – T/Woodstock PD

*Ray Zappone*

Chief Ray Zappone – T/New Paltz PD

*Paul Watzka*

Chief Paul Watzka – T/Ulster PD

ATF Representative

DEA Representative

*D. Holley Carnright*

D. Holley Carnright – Ulster County District Attorney's Office

CHIEF RAY ZAPPONE - TOWN OF NEW PALTZ POLICE DEPT.

**EXHIBIT 1.3**

2009/10

**Ulster Regional Gang Enforcement Narcotics Team  
U.R.G.E.N.T.**

**MEMORANDUM OF UNDERSTANDING**

The City of Kingston Police Department, the Ulster County Sheriff's Office, the Ulster County Probation Department, the town and village police departments in the County of Ulster, the ATF, the DEA, and the Ulster County District Attorneys Office in connection with the Ulster Regional Gang Enforcement Narcotics Team (URGENT), are executing this Memorandum of Understanding (MOU). The above listed agencies jointly and separately agree to abide by the terms and provisions of this MOU throughout the duration of this joint operation.

**I. Purpose**

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including technical equipment, away from URGENT for a reasonable period of time.

Member agencies with personnel assigned to URGENT, that remove their personnel for non-exigent circumstance, must replace them within 60 days, or after that time are no longer eligible for asset forfeiture sharing.

## **V. Expenditures**

### **A. Overtime**

Overtime will be paid by the officer's respective agency. All overtime must be pre-approved by a URGENT supervisor.

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The member agencies agree to provide the necessary property, goods and equipment that they respectively already own. Member agencies will separately purchase equipment when necessary. If URGENT ceases operations, it shall deliver to the appropriate procuring agency any equipment and/or property purchased under this agreement. All equipment will be marked for identification and inventoried by the procuring agency. Any purchases made prior to this agreement are the responsibility of the purchasing agency.

### **C. Leasing of Vehicles, Equipment, Office Equipment and Office Space**

The three appointed members of the Governing Body will decide when the leasing of vehicles, equipment, office equipment and office space is necessary for the continuous and proper administration of URGENT. Ulster County, through the Purchasing Agent or the Chairman of the Legislature, will have the authority to sign off on such lease agreements, as per proper Ulster County procedure, upon the final decision of the Governing Body.

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The member agencies agree that technical expenses related to pens and eavesdropping investigations will be paid for with asset forfeiture monies, if available.

#### **G. Evidence Fund**

The member agencies agree that the evidence fund will be funded with asset forfeiture monies, if available.

#### **H. Cellular Phones and Pagers**

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#### **I. Miscellaneous Expenses**

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#### **J. Unspecified Expenditures**

Any expenditure not specified in this Memorandum of Understanding, will be clarified by the three appointed members of the Governing Body.

### **VI. Procedures**

#### **A. Selection of Personnel**

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#### **B. Investigations**

All cases will be jointly investigated. Members from participating agencies will staff each URGENT investigation. It is, therefore, agreed that no member agency will act unilaterally.

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All media releases and statements will be mutually agreed upon and jointly handled within existing member agencies guidelines. Under no circumstances will a member agency make any statements to the media about any URGENT investigation and/or arrest without the prior clearance from the URGENT commanders. The Commanding Officer and Sergeant of URGENT are authorized to make media releases on routine arrests and seizures. All media releases will include notification and/or participation of the chief administrator in the jurisdiction of occurrence.

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3. 45% of the forfeitures will be divided equally between the participating agencies starting in a fiscal year of January 1<sup>st</sup> to December 31<sup>st</sup> and will be pro-rated monthly thereafter. Once the participating agencies have each received \$25,000.00 during the fiscal year, the division of funds will then be computed on a percentage based upon personnel assigned. Each person assigned shall be given an equal percentage and the Ulster County District Attorney's Office will receive consideration of two people assigned to the task force. In the event an agency joins during the fiscal year a portion of the \$25,000.00 base funds will be pro-rated on a monthly basis, based upon number of months the agency participates that fiscal year, unless mutually agreed to by advisory council.
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8. Any seizure not specified in this MOU will be clarified by the three appointed members of the Governing Body.

#### **E. Evaluation**

The agencies involved agree to monitor the progress and effectiveness of this effort. An evaluation of the nature and result of URGENT investigations will be conducted by the chief administrators, by way of a quarterly report and meeting with the URGENT commanders. The criteria for evaluation will include but not be limited to the number of investigations completed, number of arrests, and amount of seizures and impact on the community. Modifications or adjustments to this mission will be implemented when necessary. In addition to a quarterly report all records kept in the course of normal business shall be available upon request for inspection by a representative of each of the participating agencies.

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#### **G. Use of Vehicles**

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Each party hereby agrees to defend, indemnify and save harmless the other party against any and all liability, loss damage, suit, charge attorney's fees and expenses of whatever kind or nature which the other party may directly or indirectly incur, or be required to pay by reason or in consequence of the intentionally wrongful or negligent act or omission of the party, its agents, employees or contractors. If a

claim or action is made or brought against either party and for which the other party may be responsible hereunder in whole or in part, then the other party shall be notified and shall handle or participate in the handling of the defense of such matter.

Participating agencies also agree to provide fuel, routine maintenance and repairs for their respective vehicles. Inter-agency use of vehicles is to be closely monitored by supervisors.

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#### **J. Personnel Complaints**

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#### **K. Modification and Determination**

This agreement may be modified at any time by written consent of the agencies. Any participating agency may terminate its participation in URGENT under this MOU by delivering a written notice of termination to the other participating agencies. This agreement will be in effect from 01/01/2009 – 12/31/2010.

URGENT 01/01/2009 - 12/31/2010 M.O.U.

Executive Officers Signatures

*Paul VanBlaricum*

Sheriff Paul VanBlaricum - Ulster Co. S.O. ✓

*Gerald M Keller*

Chief Gerald Keller - Kingston PD ✓

Chief Phil Mattricion - V/Ellenville PD

Melanie Mullins - Ulster County Probation

*Lou Barbaria*

Chief Lou Barbaria - T/Saugerties ✓

*Joseph Snyder*

Chief Joseph Snyder - T/New Paltz PD ✓

*Paul Watzka*

Chief Paul Watzka - T/Ulster PD ✓

*Paul Watzka*

Chief Joe Ryan - T/Plattekill ✓

*D. Holley Carnright*

D. Holley Carnright - Ulster County District Attorney's Office ✓

*Clayton Keefe*

Chief Clayton Keefe - Woodstock PD ✓

**EXHIBIT 1.4**

~~SECRET~~  
2011/12

**Ulster Regional Gang Enforcement Narcotics Team  
U.R.G.E.N.T.**

**MEMORANDUM OF UNDERSTANDING**

The City of Kingston Police Department, the Ulster County Sheriff's Office, the Ulster County Probation Department, the town and village police departments in the County of Ulster, the ATF, the DEA, and the Ulster County District Attorneys Office in connection with the Ulster Regional Gang Enforcement Narcotics Team (URGENT), are executing this Memorandum of Understanding (MOU). The above listed agencies jointly and separately agree to abide by the terms and provisions of this MOU throughout the duration of this joint operation.

**I. Purpose**

The purpose of these guidelines is to outline the mission of the Ulster Regional Gang Enforcement Narcotics Team. Additionally, these guidelines will formalize relationships between the participating agencies with regard to items such as policy guidance, planning, training, public relations, reimbursements, funding, and media coordination in order to maximize interagency cooperation.

**II. Mission**

The mission of URGENT is to achieve maximum coordination and cooperation, and bring to bear the combined resources of member agencies to primarily investigate gang members and affiliates involved in criminal enterprises as well as low and mid level narcotic related offenses utilizing both state and federal laws.

**III. Organization, Supervision and Chain of Command**

URGENT will be comprised of a combined enforcement body of members from the above named agencies. The policy, program, involvement and direction of URGENT shall be joint responsibility of the chief administrators of the respective agencies. These administrators agree to establish a "Governing Body" which shall consist of a representative from the Kingston Police Department, the Ulster County Sheriff's Office, a member chosen from a Town or Village Police Department, and a member of the Ulster County District Attorney's Office, to oversee the administrative functions and concerns of URGENT. The Kingston Police Department will assign one Detective Lieutenant and the UCSO will supply one Detective Lieutenant, as the commanders of URGENT. In the absence of the Detective Lieutenant, 3 members will be designated as Officers in Charge (OIC).

**IV. Personnel**

It is understood and agreed that occasionally exigent circumstances affecting the mission of the member agencies may require the diversion of the above resources,

including technical equipment, away from URGENT for a reasonable period of time.

Member agencies with personnel assigned to URGENT, that remove their personnel for non-exigent circumstance, must replace them within 60 days, or after that time are no longer eligible for asset forfeiture sharing.

## **V. Expenditures**

### **A. Overtime**

Overtime will be paid by the officer's respective agency. All overtime must be pre-approved by a URGENT supervisor.

### **B. Equipment**

The member agencies agree to provide the necessary property, goods and equipment that they respectively already own. Member agencies will separately purchase equipment when necessary. If URGENT ceases operations, it shall deliver to the appropriate procuring agency any equipment and/or property purchased under this agreement. All equipment will be marked for identification and inventoried by the procuring agency. Any purchases made prior to this agreement are the responsibility of the purchasing agency.

### **C. Leasing of Vehicles, Equipment, Office Equipment and Office Space**

The three appointed members of the Governing Body will decide when the leasing of vehicles, equipment, office equipment and office space is necessary for the continuous and proper administration of URGENT. Ulster County, through the Purchasing Agent or the Chairman of the Legislature, will have the authority to sign off on such lease agreements, as per proper Ulster County procedure, upon the final decision of the Governing Body.

### **D. Office Equipment**

The member agencies, to the extent possible, agree to provide necessary office equipment and needed supplies to carry out the administrative operation of URGENT.

### **E. Office Space**

The UCSO shall agree to provide office space for URGENT at the Ulster County Law Enforcement Center.

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6. When a non-URGENT member of a participating agency within URGENT seizes US currency, or property of value, that agency will be individually responsible for and entitled to, the entire seizure of the money or property of value.
7. In the event that URGENT processes an asset forfeiture for any agency, participating or not, there will be a 10% administrative charge which shall be earmarked for the URGENT fund. More "routine" assistance does not make that case an URGENT investigation. All agencies are encouraged to contact URGENT staff for intelligence purposes and or follow up assistance as needed.
8. Any seizure not specified in this MOU will be clarified by the three appointed members of the Governing Body.

#### **E. Evaluation**

The agencies involved agree to monitor the progress and effectiveness of this effort. An evaluation of the nature and result of URGENT investigations will be conducted by the chief administrators, by way of a quarterly report and meeting with the URGENT commanders. The criteria for evaluation will include but not be limited to the number of investigations completed, number of arrests, and amount of seizures and impact on the community. Modifications or adjustments to this mission will be implemented when necessary. In addition to a quarterly report all records kept in the course of normal business shall be available upon request for inspection by a representative of each of the participating agencies.

#### **F. Firearms Training/Qualification and Related Training**

All investigative personnel assigned to URGENT shall continue routine firearms training and qualification as provided and required by their respective agencies in addition to any training that might be provided by URGENT.

#### **G. Use of Vehicles**

If it is determined to be operationally necessary, the member agencies hereby agree and authorize members of URGENT to use vehicles from all agencies for the furtherance of the mission of this unit. Vehicles shall be used in compliance with existing member agency policy.

Each party hereby agrees to defend, indemnify and save harmless the other party against any and all liability, loss damage, suit, charge attorney's fees and expenses of whatever kind or nature which the other party may directly or indirectly incur, or be required to pay by reason or in consequence of the intentionally wrongful or negligent act or omission of the party, its agents, employees or contractors. If a

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claim or action is made or brought against either party and for which the other party may be responsible hereunder in whole or in part, then the other party shall be notified and shall handle or participate in the handling of the defense of such matter.

Participating agencies also agree to provide fuel, routine maintenance and repairs for their respective vehicles. Inter-agency use of vehicles is to be closely monitored by supervisors.

#### **H. Informants**

All informants, either compensated or contractual, must be formally processed in accordance with URGENT's written informant policy prior to being actively utilized. The written informant policy will also govern the management of informants.

#### **I. Report and Evidence Policy**

All reports and evidence will be processed and maintained in accordance with the written policies of the Kingston Police Department and the Ulster County Sheriff's Office. KPD reports and evidence procedures will be utilized for investigations that are initiated within the City of Kingston. UCSO reports and evidence procedures will be utilized for all investigations occurring outside of the City of Kingston.

#### **J. Personnel Complaints**

Citizen and internal complaints against an officer or officers assigned to URGENT will be forwarded to the Commanding Officer of URGENT. If the complaint cannot be resolved or is in violation of the member's departmental policies and procedures or of URGENT's policies and procedures, the complaint will be forwarded to the member's agency. The Department agency head or designee will conduct a joint investigation, with the commanding officer of designee from URGENT. Nothing in this section precludes any citizen from going directly to an officer's department to file a complaint.

#### **K. Modification and Determination**

This agreement may be modified at any time by written consent of the agencies. Any participating agency may terminate its participation in URGENT under this MOU by delivering a written notice of termination to the other participating agencies. This agreement will be in effect from 01/01/2011 – 12/31/2012.

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URGENT 01/01/2011 - 12/31/2012 M.O.U.

Executive Officers Signatures

 - PVB

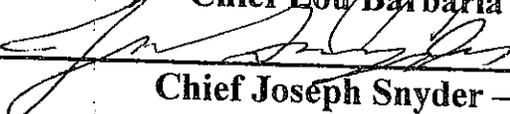
Sheriff Paul VanBlarcum - Ulster Co. S.O. ✓

  
Chief Gerald Keller - Kingston PD ✓

Chief Phil Mattricion - V/Ellenville PD

Melanie Mullins - Ulster County Probation

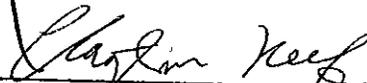
  
Chief Lou Barbara - T/Saugerties ✓

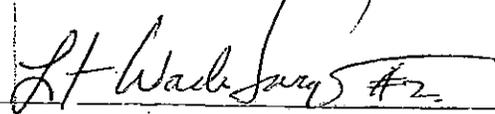
  
Chief Joseph Snyder - T/New Paltz PD ✓

Chief Paul Watzka - T/Ulster PD

  
Chief Joe Ryan - T/Plattekill ✓

D. Holley Carnright - Ulster County District Attorney's Office ✓

  
Chief Clayton Keefe - Woodstock PD ✓

 #2 - LT. Wade Sargent ✓

Chief David Ackert - T/ Lloyd PD

\* Signed with approval and on behalf of Chief Ackert

**EXHIBIT 2**

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**EXHIBIT 2.1**

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# City of Kingston



*Andrew Zweben  
Corporation Counsel*

*Daniel Gartenstein  
Assistant Corporation Counsel*

*City Hall  
420 Broadway  
Kingston, New York 12401*

*Telephone (845) 331-0080  
Extension 3947*

*Office of the Corporation Counsel*

*Fax (845) 334-3959*

## RECEIVED

JUN 06 2012

June 5, 2012

Bea Havranek, Esq.  
Ulster County Attorney  
P.O. Box 1800  
Kingston, New York 12401

ULSTER COUNTY ATTORNEY

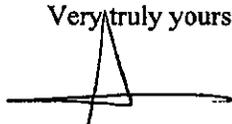
Re: URGENT Agreement

Dear Ms. Havranek; 

As you know the City of Kingston has advised the Ulster County Sheriff's office that it will no longer be able to participate in the URGENT program under the existing terms and conditions. I also understand that the contract under which the various municipalities were operating was not approved by the Ulster County Legislature.

In addition to expressing the responsibilities of the various municipal police agencies the agreement provides for the division of expenses and seized assets. Under the circumstances we should undertake an effort to unwind the relationship(s) that have been formed and resolve the disposition of outstanding expenses and assets including assets due from past operations. I would suggest we meet for that purpose. At your convenience please give me a call so we can set up a time and place to meet. If you wish you can have your office call Janet Higgins at 334-3947 and she will facilitate the process.

Very truly yours,

  
Andrew P. Zweben  
Corporation Counsel

## **EXHIBIT 2.2**

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# ULSTER COUNTY ATTORNEY

**BEATRICE HAVRANEK**  
*County Attorney*  
845-340-3685

**KRISTIN A. GUMAER**  
*Assistant County Attorney*  
845-334-5402

**SUSAN K. PLONSKI**  
*Assistant County Attorney/  
Contract Manager*  
845-340-3441

240 Fair Street, PO Box 1800  
Kingston, New York 12402  
845-340-3685 • Fax: 845-340-3691

**MICHAEL P. HEIN**  
*County Executive*



*Service by facsimile or e-mail not accepted*

**CLINTON G. JOHNSON**  
*First Assistant County Attorney*  
845-340-3685

**WILLIAM N. CLOONAN**  
*Assistant County Attorney*  
845-340-3685

**ROLAND A. BLOOMER**  
*Assistant County Attorney/  
Assistant Contract Manager*  
845-331-2447

**PRIVILEGED AND CONFIDENTIAL**

## MEMORANDUM

TO: Hon. Elliott Auerbach,  
Comptroller

FROM: Beatrice Havranek, Esq. *BH*  
County Attorney

DATE: June 13, 2012

RE: URGENT Agreement

Enclosed please find a letter from me, dated June 13, 2012, together with enclosures to the Hon. Paul Van Blarcum, Ulster County Sheriff, which are self-explanatory.

As you will note from the enclosed, the City of Kingston terminated its participation with the Ulster Regional Gang Enforcement Narcotics Team (URGENT). As such, Corporation Counsel for the City of Kingston is seeking to meet to discuss the issue of assets and expenses, and how they should be divided.

My office provided the Sheriff with a revised Memorandum of Agreement (MOU) on October 14, 2011. Unfortunately, there appears to be diminished interest on the part of the past participating non-county municipalities to move forward in regards to this MOU. More importantly, the City of Kingston Corporation Counsel is requesting a meeting to identify the assets acquired, both monetary and tangible, as well as expenses attendant to URGENT, both past and current so they can be "divided." My office has no financial records regarding this

matter, and, based upon your June 20, 2011 letter to the Chairman and leaders of the Ulster County Legislature, it appears that your office did perform some "audit work" in relation thereto. A copy of that letter is enclosed.

Pursuant to Section C-57 of the Ulster County Charter and your authority to examine and audit all books, records, and accounts of the County, your participation in this matter is essential. Prior to scheduling any meeting with Corporation Counsel, exactly what funds and assets are involved must be identified. If you have not already done an audit of URGENT, it is important that one be done now.

Thus, I am respectfully requesting your assistance in this matter. I look forward to hearing from you.

BH:kpc  
Enclosure

cc: Hon. Paul Van Blarcum, Ulster County Sheriff

bea\Urgent memo to Comptroller.061112

**EXHIBIT 3**

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**EXHIBIT 3.1**

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# City of Kingston



*Andrew Zweben  
Corporation Counsel*

*Daniel Gartenstein  
Assistant Corporation Counsel*

*City Hall  
420 Broadway  
Kingston, New York 12401*

*Telephone (845) 331-0080  
Extension 3947*

*Office of the Corporation Counsel*

*Fax (845) 334-3959*

September 12, 2012

Hon. Elliot Auerbach  
Comptroller, Ulster County  
P.O. Box 1800  
Kingston, New York 12402

Re: "URGENT Program Report of Examination"

Dear Comptroller Auerbach:

Your office has asked the City of Kingston for a written response to the draft report entitled as above. The City's comments with respect to the details of the report appear below; however, as a preliminary matter, I would note the following issues.

As I expressed to Deputy Comptroller Eriole during our meeting of September 5, 2012, I fail to see any jurisdiction for your office to conduct the examination it undertook. The express purpose of the report, as set forth in the undated cover letter, is to determine the "potential right of the City of Kingston to a distribution of funds seized as part of the Ulster Regional Gang Enforcement Narcotics Team ('URGENT')." As you know, your office has no jurisdiction over the City of Kingston, nor has the City requested the assistance or intervention of your office with respect to its right to be paid a portion of the funds seized by URGENT.

The powers of your office are delimited by the terms of Article IX of the Ulster County Charter, specifically § C-57, subs. A-J. The only subsections of § C-57 that could arguably apply to the subject of your report are "A", "C", "D", "F", "G" and, of course, following an audit within your jurisdiction, "I". As indicated below, none of those sections authorizes your office to make, or offer an opinion on, the City's right to receive its share of funds seized by URGENT.

Subsection A of § C-57 empowers your office to "(E)xamine, audit and verify all books, records and accounts kept by various administrative units offices and officials paid from county funds, institutions and other agencies of the County ...." Nowhere in that section is your office given any authority to make a determination concerning a "claim", as your report characterizes it, of another municipality to funds held in county accounts.

Subsection C of § C-57 empowers your office to "(M)aintain records of appropriations, encumbrances and expenditures, and prescribe approved methods of accounting for all units of County government unless otherwise required by the State Comptroller.

As with subsection A, there is no grant of authority to make a discretionary determination or render a

legal opinion regarding the right of another municipality to non-county funds held in a County account.

Subsection D of § C-57 empowers your office to “(C)ertify the availability of funds for all requisitions, contracts, purchase orders and other documents to which the county incurs financial obligations or for the expenditure of funds for which the County is responsible. Assuming, arguendo, that Ulster County is responsible for the seized funds that have been temporarily placed in a county account, the power of your office is to “certify the availability” of such funds, and does not include the resolution of legal claims that may be made thereto.

Subsection F of § C-57 empowers your office to “(A)udit and certify for payment all lawful claims or charges against the County...against funds for which the County is responsible in whole or in part.” This subsection provides a basis for your office to audit a claim, not to undertake in the first case, a determination of what a claim should be.

As you know, my letter of June 5, 2012, addressed to County Attorney Beatrice Havranek suggested that, in light of the City’s determination to cease active participation in the URGENT program, “we should undertake an effort to unwind the relationship(s) that have been formed and resolve the disposition of outstanding expenses and assets due from past operations”. I suggested a meeting for that purpose. I did not make a “claim” except by inference. The clear import of my letter was that the parties were at a point where a complicated, multi-faceted, multi-party relationship had to be unwound

With all due respect, nothing in subsection F of § C-57 gives your office a seat at that table. <sup>1</sup>

Subsection G of § C-57 empowers your office to “...audit any department, program or function of County government to assess the degree to which its operation is economical, efficient and/or effective.” While this subsection might arguably provide your office with a basis to audit the operations of the Sheriff’s office in connection with law enforcement activities, including URGENT, to determine whether such operations are “economical, efficient or effective” it certainly provides no authority to participate in a determination concerning the disposition of seized funds as your report purports to do.

I believe the fundamental flaw in any notion that you may have with respect to your jurisdiction is that the funds in question, while they were deposited in a County account, are not County funds. Nor, is the right of the City to a portion of those funds a “claim” against county funds or even funds for which the County is responsible. The monies in question are the proceeds of monies seized by a multi-municipal team of law officers during the course of joint law enforcement operations. In that regard all of the involved agencies are “responsible” for those monies in every legal respect. Any right to those funds or a portion thereof, is a matter of state and federal law, not subject to the unilateral determination of the County. To the extent that any distribution is, or is not, governed by the terms of the various Memorandums of Understanding regarding URGENT, your office is not empowered to render legal opinions with respect thereto. <sup>2</sup>

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<sup>1</sup> Section C of your report misquotes my letter. While I certainly expect that the seized monies will be distributed, my letter of June 5, 2012, does not include the words quoted in your report. I did not use the word “divided” and your office’s substitution of such language in quotes and its attribution to me is troubling.

<sup>2</sup> I would note, in this regard, that the reference in your report to the need for a legal opinion or judicial determination concerning the legal status of the MOUs underscores the fact that this entire subject is beyond the purview of your office. I credit your staff with recognizing the limit of its authority at least in this area. In our judgment it should have informed the decision to take on this task in the first place or to continue it when the significance of this issue became apparent.

With regard to the details of your report, the City has the following comments referenced to individual lettered sections.

B. I am not aware of any records requested by your office of the Kingston Police Department, nor am I aware of any records having been supplied to your office by KPD. Moreover, the list of "INFORMATION OBTAINED" set forth in section G includes nothing from the Kingston Police Department.

D. As indicated above your office has no jurisdiction to make this determination, or frankly, to set or suggest the parameters by which it should be made. It is obviously premature to decide whether a review of the acts of the County with respect to the making of the determination are, or are not, within the purview of your office.

E, F and G. As indicated above, the fact gathering engaged in by your office was of limited scope, apparently relying on documents from one source and no interviews from non-county parties.<sup>3</sup> The report is misleading in drawing conclusions that would have to be based on a more thorough factual investigation. As no KPD officers, nor either the former or current Chief, were interviewed, there is no basis for asserting any conclusions with respect to their participation or that there was general "assent" to any financial decisions. That is simply mind-reading. I would remind you that law enforcement departments are, by nature, "quasi-military" and that the questioning of management decisions is not common or encouraged. The notion that police officers not charged with fiscal responsibility "assented" to financial decisions made by others is baseless and misleading in the absence of the testimony of those officers.

Moreover, in light of the discussion in Section F regarding the role and activities of the District Attorney's office, there is no basis for the assertion that there was "general assent" as opposed to "decisional inertia" and unilateral decision-making amongst the institutional parties and the individuals involved.

I would also note the several references in the document to the need for further discussions with the Sheriff, D.A. and KPD. (See pages 4 and 5) As these discussions have not been held, nor have you indicated any desire or plan to hold them, the issuance of this report is, at least, premature and its conclusions fatally undermined.

More significantly, the fact that no quarterly evaluation reports regarding the activities of URGENT, the amount of funds seized and the amount returned by the federal government were generated, as required by Section VI. E. of the MOUs, makes the notion that there was "general assent" to the retention of those funds nonsensical. Your report presents no evidence that the various municipalities, or, at least, the commanding officers of the participating agencies, were ever informed of the facts necessary to make decisions or "assent" to those being made. That fact alone undermines all of your conclusions in this regard. And with that, all 3 of your models are discredited.

Model 1 especially suffers from the notion that any legally binding conclusion can be drawn from inaction, particularly inaction undertaken in ignorance of facts.

Model 2 and 3 are equally unavailing as the conclusion that all agencies should share seized assets

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<sup>3</sup> It seems obvious that the limits of your investigation reflect the lack of jurisdiction of your office. As I indicate earlier, lacking jurisdiction, your office perforce lacks the authority to conduct the fact gathering necessary to make the determinations your attempt.

equally despite their unequal participation, both in manpower and time, makes no sense. Moreover, even were the MOUs binding documents, as Model 3 presumes, the available evidence, as even your limited investigation has found, indicates that the MOUs presupposed a level of participation that was not reflected in actual experience. Following the distribution scheme set out in the MOU in the absence of the parties having fulfilled the intended participation commitment is as nonsensical as a simplistic notion suggesting "equal distribution".

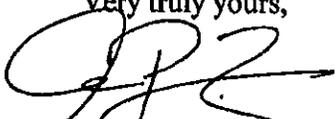
One of the contributions your involvement might have made, and didn't, was a thorough investigation and analysis of those facts. What manpower and resources were dedicated by the various participants of URGENT and for what length of time? That investigation, at least, would have provided a predicate for discussions aimed at resolving the issues of the disposition of the expenses and assets of URGENT.

Kingston rejects the notion that the County leased vehicles for the benefit of the Kingston Police Department. Firstly, until a real audit is completed, the source of the funds for the lease is unknown. Your report would suggest that the source of the lease funds were URGENT monies. Moreover, except for possible occasional use in cases of emergency call-outs of Kingston's URGENT-assigned detectives and officers, the cars were used exclusively for URGENT matters. As you were advised, Kingston's URGENT officers reported daily to the Ulster County Sheriff's Office and had no duties, except in emergencies, as KPD personnel. As you were also advised, the exact same scenario attended the participation of Ulster County Sheriff's personnel. They were subject to call-out for non-URGENT duties and, when so called, used the URGENT vehicles assigned to them.

Finally, as you asked for the City's position with respect to the disposition of the assets of URGENT. I will repeat what the Mayor advised your staff at our meeting. It is the City's position that the distribution should be based on the relative costs and expense of the program, and the contribution, both financial and in manpower, of the parties.

In closing, your offices report is inclusive and adds nothing of significance to the wind-up of the affairs of URGENT with respect to Kingston's participation. Indeed, both the report and your staff have indicated that the upshot of the report is that the parties should sit down and work out a resolution. In other words, the parties should do as I requested three (3) months ago in my June 5, 2012 letter. Under the circumstances I would strongly urge you to simply withdraw your report and advise the County Administration to do as you suggest. Sit down and work it out.

Very truly yours,



Andrew P. Zweben  
Corporation Counsel  
City of Kingston

**EXHIBIT 3.2**

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**Paul J. VanBlarcum**  
Sheriff

OFFICE OF THE  
**SHERIFF**  
**ULSTER COUNTY**

Ulster County Law Enforcement Center  
380 Boulevard, Kingston, NY 12401  
www.co.ulster.ny.us/sheriff

**Frank P. Faluotico, Jr.**  
Undersheriff

**Michael O. Freer**  
Captain / Criminal Division

**James R. Hanstein**  
Superintendent / Corrections Division

Area Code 845

Administration	340-3802
Criminal Division	338-3640
Corrections Division	340-3644
Civil Division	340-3643
Pistol Permits	340-3639
Crime Tips Hotline	340-3599
Fax (Administration)	331-2810
Fax (Criminal Division)	340-3718
Fax (Corrections/Records)	340-3468
Fax (Corrections/Booking)	340-3436
Fax (Civil Division)	334-8125
Fax (Detectives)	340-3588

September 14, 2012

Mr. Joseph Eriole  
Deputy Comptroller  
Ulster County  
PO Box 1800  
Kingston, NY 12402

Dear Mr. Eriole,

Please find below the Ulster County Sheriff's Office response and clarifications to your draft Report of Examination regarding URGENT. I will try to keep my responses to a minimum but will start with the most obvious discrepancies we found.

B. Assumptions

We are not a county "department" – it should read as the Ulster County Sheriff's Office.

C. Impetus for Review

In footnote 1, you address whether the signatories of the MOU were duly authorized by the "governing bodies," which have the power to authorize such execution, to sign the MOU. Our position is that all signatories were acting in "good faith" and with the full knowledge of their respective "governing bodies" when these MOU's were signed. This includes the Ulster County Legislature, which passed several resolutions recognizing the Sheriff's Office as the lead agency in a multi-jurisdictional drug and gang task force (URGENT ). The following resolutions are enclosed for your review:

Resolution # 87	03/14/07
Resolution # 162	05/09/07
Resolution # 76	03/15/11

E. Background Information

You have the accounts listed in reverse. 1909 was the first account established, followed by 1907.

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## F. The MOU and the Operation of URGENT

1. 2007 MOU - at a recent meeting you were supplied with a copy of the MOU with all signatories with the exception of one.
2. 2009-2010 MOU – Your report omitted KPD. They were also a signatory.
3. 2011-2012 MOU – Your report omitted Plattekill PD and DA's Office. The both were signatories.

Copies of all MOU's are enclosed with this response.

### F. Footnote

The Sheriff's Office and the District Attorney's Office have repeatedly advised Ulster County financial responsible parties (the County Administrator, the County Treasurer, two County Attorneys, County Finance and the County Comptroller) of the fact that the federal forfeiture guidelines are quite clear, that forfeiture funds ARE NOT to be co-mingled with other county monies. This has been brought to their attention of on numerous occasions to no avail.

In regards to the Ulster County District Attorney's Office, it should be noted that we have maintained an excellent relationship with their personnel. When U.R.G.E.N.T. was formed, ADA Harp was assigned and given an office at the U.C.L.E.C. The Assistant District Attorneys have been a wealth of information and have given of their time and material in the war against gangs and drugs. At the present time there are 4 Assistant District Attorneys with offices in the UCLEC. We have always had a liaison between U.R.G.E.N.T. and the District Attorney's Office. The District Attorney's Office has always maintained a strong presence in U.R.G.E.N.T. All members of the Sheriff's Office and U.R.G.E.N.T. members are in contact with their staff on a daily basis.

H. We agree with your statement that a valid and binding agreement should be entered into and executed by participating agencies. This has been done with the assistance and approval of the County Attorneys' Office and is to be voted on at the September 18, 2012 Legislative meeting.

I would now like to address several issues that are not addressed in your report, and I believe they are significant and should be included in the discussion.

First, there is no mention in the report that Former Kingston Police Department Det. Lt. Timothy Matthews, a Kingston Police Department employee at the time of the larceny, was solely responsible for stealing over \$77,000.00 from U.R.G.E.N.T. and the County of Ulster. It is my opinion that this amount should be subtracted from any money that KPD and the City of Kingston believe they are owed. It should certainly be mentioned in the report.

Additionally, there is \$124,766.32 that was deposited in the URGENT forfeiture account that stemmed from a case that was worked on solely by the Ulster County Sheriff's Office prior to the formation of U.R.G.E.N.T. No other agencies were involved and this was, at my direction and desire for this team to continue tax free operations, placed into the U.R.G.E.N.T. forfeiture fund to



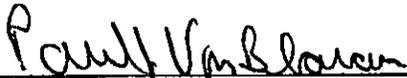
continue the task force. This money should also not be considered if any funds are dispersed to Kingston Police Department or any other involved agency.

Finally, Kingston Police Department was still an active member of U.R.G.E.N.T. when Operation Clean Sweep was discussed, formulated, executed and completed. Both Kingston Police Department and U.R.G.E.N.T. members worked daily on this investigation with assistance from New York State Police Community Narcotics Enforcement Team. At the conclusion of the operation, numerous vehicles and United States currency were seized, and these assets should be dispersed with all U.R.G.E.N.T. participants.

In conclusion I would first like to state that we did not give much time to reviewing your models, as it clearly appears that the information you utilized was not correct based on the information and omissions supplied above. There is one point in the report with which we strongly concur. That is your recommendation that the county establish separate bank account for the receipt of forfeiture money from the federal government. My staff, as well as the District Attorney's staff, has been trying to accomplish this with the county for several years without success. Again, federal statutes are quite clear that forfeiture monies cannot be co-mingled with other monies.

It is my strong belief that this issue can amicably be worked out among the parties involved without any further intervention by outside entities and those involved are already working towards a final conclusion to this matter.

Sincerely,



Paul J. VanBlarcum  
Sheriff of Ulster



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**EXHIBIT 3.3**

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**ULSTER COUNTY  
OFFICE OF THE DISTRICT ATTORNEY**

275 WALL STREET KINGSTON, NEW YORK 12401-3817

(845) 340-3280

**D. HOLLEY CARNRIGHT**

*District Attorney*

**JOHN F. TOBIN**

*Chief Assistant District Attorney*

**WILLIAM J. WEISHAUP**

*Chief of Investigations*

**KATHERINE R. VANLOAN**

*Bureau Chief - Special Victims*



JOAN LAMB  
GERARD J. VAN LOAN  
LAUREN E. SWAN  
ELIZABETH A. CULMONE  
KATHLEEN E. SHERIDAN  
JOSHUA POVILL  
LISA M. BONDARENKA  
MATTHEW M. JANKOWSKI  
MIKAEL COHN  
JESSICA MILA SCHUTZMAN  
CINDY CHAVKIN  
ANDREA HERASIMTSCHUK  
MICHAEL KAVANAGH  
CLIFFORD OWENS

September 11, 2012

Mr. Joseph Eriole  
Deputy Comptroller  
Office of the Comptroller  
County Office Building, 5<sup>th</sup> Floor  
144 Fair Street  
Kingston, NY 12401

Re: URGENT Program Report of Examination

Dear Mr. Eriole:

Since taking office in 2008 I have been fully supportive of the URGENT Task Force and remain so. I understand that the City of Kingston has asked for an accounting of forfeiture monies with a view toward possible reimbursement/distribution of same. The Ulster County District Attorney's Office is not now, nor will it be in the future, seeking an accounting or distribution of past seized sums.

Since its inception, the URGENT Task Force has operated under a number of different MOUs, all of which have been approved and/or executed by my office. I view these documents as a working model more than an exact formula.

I am of the opinion that the District Attorney's Office, prior to March, 2009, did not receive the share of seizure proceeds as anticipated in these various MOU documents as well as in enumerated New York State and Federal statute and regulations. In my judgment, allowing those sums to be retained by the task

force as working capital was the spirit if not the exact letter of the MOU.

As noted in meetings with this office, there exist two mechanisms under law for seizure/forfeiture of criminal instrumentalities and proceeds. The first is Article 13A of the New York Civil Practice Laws and Rules (CPLR) and the second is Federal Forfeiture pursuant to Title 18 of the United States Codes, implemented through the US Department of Justice (DOJ) Forfeiture Guidelines. The District Attorney, under both procedures, is the authorizing authority for any seizure/forfeiture. Under both processes the District Attorney will share in the proceeds of the items seized. The simple difference is in the amount of the sharing either authorized or statutorily demanded by the selected procedure. Under Article 13A the vehicle for starting the process is the District Attorney's Notice of Seizure provided to a criminal defendant. Under Federal rules this office, if authorizing federal seizure/forfeiture will provide a declination letter to the federal authority authorizing their adoption of the seizure. Once adopted this office will follow with a DAG-71, indicating this offices participation in the forfeiture and requesting proceed sharing. Ultimately, the sharing amount is determined by the US government. When received, these proceeds are placed into a forfeiture account for future use for law enforcement purposes as denoted by guidelines established by DOJ. Therefore the seemingly gratuitous comments in the report referring to the "DA's share" are misaddressed as those shares are required by law.

I disagree with comments offered in your report to the affect that the District Attorneys' Office has not been an active participant in the URGENT Task Force.

Your report offers one valid point which is that the seized funds are restricted by law. These funds should not be comingled with other non-seized funds, a fact that both the Sheriff and myself have previously noted.

Very truly yours,

Holley Carnright  
HC/mlm

Ulster County District Attorney: [ulstercountyny.gov/da](http://ulstercountyny.gov/da)

**EXHIBIT 3.4**

# ULSTER COUNTY ATTORNEY

240 Fair Street, PO Box 1800

Kingston, New York 12402

845-340-3685 • Fax: 845-340-3691

**MICHAEL P. HEIN**

*County Executive*

**BEATRICE HAVRANEK**

*County Attorney*

845-340-3685

**KRISTIN A. GUMAER**

*Assistant County Attorney*

845-334-5402

**SUSAN K. PLONSKI**

*Assistant County Attorney/  
Contract Manager*

845-340-3441

**CLINTON G. JOHNSON**

*First Assistant County Attorney*

845-340-3685

**WILLIAM N. CLOONAN**

*Assistant County Attorney*

845-340-3685

**ROLAND A. BLOOMER**

*Assistant County Attorney/  
Assistant Contract Manager*

845-331-2447



*Service by facsimile or e-mail not accepted*

**PRIVILEGED AND CONFIDENTIAL**

**MEMORANDUM**

TO: Hon. Elliott Auerbach,  
Comptroller

FROM: Beatrice Havranek, Esq.  
County Attorney

DATE: June 13, 2012

RE: URGENT Agreement

Enclosed please find a letter from me, dated June 13, 2012, together with enclosures to the Hon. Paul Van Blarcum, Ulster County Sheriff, which are self-explanatory.

As you will note from the enclosed, the City of Kingston terminated its participation with the Ulster Regional Gang Enforcement Narcotics Team (URGENT). As such, Corporation Counsel for the City of Kingston is seeking to meet to discuss the issue of assets and expenses, and how they should be divided.

My office provided the Sheriff with a revised Memorandum of Agreement (MOU) on October 14, 2011. Unfortunately, there appears to be diminished interest on the part of the past participating non-county municipalities to move forward in regards to this MOU. More importantly, the City of Kingston Corporation Counsel is requesting a meeting to identify the assets acquired, both monetary and tangible, as well as expenses attendant to URGENT, both past and current so they can be "divided." My office has no financial records regarding this

matter, and, based upon your June 20, 2011 letter to the Chairman and leaders of the Ulster County Legislature, it appears that your office did perform some "audit work" in relation thereto. A copy of that letter is enclosed.

Pursuant to Section C-57 of the Ulster County Charter and your authority to examine and audit all books, records, and accounts of the County, your participation in this matter is essential. Prior to scheduling any meeting with Corporation Counsel, exactly what funds and assets are involved must be identified. If you have not already done an audit of URGENT, it is important that one be done now.

Thus, I am respectfully requesting your assistance in this matter. I look forward to hearing from you.

BH:kpc  
Enclosure

cc: Hon. Paul Van Blarcum, Ulster County Sheriff

bea\Urgent memo to Comptroller.061112

# ULSTER COUNTY ATTORNEY

240 Fair Street, PO Box 1800

Kingston, New York 12402

845-340-3685 • Fax: 845-340-3691

**MICHAEL P. HEIN**

*County Executive*

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845-340-3685

**ROLAND A. BLOOMER**

*Assistant County Attorney/  
Assistant Contract Manager*

845-331-2447



*Service by facsimile or e-mail not accepted*

## PRIVILEGED AND CONFIDENTIAL

June 13, 2012

Sheriff Paul Van Blarcum  
Ulster County Sheriff's Office  
380 Boulevard  
Kingston, New York 12401

RE: URGENT Agreement

Dear Sheriff Van Blarcum:

Enclosed please find correspondence to me dated June 5, 2012, from Andrew Zweben, Esq., Corporation Counsel for the City of Kingston. Per Attorney Zweben, the City of Kingston has advised your office that it will no longer be participating in the Ulster Regional Gang Enforcement Narcotics Team (URGENT).

As noted in Attorney Zweben's letter, the City of Kingston is requesting that the outstanding expenses and assets, including assets due from past operations acquired by URGENT, be divided. He has requested a meeting for that purpose. This will require involvement with your office as well, as this office does not have any documents that would assist in this endeavor, specifically a list of all assets acquired, both monetary and tangible, in addition to an accounting of expenses incurred and that remain.

As you will also note, Attorney Zweben references the issue of lack of inter-municipal approval by the Ulster County Legislature regarding the agreement between the County and the various municipalities that have been involved in URGENT. As we have discussed in the past, it is my opinion that the URGENT Memorandum of Understanding (MOU) represents an inter-municipal agreement which required the approval of the County Legislature as well as the approval of the various governing bodies of the municipalities as parties to the agreement. This agreement impacts the County's liability, insurance and financial matters, and pursuant to both the Ulster County Administrative Code and state law, inter-municipal agreements are required to

be approved by the respective governing bodies.

On July 4, 2011, Undersheriff Frank P. Faluotico, Jr., faxed to my office a copy of what appeared to be an agreement between the County of Ulster, the City of Kingston and the Towns of Saugerties, New Paltz, Woodstock, and Lloyd. The agreement, a copy of which is attached and which was signed by representatives of the police agencies of the above referenced municipalities, indicates on the signature page that the period in effect is January 1, 2011 through December 31, 2012. I also note that the Ulster County District Attorney and the Ulster County Director of Probation have not signed the MOU, and there are no signatures on behalf of the Village of Ellenville, the Town of Ulster, and the Town of Plattekill.

There were no resolutions of the governing boards of any of the above referenced municipalities on file with the County of Ulster on July 4, 2011 authorizing or approving this inter-municipal agreement nor had the County Legislature approved the agreement. However, a proposed resolution was prepared by your office and submitted to the Ulster County Legislature and/or County Executive and received by the County Executive's Office on June 29, 2011, a copy of which is also enclosed herewith. That resolution was directed to my office.

In a letter dated July 5, 2011, to you from me, I advised that the agreement needed to be updated and approved by the participating municipalities prior to submission of the resolution to the County Legislature, and I assigned Assistant County Attorney Roland A. Bloomer, Esq. to assist you and your staff in that respect. As also noted in my July 5, 2011 letter to you, a copy of which is also enclosed, the then Chairman of the Legislature Frederick Wadnola and I discussed the matter and the policy of the County Legislature that required certified resolutions of the participating municipal entities before the resolution could be approved by the Legislature. A copy of that letter is enclosed for your convenience.

Subsequent to that letter, Attorney Bloomer and Undersheriff Faluotico met and exchanged communications on a number of occasions. The agreement was revised, and the Undersheriff advised that he was attempting to obtain the authorizing resolutions from those municipalities which were interested in entering into the agreement. I am enclosing a memorandum from Attorney Bloomer to me, dated June 11, 2012, which sets forth the history and the current status of the matter. To date, the only resolution that has been submitted to this office is from the Town of Lloyd. Communications have also been taking place with the Town of Saugerties town attorney about changes requested by that municipality to the agreement, but, as of this date, the Town Board of the Town of Saugerties has apparently not approved any agreement. Thus, under the circumstances, I respectfully request your plan as to how this arrangement can continue.

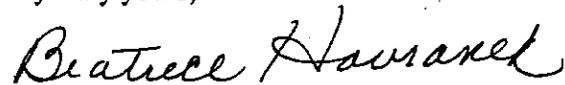
More importantly, the City of Kingston has terminated its participation in URGENT, and it seeks to resolve the disposition of outstanding expenses and assets including assets due from past operations. I shall need the assistance of the County Comptroller in order to audit and assess the foregoing prior to meeting with Corporation Counsel. As such, it is necessary that you provide this office and the office of the Ulster County Comptroller with all of the books and records necessary to identify the assets, funds and expenses of URGENT including those subject

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to being returned to the City of Kingston and any other municipality which may be entitled to same. Likewise, if there are any assets or funds due the County of Ulster from any of the municipalities, they also must be identified.

I look forward to hearing from you so that we may promptly address this matter, and so that I may respond to the request of the City of Kingston for a meeting.

Very truly yours,



BEATRICE HAVRANEK  
County Attorney

BH:kpc  
Enclosures

cc: Hon. Elliot Auerbach, Comptroller (w/enc.)

bea\Urgent letter to Sheriff.061112

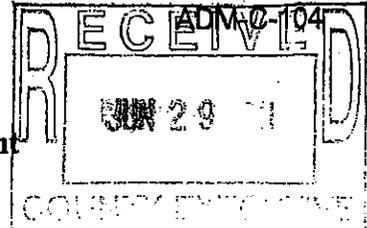
**County of Ulster  
Resolution Request Form ADM-C-104**

**To be completed by requesting department**

Department: Sheriff

Contact Andrew Slater

Tele. # x4224



Departments submit to the County Executive's Office this Resolution Request Form ADM-C-104 accompanied by appropriate backup to substantiate information in resolution. (See SOP C.4 Submission of Resolution for complete details and examples of appropriate backup)

Note: If appropriate backup is not submitted with Resolution Form, the request will be returned to the initiating department.

1) Department (s) and division (s) by number and title affected by this resolution.

Department	Division
Sheriff	Drug Investigations

2) What is the purpose of the Resolution: (Lease agreement, accept grant, personnel change, etc.)

Ulster County Legislative approval and authorization of the Memorandum of Understanding (MOU), for the period of January 1, 2011 through December 31, 2012, for the Ulster Regional Gang Enforcement Narcotics Team (U.R.G.E.N.T.) and participating municipalities.

3) What is the intent of the Resolution: (Indicate expected outcome and what service will be performed, what equipment will be purchased, etc.)

The legislature will authorize the Ulster County Sheriff's Office participation in the Ulster Regional Gang Enforcement Narcotics Team and the Memorandum of Understanding between the County of Ulster, Sheriff's Department and the other participating municipalities. (Ulster County Sheriff's Office, Kingston Police Department, Ulster County Probation Department, Town of Saugerties Police Department, Town of New Paltz Police Department, Town of Woodstock Police Department, Town of Llyod Police Department, Ulster County District Attorney's Office, and the United States Immigration and Customs Enforcement.)

4) How will passing or not passing this resolution affect the residents of Ulster County.

The Ulster County Sheriff's Office is the lead agency in this joint municipal operation and the headquarters for its operations. Therefore, buy not passing this resolution, the entire program will be severely diminished and will not be able to effectively protect the citizens of Ulster County from Drug and Gang activity.

5) Financial Impact: What budget lines are affected: Include in explanation % of Federal, State and County share and calculate financial impact annualized to the end of the year if different.

Dept./Div	Budget line	App/Rev A/R	Amount	Budgeted Y/N	Explanation and/or Calculation
Total			0.00		

Notes: 1) Insert a minus sign in front of Revenue amounts.

6) Attach appropriate backup to substantiate this resolution. If available, please provide a copy of sample resolution.

List backup attached.


---

Approved \_\_\_\_\_

Denied \_\_\_\_\_

---

Department Head Signature

Date:

---

---

County Executive

Date:

---

~~2010/12~~  
2011/12

**Ulster Regional Gang Enforcement Narcotics Team  
U.R.G.E.N.T.**

**MEMORANDUM OF UNDERSTANDING**

The City of Kingston Police Department, the Ulster County Sheriff's Office, the Ulster County Probation Department, the town and village police departments in the County of Ulster, the ATF, the DEA, and the Ulster County District Attorneys Office in connection with the Ulster Regional Gang Enforcement Narcotics Team (URGENT), are executing this Memorandum of Understanding (MOU). The above listed agencies jointly and separately agree to abide by the terms and provisions of this MOU throughout the duration of this joint operation.

**I. Purpose**

The purpose of these guidelines is to outline the mission of the Ulster Regional Gang Enforcement Narcotics Team. Additionally, these guidelines will formalize relationships between the participating agencies with regard to items such as policy guidance, planning, training, public relations, reimbursements, funding, and media coordination in order to maximize interagency cooperation.

**II. Mission**

The mission of URGENT is to achieve maximum coordination and cooperation, and bring to bear the combined resources of member agencies to primarily investigate gang members and affiliates involved in criminal enterprises as well as low and mid level narcotic related offenses utilizing both state and federal laws.

**III. Organization, Supervision and Chain of Command**

URGENT will be comprised of a combined enforcement body of members from the above named agencies. The policy, program, involvement and direction of URGENT shall be joint responsibility of the chief administrators of the respective agencies. These administrators agree to establish a "Governing Body" which shall consist of a representative from the Kingston Police Department, the Ulster County Sheriff's Office, a member chosen from a Town or Village Police Department, and a member of the Ulster County District Attorney's Office, to oversee the administrative functions and concerns of URGENT. The Kingston Police Department will assign one Detective Lieutenant and the UCSO will supply one Detective Lieutenant. as the commanders of URGENT. In the absence of the Detective Lieutenant, 3 members will be designated as Officers in Charge (OIC).

**IV. Personnel**

It is understood and agreed that occasionally exigent circumstances affecting the mission of the member agencies may require the diversion of the above resources,

including technical equipment, away from URGENT for a reasonable period of time.

Member agencies with personnel assigned to URGENT, that remove their personnel for non-exigent circumstance, must replace them within 60 days, or after that time are no longer eligible for asset forfeiture sharing.

## **V. Expenditures**

### **A. Overtime**

Overtime will be paid by the officer's respective agency. All overtime must be pre-approved by a URGENT supervisor.

### **B. Equipment**

The member agencies agree to provide the necessary property, goods and equipment that they respectively already own. Member agencies will separately purchase equipment when necessary. If URGENT ceases operations, it shall deliver to the appropriate procuring agency any equipment and/or property purchased under this agreement. All equipment will be marked for identification and inventoried by the procuring agency. Any purchases made prior to this agreement are the responsibility of the purchasing agency.

### **C. Leasing of Vehicles, Equipment, Office Equipment and Office Space**

The three appointed members of the Governing Body will decide when the leasing of vehicles, equipment, office equipment and office space is necessary for the continuous and proper administration of URGENT. Ulster County, through the Purchasing Agent or the Chairman of the Legislature, will have the authority to sign off on such lease agreements, as per proper Ulster County procedure, upon the final decision of the Governing Body.

### **D. Office Equipment**

The member agencies, to the extent possible, agree to provide necessary office equipment and needed supplies to carry out the administrative operation of URGENT.

### **E. Office Space**

The UCSO shall agree to provide office space for URGENT at the Ulster County Law Enforcement Center.

#### **F. Technical expenses**

**The member agencies agree that technical expenses related to pens and eavesdropping investigations will be paid for with asset forfeiture monies, if available.**

#### **G. Evidence Fund**

**The member agencies agree that the evidence fund will be funded with asset forfeiture monies, if available.**

#### **H. Cellular Phones and Pagers**

**The member agencies agree to supply their representative(s) with a Nextel cellular phone with point to point and group activation.**

#### **I. Miscellaneous Expenses**

**The member agencies agree that miscellaneous expenses such as training, rental cars, investigative travel, etc. will be funded with asset forfeiture monies, if available.**

#### **J. Unspecified Expenditures**

**Any expenditure not specified in this Memorandum of Understanding, will be clarified by the three appointed members of the Governing Body.**

### **VI. Procedures**

#### **A. Selection of Personnel**

**Prior to being assigned to URGENT, a prospective member must undergo a formal review by his/her Departmental command staff to insure an exemplary disciplinary record with no integrity concerns. The prospective member must then participate in a selection process with the command staff of URGENT that will make a recommendation to the chief administrator of the prospective member's department.**

#### **B. Investigations**

**All cases will be jointly investigated. Members from participating agencies will staff each URGENT investigation. It is, therefore, agreed that no member agency will act unilaterally.**

### **C. Media**

**All media releases and statements will be mutually agreed upon and jointly handled within existing member agencies guidelines. Under no circumstances will a member agency make any statements to the media about any URGENT investigation and/or arrest without the prior clearance from the URGENT commanders. The Commanding Officer and Sergeant of URGENT are authorized to make media releases on routine arrests and seizures. All media releases will include notification and/or participation of the chief administrator in the jurisdiction of occurrence.**

### **D. Forfeitures**

**Any properties or funds confiscated, with a value greater than \$1000.00, which are a direct result of a criminal investigation will be processed by the URGENT Asset Forfeiture Officer pursuant to forfeiture regulations of the United States Department of Justice and/or the Ulster County District Attorney's Office agree to the following division of funds:**

- 1. 20% of the forfeiture will be designated for the mandatory federal asset forfeiture administrative fees**
- 2. 35% of the forfeitures will be earmarked for the URGENT fund. This fund will be utilized for operating expenses outlined in section V of this MOU. Once the fund has reached one and one half times the amount of the projected annual budget, no additional monies will be added to this account and all monies will be dispersed per section VI. D.3. of this MOU until it reaches the level of the annual budget, unless mutually agreed to by advisory council.**
- 3. 45% of the forfeitures will be divided equally between the participating agencies starting in a fiscal year of January 1<sup>st</sup> to December 31<sup>st</sup> and will be pro-rated monthly thereafter. Once the participating agencies have each received \$25,000.00 during the fiscal year, the division of funds will then be computed on a percentage based upon personnel assigned. Each person assigned shall be given an equal percentage and the Ulster County District Attorney's Office will receive consideration of two people assigned to the task force. In the event an agency joins during the fiscal year a portion of the \$25,000.00 base funds will be pro-rated on a monthly basis, based upon number of months the agency participates that fiscal year, unless mutually agreed to by advisory council.**
- 4. The operating budget for URGENT shall be on a fiscal year, from January 1<sup>st</sup> through and including December 31.**
- 5. Seizures of less than \$5000.00 will be fully deposited in the URGENT fund, minus the 20% federal administrative fee, regardless of the fund balance.**

6. When a non-URGENT member of a participating agency within URGENT seizes US currency, or property of value, that agency will be individually responsible for and entitled to, the entire seizure of the money or property of value.
7. In the event that URGENT processes an asset forfeiture for any agency, participating or not, there will be a 10% administrative charge which shall be earmarked for the URGENT fund. More "routine" assistance does not make that case an URGENT investigation. All agencies are encouraged to contact URGENT staff for intelligence purposes and or follow up assistance as needed.
8. Any seizure not specified in this MOU will be clarified by the three appointed members of the Governing Body.

#### **E. Evaluation**

The agencies involved agree to monitor the progress and effectiveness of this effort. An evaluation of the nature and result of URGENT investigations will be conducted by the chief administrators, by way of a quarterly report and meeting with the URGENT commanders. The criteria for evaluation will include but not be limited to the number of investigations completed, number of arrests, and amount of seizures and impact on the community. Modifications or adjustments to this mission will be implemented when necessary. In addition to a quarterly report all records kept in the course of normal business shall be available upon request for inspection by a representative of each of the participating agencies.

#### **F. Firearms Training/Qualification and Related Training**

All investigative personnel assigned to URGENT shall continue routine firearms training and qualification as provided and required by their respective agencies in addition to any training that might be provided by URGENT.

#### **G. Use of Vehicles**

If it is determined to be operationally necessary, the member agencies hereby agree and authorize members of URGENT to use vehicles from all agencies for the furtherance of the mission of this unit. Vehicles shall be used in compliance with existing member agency policy.

Each party hereby agrees to defend, indemnify and save harmless the other party against any and all liability, loss damage, suit, charge attorney's fees and expenses of whatever kind or nature which the other party may directly or indirectly incur, or be required to pay by reason or in consequence of the intentionally wrongful or negligent act or omission of the party, its agents, employees or contractors. If a

claim or action is made or brought against either party and for which the other party may be responsible hereunder in whole or in part, then the other party shall be notified and shall handle or participate in the handling of the defense of such matter.

Participating agencies also agree to provide fuel, routine maintenance and repairs for their respective vehicles. Inter-agency use of vehicles is to be closely monitored by supervisors.

#### **H. Informants**

All informants, either compensated or contractual, must be formally processed in accordance with URGENT's written informant policy prior to being actively utilized. The written informant policy will also govern the management of informants.

#### **I. Report and Evidence Policy**

All reports and evidence will be processed and maintained in accordance with the written policies of the Kingston Police Department and the Ulster County Sheriff's Office. KPD reports and evidence procedures will be utilized for investigations that are initiated within the City of Kingston. UCSO reports and evidence procedures will be utilized for all investigations occurring outside of the City of Kingston.

#### **J. Personnel Complaints**

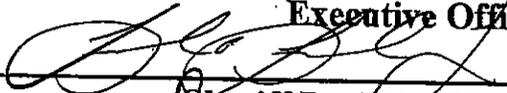
Citizen and internal complaints against an officer or officers assigned to URGENT will be forwarded to the Commanding Officer of URGENT. If the complaint cannot be resolved or is in violation of the member's departmental policies and procedures or of URGENT's policies and procedures, the complaint will be forwarded to the member's agency. The Department agency head or designee will conduct a joint investigation, with the commanding officer of designee from URGENT. Nothing in this section precludes any citizen from going directly to an officer's department to file a complaint.

#### **K. Modification and Determination**

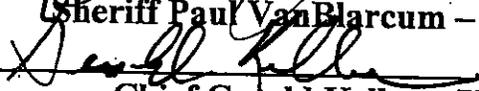
This agreement may be modified at any time by written consent of the agencies. Any participating agency may terminate its participation in URGENT under this MOU by delivering a written notice of termination to the other participating agencies. This agreement will be in effect from 01/01/2011 – 12/31/2012.

**URGENT 01/01/2011 – 12/31/2012 M.O.U.**

**Executive Officers Signatures**

 - P1B

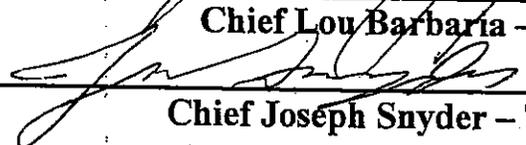
**Sheriff Paul VanBlarcum – Ulster Co. S.O.**



**Chief Gerald Keller – Kingston PD**

**Chief Phil Mattricion – V/Ellenville PD**

**Melanie Mullins – Ulster County Probation**

**Chief Lou Barbaria – T/Saugerties**

**Chief Joseph Snyder – T/New Paltz PD**

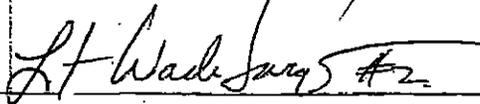
**Chief Paul Watzka – T/Ulster PD**

  
**Chief Joe Ryan- T/Plattekill**

**D. Holley Carnright – Ulster County District Attorney's Office**



**Chief Clayton Keefe- Woodstock PD**

 #2 – LT. Wade Sargent.

**Chief David Ackert – T/ Lloyd PD**

\* Signed with approval and on behalf of Chief Ackert

**Requesting The Chairman Of The Ulster County Legislature To Authorize An Agreement With The Ulster County Sheriff's Office, the Ulster County Probation Department, Ulster County District Attorney's Office, City of Kingston Police Department, the town and Village Police Departments within the County of Ulster in connection with the Ulster Regional Gang Enforcement Narcotics Team, (U.R.G.E.N.T.)**

The Law Enforcement and Public Safety Committee (Chairman Hayes and Deputy Chairman Briggs and Legislators Belfiglio, Ronk, Sweeney, Hochberg and Rodriguez) offers the following:

WHEREAS, this resolution has been submitted by the County Executive on behalf of the Ulster County Sheriff, and

WHEREAS, in response to Governor Pataki's 2005 initiative to name New York the safest state in the nation Ulster County has created an a local Re-Entry Task Force, the Ulster Regional Gang Enforcement Narcotics Team, (U.R.G.E.N.T.)

WHEREAS, the Ulster County Sheriff is requesting that the Chairman of the Ulster County Legislature authorize an agreement, and any amendments thereto, with the Ulster County Sheriff's Office, the Ulster County Probation Department, Ulster County District Attorney's Office, City of Kingston Police Department, the town and Village Police Departments within the County of Ulster for our participation in the Ulster Regional Gang enforcement Narcotics Team (U.R.G.E.N.T.) Memorandum of Understanding (M.O.U.) for the period of January 1, 2011 through December 31, 2012

WHEREAS, the Law Enforcement and Public Safety Committee has met and reviewed said request with a majority of its members voting approval, now, therefore, be it

RESOLVED, that the Chairman of the Ulster County Legislature hereby authorized an agreement, and any amendments thereto, with the Ulster County Sheriff's Office, the Ulster County Probation Department, Ulster County District Attorney's Office, City of Kingston Police Department, the town and Village Police Departments within the County of Ulster for our participation in the Ulster Regional Gang enforcement Narcotics Team (U.R.G.E.N.T.) Memorandum of Understanding (M.O.U.), for the period from January 1, 2011 to December 31, 2012, in the form as filed with the Clerk of the Ulster County Legislature or as modified with the approval of the County Attorney,

and moves its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

FINANCIAL IMPACT:  
NONE



## ULSTER COUNTY ATTORNEY

# Memo

**To:** Beatrice Havranek, Esq.  
**From:** Roland Bloomer, Esq.  
**CC:**  
**Date:** June 11, 2012  
**Re:** U.R.G.E.N.T. MOU – Status & Chronological List of Events

---

You have asked the current status, what is still required, and a chronological list of events pertaining to the U.R.G.E.N.T. MOU (hereinafter referred to as the "MOU").

### Current Status

To my knowledge the MOU is not fully executed. I have been informed that all but two (2) of the municipalities have entered into the MOU (Town of Saugerties and Kingston Police Department), but have not been provided documentation of such. To date, I have only received the Town of Lloyd's certified resolution authorizing the Chief of the Police Department to enter into the MOU. I have yet to see a signed MOU by any of the participating municipalities.

### Required

Per the July 5, 2011 Memorandum from Beatrice Havranek to Paul VanBlarcum, in order to fully execute the MOU, each municipality wishing to enter into the MOU must get authorization from their governing body. Once the municipality has been authorized to participate in and sign the MOU, it must provide the certified resolution and sign the MOU. Once all certified resolutions and signatures are obtained, the MOU and certified resolutions should be presented to the Ulster County Legislature along with a resolution, requesting that the Ulster County Legislature authorize the Ulster County Sheriff to enter into the MOU.

### Chronological List of Events

RS = Robert Sudlow – Deputy Ulster County Executive  
BH = Beatrice Havranek, Esq. – Ulster County Attorney  
RB = Roland Bloomer, Esq. – Assistant County Attorney / Assistant Contract Manager  
PV = Paul VanBlarcum – Ulster County Sheriff  
FF = Frank Faluotico, Jr. – Ulster County Undersheriff  
JG = John Greco, Esq. – Attorney for Town of Saugerties

07/05/2011	BH memorandum to PV	MOU needs to be updated and Legislative Policy requiring resolutions from participants.
07/26/2011	RB email to FF	Provided a copy of MOU Draft #2 & reminder of legislative resolution requirement.
07/26/2011	Letter from Town of Lloyd	Certified Resolution authorizing participation.
08/12/2011	RB email to FF	Requesting to discuss the MOU.
08/15/2011	FF email to RB	Suggested changes to MOU.
08/18/2011	RB email to FF	Provided a copy of the updated MOU Draft #5 & requested answers to questions.
10/11/2011	FF email to RB	Requesting meeting to finalize MOU.
10/12/2011	RB & FF - 9:30am meeting	Reviewed and revised MOU.
10/14/2011	RB email to FF	Provided a copy of the MOU Final & explain next step - obtain resolutions from municipalities.
12/21/2011	RB email to FF	Requesting status of MOU.
01/12/2012	RB email to FF	Provided another copy of the MOU Final per FF request.
02/03/2012	RB email to FF	Requesting status of MOU and to be kept advised of municipalities that have signed.
02/16/2012	RB email to FF	Reiterated previous discussion and reminding resolutions required to move forward.
02/16/2012	JG letter to RB	Informed of meeting with FF and presented issues with MOU language.
02/27/2012	RB response letter to JG	Explaining language, suggesting changes.
02/28/2012	RB call to FF	Left message to call in order to discuss JG letter, response, and moving forward.
03/01/2012	RB email to FF	Provided copy of response letter to JG and explained steps going forward.
03/06/2012	JG letter to RB	Rejected proposed language and requested further changes.
03/12/2012	RB call to JG	Asked for email to expedite process, no email but provided fax number.
03/12/2012	RB fax to JG	Provided suggested language changes.
03/22/2012	RB call to JG	Was informed that fax was received and being reviewed.
03/28/2012	Note from RS	FF reached out to Saugerties Police Department yesterday, Woodstock to sign in April, only Kingston Police Department left.
04/17/2012	RB and FF discussion at Ulster County Community College during Legislative Meetings	FF informed RB that Woodstock signed the MOU, Saugerties Police Chief reached out to JG and got no response.  RB informed FF no response from JG and explained if Saugerties accepted changes the updated MOU would have to go back around to all those who already signed.

OFFICE OF THE

SHERIFF

ULSTER COUNTY



Paul J. VanBlarcum  
Sheriff

Ulster County Law Enforcement Center  
380 Boulevard, Kingston, NY 12401  
www.co.ulster.ny.us/sheriff

Frank P. Fabuoco, Jr.  
Undersheriff

Michael O. Freer  
Captain / Criminal Division

James R. Hanstain  
Superintendent / Corrections Division

	Area Code 845	
Administration		340-3802
Criminal Division		338-3640
Corrections Division		340-3644
Civil Division		340-3643
Pistol Permits		340-3639
Crime Tips Hotline		340-3399
Fax (Administration)		331-2810
Fax (Criminal Division)		340-3718
Fax (Corrections/Records)		340-3468
Fax (Corrections/Booking)		340-3436
Fax (Civil Division)		334-8125
Fax (Detectives)		340-3588

**FAX TRANSMITTAL COVER SHEET**

Date: 6/3/11

Attention: Bea of: \_\_\_\_\_

Sent by: Frank Phone: (845) \_\_\_\_\_

Comments:

You

**NOTICE**

The fax transmission accompanying this transmittal form contains privileged and confidential information solely for the use of the individual or entity to whom it is addressed. If the reader of this notice is not the addressee, or the employee or agent responsible to deliver it to the intended addressee, you are hereby notified that dissemination, distribution or copying of this communication is strictly prohibited. If you have received this facsimile in error, please notify us by telephone and return the original message to us at the above address by mail.





**Ulster Regional Gang Enforcement Narcotics Team  
U.R.G.E.N.T.**

**MEMORANDUM OF UNDERSTANDING**

The City of Kingston Police Department, the Ulster County Sheriff's Office, the Ulster County Probation Department, the town and village police departments in the County of Ulster, the ATF, the DEA, and the Ulster County District Attorneys Office in connection with the Ulster Regional Gang Enforcement Narcotics Team (URGENT), are executing this Memorandum of Understanding (MOU). The above listed agencies jointly and separately agree to abide by the terms and provisions of this MOU throughout the duration of this joint operation.

**I. Purpose**

The purpose of these guidelines is to outline the mission of the Ulster Regional Gang Enforcement Narcotics Team. Additionally, these guidelines will formalize relationships between the participating agencies with regard to items such as policy guidance, planning, training, public relations, reimbursements, funding, and media coordination in order to maximize interagency cooperation.

**II. Mission**

The mission of URGENT is to achieve maximum coordination and cooperation, and bring to bear the combined resources of member agencies to primarily investigate gang members and affiliates involved in criminal enterprises as well as low and mid level narcotic related offenses utilizing both state and federal laws.

**III. Organization, Supervision and Chain of Command**

URGENT will be comprised of a combined enforcement body of members from the above named agencies. The policy, program, involvement and direction of URGENT shall be joint responsibility of the chief administrators of the respective agencies. These administrators agree to establish a "Governing Body" which shall consist of a representative from the Kingston Police Department, the Ulster County Sheriff's Office, a member chosen from a Town or Village Police Department, and a member of the Ulster County District Attorney's Office, to oversee the administrative functions and concerns of URGENT. The Kingston Police Department will assign one Detective Lieutenant and the UCSO will supply one Detective Lieutenant as the commanders of URGENT. In the absence of the Detective Lieutenant, 3 members will be designated as Officers in Charge (OIC).

**IV. Personnel**

It is understood and agreed that occasionally exigent circumstances affecting the mission of the member agencies may require the diversion of the above resources,

including technical equipment, away from URGENT for a reasonable period of time.

Member agencies with personnel assigned to URGENT, that remove their personnel for non-exigent circumstance, must replace them within 60 days, or after that time are no longer eligible for asset forfeiture sharing.

## V. Expenditures

### A. Overtime

Overtime will be paid by the officer's respective agency. All overtime must be pre-approved by a URGENT supervisor.

### B. Equipment

The member agencies agree to provide the necessary property, goods and equipment that they respectively already own. Member agencies will separately purchase equipment when necessary. If URGENT ceases operations, it shall deliver to the appropriate procuring agency any equipment and/or property purchased under this agreement. All equipment will be marked for identification and inventoried by the procuring agency. Any purchases made prior to this agreement are the responsibility of the purchasing agency.

### C. Leasing of Vehicles, Equipment, Office Equipment and Office Space

The three appointed members of the Governing Body will decide when the leasing of vehicles, equipment, office equipment and office space is necessary for the continuous and proper administration of URGENT. Ulster County, through the Purchasing Agent or the Chairman of the Legislature, will have the authority to sign off on such lease agreements, as per proper Ulster County procedure, upon the final decision of the Governing Body.

### D. Office Equipment

The member agencies, to the extent possible, agree to provide necessary office equipment and needed supplies to carry out the administrative operation of URGENT.

### E. Office Space

The UCSO shall agree to provide office space for URGENT at the Ulster County Law Enforcement Center.

#### **F. Technical expenses**

The member agencies agree that technical expenses related to pens and eavesdropping investigations will be paid for with asset forfeiture monies, if available.

#### **G. Evidence Fund**

The member agencies agree that the evidence fund will be funded with asset forfeiture monies, if available.

#### **H. Cellular Phones and Pagers**

The member agencies agree to supply their representative(s) with a Nextel cellular phone with point to point and group activation.

#### **I. Miscellaneous Expenses**

The member agencies agree that miscellaneous expenses such as training, rental cars, investigative travel, etc. will be funded with asset forfeiture monies, if available.

#### **J. Unspecified Expenditures**

Any expenditure not specified in this Memorandum of Understanding, will be clarified by the three appointed members of the Governing Body.

### **VI. Procedures**

#### **A. Selection of Personnel**

Prior to being assigned to URGENT, a prospective member must undergo a formal review by his/her Departmental command staff to insure an exemplary disciplinary record with no integrity concerns. The prospective member must then participate in a selection process with the command staff of URGENT that will make a recommendation to the chief administrator of the prospective member's department.

#### **B. Investigations**

All cases will be jointly investigated. Members from participating agencies will staff each URGENT investigation. It is, therefore, agreed that no member agency will act unilaterally.

### **C. Media**

All media releases and statements will be mutually agreed upon and jointly handled within existing member agencies guidelines. Under no circumstances will a member agency make any statements to the media about any URGENT investigation and/or arrest without the prior clearance from the URGENT commanders. The Commanding Officer and Sergeant of URGENT are authorized to make media releases on routine arrests and seizures. All media releases will include notification and/or participation of the chief administrator in the jurisdiction of occurrence.

### **D. Forfeitures**

Any properties or funds confiscated, with a value greater than \$1000.00, which are a direct result of a criminal investigation will be processed by the URGENT Asset Forfeiture Officer pursuant to forfeiture regulations of the United States Department of Justice and/or the Ulster County District Attorney's Office agree to the following division of funds:

1. 20% of the forfeiture will be designated for the mandatory federal asset forfeiture administrative fees
2. 35% of the forfeitures will be earmarked for the URGENT fund. This fund will be utilized for operating expenses outlined in section V of this MOU. Once the fund has reached one and one half times the amount of the projected annual budget, no additional monies will be added to this account and all monies will be dispersed per section VI. D.3. of this MOU until it reaches the level of the annual budget, unless mutually agreed to by advisory council.
3. 45% of the forfeitures will be divided equally between the participating agencies starting in a fiscal year of January 1<sup>st</sup> to December 31<sup>st</sup> and will be pro-rated monthly thereafter. Once the participating agencies have each received \$25,000.00 during the fiscal year, the division of funds will then be computed on a percentage based upon personnel assigned. Each person assigned shall be given an equal percentage and the Ulster County District Attorney's Office will receive consideration of two people assigned to the task force. In the event an agency joins during the fiscal year a portion of the \$25,000.00 base funds will be pro-rated on a monthly basis, based upon number of months the agency participates that fiscal year, unless mutually agreed to by advisory council.
4. The operating budget for URGENT shall be on a fiscal year, from January 1<sup>st</sup> through and including December 31.
5. Seizures of less than \$5000.00 will be fully deposited in the URGENT fund, minus the 20% federal administrative fee, regardless of the fund balance.



6. When a non-URGENT member of a participating agency within URGENT seizes US currency, or property of value, that agency will be individually responsible for and entitled to, the entire seizure of the money or property of value.
7. In the event that URGENT processes an asset forfeiture for any agency, participating or not, there will be a 10% administrative charge which shall be earmarked for the URGENT fund. More "routine" assistance does not make that case an URGENT investigation. All agencies are encouraged to contact URGENT staff for intelligence purposes and or follow up assistance as needed.
8. Any seizure not specified in this MOU will be clarified by the three appointed members of the Governing Body.

#### **E. Evaluation**

The agencies involved agree to monitor the progress and effectiveness of this effort. An evaluation of the nature and result of URGENT investigations will be conducted by the chief administrators, by way of a quarterly report and meeting with the URGENT commanders. The criteria for evaluation will include but not be limited to the number of investigations completed, number of arrests, and amount of seizures and impact on the community. Modifications or adjustments to this mission will be implemented when necessary. In addition to a quarterly report all records kept in the course of normal business shall be available upon request for inspection by a representative of each of the participating agencies.

#### **F. Firearms Training/Qualification and Related Training**

All investigative personnel assigned to URGENT shall continue routine firearms training and qualification as provided and required by their respective agencies in addition to any training that might be provided by URGENT.

#### **G. Use of Vehicles**

If it is determined to be operationally necessary, the member agencies hereby agree and authorize members of URGENT to use vehicles from all agencies for the furtherance of the mission of this unit. Vehicles shall be used in compliance with existing member agency policy.

Each party hereby agrees to defend, indemnify and save harmless the other party against any and all liability, loss damage, suit, charge attorney's fees and expenses of whatever kind or nature which the other party may directly or indirectly incur, or be required to pay by reason or in consequence of the intentionally wrongful or negligent act or omission of the party, its agents, employees or contractors. If a

claim or action is made or brought against either party and for which the other party may be responsible hereunder in whole or in part, then the other party shall be notified and shall handle or participate in the handling of the defense of such matter.

Participating agencies also agree to provide fuel, routine maintenance and repairs for their respective vehicles. Inter-agency use of vehicles is to be closely monitored by supervisors.

#### **H. Informants**

All informants, either compensated or contractual, must be formally processed in accordance with URGENT's written informant policy prior to being actively utilized. The written informant policy will also govern the management of informants.

#### **I. Report and Evidence Policy**

All reports and evidence will be processed and maintained in accordance with the written policies of the Kingston Police Department and the Ulster County Sheriff's Office. KPD reports and evidence procedures will be utilized for investigations that are initiated within the City of Kingston. UCSO reports and evidence procedures will be utilized for all investigations occurring outside of the City of Kingston.

#### **J. Personnel Complaints**

Citizen and internal complaints against an officer or officers assigned to URGENT will be forwarded to the Commanding Officer of URGENT. If the complaint cannot be resolved or is in violation of the member's departmental policies and procedures or of URGENT's policies and procedures, the complaint will be forwarded to the member's agency. The Department agency head or designee will conduct a joint investigation, with the commanding officer of designee from URGENT. Nothing in this section precludes any citizen from going directly to an officer's department to file a complaint.

#### **K. Modification and Determination**

This agreement may be modified at any time by written consent of the agencies. Any participating agency may terminate its participation in URGENT under this MOU by delivering a written notice of termination to the other participating agencies. This agreement will be in effect from 01/01/2011 - 12/31/2012.

**URGENT 01/01/2011 - 12/31/2012 M.O.U.**

**Executive Officers Signatures**

*[Handwritten Signature]*  
- P/B

**Sheriff Paul VanBlarcum - Ulster Co. S.O.**

*[Handwritten Signature]*  
**Chief Gerald Keller - Kingston PD**

**Chief Phil Mattricion - V/Ellenville PD**

**Melanie Mullins - Ulster County Probation**

*[Handwritten Signature]*  
**Chief Lou Barbaria - T/Saugerties**

*[Handwritten Signature]*  
**Chief Joseph Snyder - T/New Paltz PD**

**Chief Paul Watzka - T/Ulster PD**

**Chief Joe Ryan - T/Plattekill**

**D. Holley Carrnright - Ulster County District Attorney's Office**

*[Handwritten Signature]*  
**Chief Clayton Keefe - Woodstock PD**

*[Handwritten Signature]* - **LT. Wade Sargent**

**Chief David Ackert - T/ Lloyd PD**

\* Signed with approval and on behalf of Chief Ackert

# City of Kingston



*Andrew Zweben  
Corporation Counsel*

*Daniel Gartenstein  
Assistant Corporation Counsel*

*City Hall  
420 Broadway  
Kingston, New York 12401*

*Telephone (845) 331-0080  
Extension 3947*

*Office of the Corporation Counsel*

*Fax (845) 334-3959*

## RECEIVED

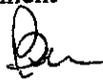
JUN 06 2012

June 5, 2012

Bea Havranek, Esq.  
Ulster County Attorney  
P.O. Box 1800  
Kingston, New York 12401

ULSTER COUNTY ATTORNEY

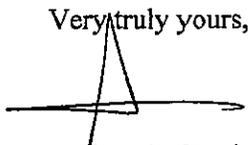
Re: URGENT Agreement

Dear Ms. Havranek; 

As you know the City of Kingston has advised the Ulster County Sheriff's office that it will no longer be able to participate in the URGENT program under the existing terms and conditions. I also understand that the contract under which the various municipalities were operating was not approved by the Ulster County Legislature.

In addition to expressing the responsibilities of the various municipal police agencies the agreement provides for the division of expenses and seized assets. Under the circumstances we should undertake an effort to unwind the relationship(s) that have been formed and resolve the disposition of outstanding expenses and assets including assets due from past operations. I would suggest we meet for that purpose. At your convenience please give me a call so we can set up a time and place to meet. If you wish you can have your office call Janet Higgins at 334-3947 and she will facilitate the process.

Very truly yours,

  
Andrew P. Zweben  
Corporation Counsel

file copy

# ULSTER COUNTY ATTORNEY

240 Fair Street, PO Box 1800

Kingston, New York 12402

845-340-3685 • Fax: 845-340-3691

**MICHAEL P. HEIN**

*County Executive*



*Service by facsimile or e-mail not accepted*

**BEATRICE HAVRANEK**

*County Attorney*

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**KRISTIN A. GUMAER**

*Assistant County Attorney*

845-334-5402

**SUSAN K. PLONSKI**

*Assistant County Attorney/  
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845-340-3441

**CLINTON G. JOHNSON**

*First Assistant County Attorney*

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**WILLIAM N. CLOONAN**

*Assistant County Attorney*

845-340-3685

**ROLAND A. BLOOMER**

*Assistant County Attorney/  
Assistant Contract Manager*

845-331-2447

## MEMORANDUM

TO: Hon. Paul J. Van Blarcum  
Ulster County Sheriff

FROM: Beatrice Havranek, Esq. *BH*  
County Attorney

DATE: July 5, 2011

RE: Ulster Regional Gang Enforcement Narcotics Team (URGENT)

Your Resolution Request Form received by the County Executive's Office on June 29, 2011, for approval of the Memorandum of Understanding for the Ulster Regional Gang Enforcement Narcotics Team (URGENT) for the period July 1, 2011 through December 31, 2012, has been directed to the County Attorney's Office.

As a result, my office has reviewed the agreement as proposed by you and needs to meet with you to discuss updating the agreement so that it accurately reflects the current situation.

In addition, Chairman Wadnola has discussed this matter with me. It is the policy of the County Legislature whenever entering into a inter-municipal agreement, which this is, to first obtain the certified resolutions of the participating municipal entities. Thus, once a final draft is approved by this office, it shall need to be forwarded to the participating municipal entities by you so that the respective legislative bodies may authorize entering into the agreement.

I have assigned Assistant County Attorney Roland Bloomer to work with you and/or your staff in updating the agreement. Kindly contact him upon receipt of this memo.

BH:gr

cc.: Hon. Michael P. Hein, County Executive  
Hon. Elliott Auerbach, County Comptroller  
Hon. Paul J. Hansut, Majority Leader  
Hon. Jeannette Provenzano, Minority Leader  
Kenneth Gilligan, Esq., Legislative Counsel  
Michael Kavanagh, Esq., Legislative Counsel  
Christopher Ragucci, Esq., Minority Counsel  
Roland A. Bloomer, Esq., Assistant County Attorney/Ass't. Contract Mgr.

# COUNTY OF ULSTER

PO BOX 1800  
KINGSTON, NEW YORK 12402

m7

Office of the Comptroller  
(845) 340-3525  
(845) 340-3697-Fax



Elliott Auerbach  
Comptroller

Laura F. Walls  
Deputy Comptroller

DATE: June 20, 2011

TO: Frederick J. Wadnola, Chairman  
Paul J. Hansut, Majority Leader  
Jeanette M. Provenzano, Minority Leader  
Ulster County Legislature

FROM: Elliott Auerbach, Comptroller

RE: URGENT Task Force MOU

A handwritten signature in black ink, appearing to read "Elliott Auerbach", written over the "FROM:" line of the memo.

During the course of our audit work related to confidential investigative funds at the Sheriff's Department earlier this year we obtained copies of the Ulster Regional Gang Enforcement Narcotics Team (URGENT) Memorandum of Understanding (MOU) and believe that the vitality of this crime-fighting program may be threatened by what we did not find.

In order to ensure the value of this program is not compromised due to a procedural oversight, I am compelled to bring to your attention that we cannot find any Legislative Resolution authorizing this Inter-Municipal Agreement (IMA). We are advised by counsel that in accordance with General Municipal Law Article 5-G for the MOU to be enforceable, the governing bodies of the respective participating municipalities are required to approve such agreements by resolution.

We further inquired of the participating municipalities if the IMA MOU had been approved by the governing boards and no such approvals could be provided.

You will note the MOU addresses issues such as overtime, leasing of vehicles, and "unspecified expenditures" that will be clarified by the "three appointed members of the Governing Board". It allocates forfeiture monies, governs compensation of informants, and establishes policy on personnel complaints without legislative authorization.

Attached please find the most recent MOU signed by six of the eleven participating members so that you may review this situation with your respective counsels to ensure that this valuable law enforcement initiative remains in compliance.

# ULSTER COUNTY ATTORNEY

240 Fair Street, PO Box 1800  
Kingston, New York 12402  
845-340-3685 • Fax: 845-340-3691  
**MICHAEL P. HEIN**  
*County Executive*

**BEATRICE HAVRANEK**  
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**ROLAND A. BLOOMER**  
*Assistant County Attorney/  
Assistant Contract Manager*  
845-331-2447



*Service by facsimile or e-mail not accepted*

## MEMORANDUM

TO: Hon. Elliott Auerbach  
Ulster County Comptroller

FROM: Beatrice Havranek, Esq. *BH*  
Ulster County Attorney

DATE: September 14, 2012

RE: Draft Report of Examination of the Ulster County Comptroller  
URGENT Program - March 1, 2007 through June 30, 2012,  
Dated September \_\_\_\_, 2012

On September 10, 2012, Ulster County Deputy Comptroller, Joseph Eriole, Esq., provided my office with a copy of the above referenced report and requested that I comment on it by September 14, 2012. It is my opinion that that draft report, as written, understates Ulster County's share of the costs and expenses associated with the Ulster Regional Gang Enforcement Narcotics Team (URGENT).

Absent in the draft report are most of the tables referenced therein. As such, I have reviewed only those limited portions of the report provided to me in the short amount of time allotted for my review. The narrative of the report also leads me to believe that there is relevant information that remains to be obtained by your office that is essential to this report. I strongly recommend that this additional information be obtained by your office so that it can perform a full and complete accounting and auditing of all the expenses and assets associated with URGENT. Without this information, it is impossible and inappropriate for my office to fully comment on the report at this time.

I am also in receipt of a copy of your office's September 6, 2012 memorandum to the Chairman of the Ulster County Legislature wherein you request that the Legislature delay its approval of the proposed URGENT Memorandum of Agreement (MOU). Per your office's memorandum, it appears that the Legislature may act upon the proposed MOU at its September 19, 2012 meeting.

Notwithstanding the foregoing, however, it is my opinion that it would not be prudent or in the best interests of the County for your office to render a final report until such time as a full and complete report can be prepared by your office and sufficient time is provided for a response by the offices and entities involved.

Based upon the limited information provided in the report, the following represents some of the issues that need to be further addressed.

There was no inclusion of the tables referred to in Appendix "A" of the report as well as others referenced to in the report. A cursory review of the County's financial system (HTE) reveals that there are at least two accounts designated that are specifically identified for URGENT kept by the County, to wit: account code 1907 which represents revenues and expenses regarding forfeitures, and account code 1909 which, I presume, represents expenses and revenues that are not derived from forfeitures but from amounts raised by taxes upon County taxpayers and any other sources of revenue. The report does not presume that there may be other accounts that are not kept by the County, per se, but by other entities or officers.

There also exists costs and expenses of departments within the County that were not funded by forfeitures but solely by the County; and those costs and expenses do not appear to be contained in either of the account codes referenced above or in the draft report. For instance, Appendix "B" of the draft report lists the value of vehicles leased and specifically allocated to the City of Kingston Police Department; but, it does not list any other expenses attendant to those vehicles, such as insurance costs, maintenance and upkeep of the vehicles, gasoline and fuel costs, equipment and tire costs, etc.

The draft report does not address vehicles that may have also been insured by the County of Ulster and/or maintained by the County of Ulster that were purchased or acquired through forfeiture funds or with County funds, nor does it identify any maintenance and upkeep costs from Central Auto for the leased vehicles per Appendix "B" and any other vehicles that may have been assigned to URGENT.

Using the schedule provided in Appendix "B" of the draft, I was able to obtain from the Ulster County Department of Insurance a preliminary estimate for costs associated with both insurance premiums and property damage claims paid from County funds within the Department of Insurance or Central Auto totaling in excess of \$12,300.00 solely for those leased vehicles listed in the Appendix. There may be additional costs and expenses related thereto; and I strongly urge your office to research this issue. Records, such as accident reports regarding URGENT related vehicles, are also kept by the Department of Safety.

The Ulster County Department of Probation was involved in URGENT, yet the report does not reveal what costs were paid out of that department's budget for URGENT.

In addition, there is nothing in the draft report that addresses occupancy or personnel costs that were associated with URGENT and borne by the County of Ulster. I presume that the offices for URGENT were housed in the Ulster County Law Enforcement Center. Thus, there should be an accounting for occupancy costs together with maintenance, utility costs, and administrative costs that were paid from County funds not derived from forfeitures.

The report does not indicate time and attendance for all those individuals from each of the entities who participated in URGENT activities. The labor costs associated with such records, if they exist, should be attributed to the respective municipalities and compared on a pro-rata basis. Records indicating where URGENT arrests took place and were prosecuted, both in the Justice Courts and the County Court, may be relevant for this purpose. As for the County, presumably personnel costs, including benefits, were incurred and paid for by the County. If those costs came from other line items other than the URGENT accounts, this is an additional factor that needs to be addressed.

It cannot be ascertained from the draft report exactly what other assets including, but not limited to, weapons, law enforcement equipment or vehicle equipment, cell phones, radios, computers and electronic equipment exist within the realm of URGENT. Whether or not the County of Ulster financed and paid for these assets from its funds is a crucial element that should be included in the report as well as whether or not they were allocated to another municipality other than the County of Ulster.

Currently, there are three pending civil cases wherein the County of Ulster is involved as a result of URGENT activities. In addition, there may be others that may have been disposed of through the legal system. My office has not been afforded enough time to retrieve records kept in storage or otherwise for this purpose. As you are aware, while the County has insurance coverage for some of its litigation, it also is responsible for deductibles in that respect.

On June 13, 2012, by way of correspondence to you, I requested your assistance in this matter. A copy of my memorandum to the Ulster County Sheriff was also forwarded to you with my request. Both my memorandum to you and that of the Sheriff, together with all enclosures, should be made part of the record. For your convenience, I am enclosing copies of the foregoing.

Finally, in light of the foregoing comments, it is respectfully requested that my office be afforded the opportunity to further review and comment upon any revised report prior to a final report being issued by your office.

BH:gr  
enclosures

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**EXHIBIT 3.5**

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## COMMENTS ADDRESSED

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As part of our investigation, the UCSO, the D.A., the City of Kingston, and the County Attorney's Office, were afforded the opportunity to review this Report of Examination in draft. The purpose of sharing the Draft Report was to ensure the fundamental accuracy of factual information contained in the report.

An interview was conducted with each party after sharing the Draft Report on September 5, 2012 ("Draft Interviews"). Thereafter, each party was also afforded the opportunity to comment on the Draft Report in writing. Those comments are attached in full in **Exhibit 3.1**.

Following is our response to the referenced comments.

## RESPONSE TO THE COMMENTS OF THE CITY OF KINGSTON

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The comment letter of the City of Kingston was written by Andrew Zweben, Esq., its corporation counsel.

1. The Jurisdiction of the County Comptroller's Office. Essentially half of the comment letter of the City of Kingston is devoted to the unproductive notion that the County Comptroller's Office is without jurisdiction to conduct the examination in question. Despite the City's strenuous objection, this premise is summarily rejected.

First, we note that upon the June 5, 2012 request of the City of Kingston for a meeting to "unwind" the affairs of URGENT with respect to Kingston's interests therein, the County Attorney's Office requested that our office conduct the Examination. It was in response to this request that our examination was initiated. The "seat at the table" which Mr. Zweben seeks to deny the Comptroller's Office was given to us by the County Attorney's Office, in an effort to respond to Mr. Zweben's request for winding up. The City of Kingston's objection to our office's involvement suggests that the winding up of this complicated endeavor could be conducted without an examination of the fiscal records and the contractual rights (if any) pursuant to which any monies were to be utilized or dispersed, a notion which cannot be sustained.

Second, we view the request of the County Attorney's Office in this regard to have been entirely appropriate in light of the Comptroller's clearly defined role as the "chief accounting and auditing officer" of the County (County Charter Article IX, Section C-57(A)). Whatever rights any party may ultimately be determined to have to URGENT funds (if any), those funds are held in a County of Ulster account, and any disbursement, transfer, or expenditure of those funds is subject to the approval and administration of the County of Ulster, a fact to which, notably, no objection has previously been stated by Kingston or any other agency participating in URGENT in the seven years of its operation. Therefore, the suggestion that

the County Comptroller has no jurisdiction to examine the finances of the program is simply without merit.

For the same reasons, the argument of the City of Kingston that the request to unwind the financial affairs of URGENT do not constitute a “‘claim’ against county funds or even funds for which the County is responsible” hardly merits a response. It is axiomatic that the City of Kingston’s request implicates the County in both respects.

Third, the suggestion that the seizure of subject funds was made by a “multi-municipal team of law enforcement officers” somehow precludes the County from the examination of the books and records of the operation is similarly unavailing. The unresolved question of whether this “multi-municipal team” had any legal standing is a basic finding and premise of the Report, and, notably, the City of Kingston made clear in its Draft Interview and in its comment letter, that it shares the considerable doubt expressed in our Report as to whether MOU can bind the parties at all. It cannot simultaneously be argued that the County should be excluded from an examination of accounts under its control on the basis that those funds are properly controlled by a conglomerate of law enforcement agencies, while also arguing that those agencies may not have been legally bound together.

2. Factual Assertions. Counsel for the City of Kingston raises several factual issues which are addressed immediately below.

We acknowledge that the use of quotation marks with respect to the language of Mr. Zweben’s June 5 letter was in error. The error was occasioned by an effort to emphasize the questionable right to the division of funds, and not to misquote the letter. The letter is attached to this Report, and no effort to mischaracterize the brief letter was intended. The error has been corrected in the final Report.

Mr. Zweben states that he is unaware of records requested by our office of the City of Kingston in connection with this Report. We note first that the reference to which he is referring in our Draft Report was a generic one applying to all the entities from which we collected information. However, we also note that requests for information were made by our Office to Kingston, which, of course, afforded Kingston an opportunity to provide such records. In correspondence from the Comptroller’s office to Mr. Zweben, a request was made to provide us with the City’s position as to what amount of money it believed was due to the City, to which no specific response was provided. Also in correspondence from our office, requests were made through Mr. Zweben for information with respect to the leased vehicles referenced in Appendix B, and whether the City filed its own DAG-71 forms with respect to URGENT seizures, to which, after a follow up inquiry, Mr. Zweben did provide responses. We also made inquiry to the Kingston Comptroller as to whether they maintained any URGENT account in the City’s name. Last, the Draft Interview, and the opportunity to provide written comment, were, themselves, *part* of the investigation, as was made clear to the City of Kingston when the invitation to do so was extended, and as such they were a part of the process of gathering information. We reiterate that the Report to which Mr. Zweben is referring in his comment letter was a Draft Report, and the “request” for information was

ongoing at that time. It is therefore factually inaccurate to assert that no records or information was sought.

With respect to sections E, F, and G of our Report, the City challenges the validity of the Report on the basis that a more detailed investigation might have been conducted. Our Report makes clear that a more detailed investigation would have to be conducted, absent the mutual resolution of the issues by the parties. The limitations of the examination are duly noted in both the Draft Report and this final Report of Examination.

However, we observe with interest Mr. Zweben's assertion that the officers involved in URGENT, "who are not charged with fiscal responsibility" could therefore not assent to the disposition of funds, is entirely contrary to his earlier assertion that the County Comptroller's Office is precluded from involvement because according to his analysis that same "multi-municipal team" is "responsible for those monies in every respect."

The City's observation that the need for further discussions with the stakeholders referenced in our Draft Report "have not been held" is simply mistaken. As set forth herein, Draft Interviews were held with all of the referenced entities, including Kingston.

The City suggests that one of our premises for consideration of the winding up of Kingston's involvement is without merit, namely, the premise that the participating agencies could be found to have mutually assented to a distribution of funds which was contrary to the MOU terms, is "nonsensical." The use of this regrettable term notwithstanding, we merely observe that our investigation reveals that such assent is *precisely* what is alleged by the Sheriff's Office to have taken place, and is confirmed by the Sheriff (the parties "acted in good faith") and the D.A. ( the "spirit" of the MOU was followed), in their comment letters. As far as the assertion that our report produces no evidence of written communication of those decisions to the agencies, Mr. Zweben is correct, a deficiency in the records of URGENT which is duly noted in our Report.

The comment that the lack of such "reporting" invalidates all of our Models is without merit. The lack of sufficient records is troubling, and may make the decisions of the 'assembly" of agencies at any given time difficult to establish, but it does not vitiate the fact that the Sheriff's Office has advised that those decisions took place, at meetings where many of the agencies were present. As noted in our Report, we do not vouch for the facts provided to us, and we do not offer a legal opinion as to whether the parties had the right to make the decisions which we are advised they made. But that does not alter the fact that they appear to have *made* them. And thus, models of potential distribution (or no distribution) based upon those decisions are reasonable to examine.

Mr. Zweben also offers the City's position that models based upon equal allocation of costs and disbursements "make no sense." We disagree. In fact, whether the agencies actually followed the MOU or not, the plain language of every version of the MOU signed by the parties (with or without proper authorization) actually require *precisely* this kind of equal distribution of seized assets. So the parties thought it "made sense." That they later departed from it in practice is at the heart of the issue, but it can hardly be argued that the "equal" burden and benefit concept can be dismissed out of hand as Mr. Zweben proposes. Moreover, this position is again inconsistent with the City's own earlier comment that URGENT was a multi-municipal cooperative effort, and, especially if the MOU is deemed to have been ineffective to bind the parties, equal division of the means by which those cooperative efforts would be supported and rewarded, is certainly one reasonable conclusion.

The comment that our office might have investigated more thoroughly the actual contribution of participating agencies with respect to manpower and resources is in keeping with our conclusion that such an investigation would require a much more intensive analysis, which only makes sense if there is an agreement among the parties, an opinion of the County Attorney, or a judicial determination, that the costs and disbursements of the program are to be determined in this matter. The City states that it is their belief that the "distribution should be based upon the relative costs and expense of the program, and the contribution, both financial and in manpower, of the parties." It should be noted that this position is contrary to the MOU and contrary to the mutual decisions of the member agencies as related to us by the Sheriff's Office. While neither the MOU nor the mutual assent may be binding (positions espoused by Mr. Zweben), both have the benefit of having been *actually expressed* throughout the life of the program. The City's view of the correct model (equitable or *quantum meruit* allocation), does not share that history. Therefore, we did not include that model in our Draft Report, because it cannot be properly analyzed on the basis of the information available to us, and because it has no basis in the presumed (MOU) or practical history of the program.

Nevertheless, we do not reject the comment that in the absence of an enforceable MOU, an equitable allocation is a reasonable alternative model. We have added discussion of such a model to our final Report, but we note therein that this model is by no means an approach mandated by the facts. As our Report states, if the parties do not resolve the matter amicably, the opinion of counsel as to the proper parameters of a further inquiry will be sought by this Office, or a judicial determination may be required. Should it be determined on the basis of such an opinion or decision that the equitable allocation model is the appropriate model, we will, of course, conduct a further investigation on that premise.

3. Conclusion. The City of Kingston's conclusion, while suggesting that we withdraw our Report, essentially agrees with our central determination: the nature of the "next level" of inquiry, and the potential adverse consequences to the parties (including Kingston) and the URGENT program is such that the parties should seek to resolve the matter. Our report provides sufficient data to encourage that result.

## **RESPONSE TO THE COMMENTS OF THE SHERIFF'S OFFICE\_\_\_\_\_**

The comments of the UCSO were submitted by Ulster County Sheriff Paul Van Blarcum.

1. Assumptions. The Sheriff points out that the Sheriff's office should be referred to as such. We have made the appropriate correction.
2. Impetus for Review. The UCSO remarks that as to the effectiveness of the MOU as a controlling document, the parties were operating in "good faith" and with the knowledge of their governing bodies, while URGENT has been in operation. We have found no evidence to the contrary, but as noted in our Report, we cannot draw a legal conclusion as to what result that yields for determining the "wind up" of URGENT's affairs with respect to Kingston.
3. The MOU and the Operation of URGENT. The UCSO has provided copies of prior MOU's which were not previously in our possession, which have been attached hereto and for which we thank them. Our office did not "omit" them from our Draft Report. We did not have them.
4. Background Information. The UCSO points out that our Draft Report should be amended to reflect that account 1909 was established prior to 1907. This has been corrected in the final Report.
5. Footnote. Our Draft Report suggested that it might be appropriate to establish a separate bank account for the seized funds, as opposed to merely earmarking the funds a separate revenue account. The UCSO strongly concurs with this suggested practice. Our further investigation and our final Report determines that the County's current practice of segregating the seizure money by identifying it as a separate revenue account, as opposed to a separate bank account, is likely appropriate. Our report has been amended accordingly.

We are pleased with the statements of the UCSO that their view of the D.A.'s participation in URGENT is positive. Our Report continues to reflect the information provided to us by the UCSO at our initial Draft Interview, but the more positive comments of the UCSO in this regard is duly noted, and undoubtedly the present view is beneficial to the program and to the County in general.

6. Need for a New MOU. The UCSO agrees that a new MOU should be entered into. Their reference to a newly negotiated MOU is a reference to a proposed retroactive MOU which would only be effective through the end of 2012. We have expressed serious concerns as to the efficacy and wisdom of this approach, and as to the particular terms of the proposed MOU. In a response memo jointly submitted with the D.A., the UCSO agreed that the proposed MOU should be revised in accordance with our suggestions, and opined that

addressing our concerns should be achievable prior to the legislature's October meeting. We trust that this is the case. Copies of our memo and the joint memo of the UCSO and D.A. are attached hereto in Exhibit 4.

7. Additional Comments. The UCSO suggests that the expense and theft associated with the investigation and conviction of former Kingston Police Detective Lt. Timothy Matthews should be taken into account and weighed against any potential distribution to Kingston. Response to this comment has been incorporated into our final Report. The comment that \$124,766.32 was incorrectly included in our distribution models is incorrect. We did take the approach the UCSO suggests; it was not considered in any of our models for disbursement to Kingston.

The UCSO suggests that funds seized by the City of Kingston in connection with an Operation Clean Sweep seizure should be considered for distribution because it is alleged that Kingston was a member of URGENT when the seizure was made. Our information, however, is that this seizure was made on March 31, 2012, and Kingston had withdrawn from URGENT by July, 2011.

8. Desire to Amicably Resolve. Like the City of Kingston, the UCSO offers that it can amicably resolve the issues raised by Kingston's desire to unwind its relationship with URGENT. This is in keeping with our strong recommendation, and we believe the findings and data in our Report will encourage and facilitate this result. However, we do not agree that this can be accomplished without the "intervention [of] outside entities." Any resolution must be subject to the approval of all participating agencies' governing bodies and memorialized in appropriate binding documents vetted by counsel.

## **RESPONSE TO THE COMMENTS OF THE DISTRICT ATTORNEY \_\_\_\_\_**

The comment letter of the District Attorney's Office were submitted by D.A Holley Carnwright.

1. No Request for Distribution. The D.A. states that they do not seek any share of seized funds attributable to URGENT at this time. Presumably this is light of the fact that they presently take a percentage of those funds in connection with the filing of their own DAG-71 on such funds, as noted in our Report. However, we do point out that this remains in contravention of the MOU's previously executed, and the practice of the D.A. retaining 20% of the seized funds may also not have been, and may not now be, approved of by the other member agencies.
2. D.A.'s Participation. Our Draft Report expressed some confusion as to the involvement of the D.A.'s office in the URGENT Program based on information provided to us by the UCSO at their initial Draft Interview. The D.A. acknowledges its participation. Our final Report has been appropriately amended.

3. D.A.'s Retention of Funds. The D.A. states that prior to 2009, the D.A. "did not receive [its] share of seizure proceeds as anticipated by the [MOUs] and the [NY and Federal statutes and regulations]," but that the D.A. viewed the retention and distribution of these funds as working capital of URGENT as appropriate "under the spirit if not the exact letter of the MOU." It is unclear how the D.A.'s statement as to not receiving its "share" of proceeds is to be reconciled with the earlier statement that the D.A. claims no share at this time; the D.A. does not elaborate on why that position should have changed, and it begs the question whether the D.A. takes the position that its office and the other participating agencies may simply alter that position at will. It is also somewhat inconsistent with the later comment that our Report's characterization of the D.A.'s retained funds as the "D.A.'s share" is "misaddressed," since the D.A. himself refers to either waiving or retaining its "share" in the same comment letter. In any event, the D.A.'s position in this regard, while explained with reference to statutory law and regulations, remains inconsistent with the MOU, and possibly with the mutual decisions of the member agencies, and therefore leaves open the questions raised as to how to account for the assets and any potential distribution.
4. The D.A.'s Participation in URGENT. In our initial Draft Interview and our Draft Interview following the Draft Report, the D.A. made clear its significant involvement in URGENT. Our Report reflects that. Contrary to the D.A.'s comment, we did not make a finding in our Draft Report that the D.A. was not significantly involved in URGENT, but only that we were advised of same by the UCSO in our initial interview.
5. Restriction of Seized Funds. The D.A. agrees with the Sheriff in asserting that the monies in the seized funds account must not be co-mingled. As in our response to the Sheriff #7, above, we believe the current practice of identifying the funds in a separate revenue account satisfies the regulations.

## **RESPONSE TO THE COMMENTS OF THE COUNTY ATTORNEY \_\_\_\_\_**

The comments of the County Attorney's Office were submitted by Ulster County Attorney Beatrice Havranek.

1. Understatement of County's URGENT Costs and Expenses. The County Attorney states that there are many carrying or associated costs of the URGENT program which were not included in our Draft Report, such as insurance, maintenance, or repairs of vehicles used in the URGENT program, or the costs of administering the program, including the use of county facilities (ie., the Law Enforcement Center), or the labor and personnel costs borne by the County and/or UCSO in support of the program. We agree that these items were not taken into account in the final Report.

In a forced resolution of this matter, such as a judicial determination, the County Attorney's position may well be sustained. The position of the County Attorney in this regard dovetails with that of the City of Kingston that a *quantum meruit* allocation of costs and disbursements should be undertaken. As noted, such a Model has been discussed in the final Report. However, we point out that the MOU does not contemplate that such costs be "deducted" from any distribution, and on the contrary, establishes that the UCSO will act as the

administrative hub of the program, without mention of compensation for providing those services.

Further, even if it is argued that the MOU is not enforceable, it does not necessarily follow that such costs are to be deducted from a distribution. Those costs might be categorized as a form of the County's contribution to the program, just as direct allocation of budget funds to the program were.

The point is that while the County Attorney's suggestion is reasonable, it would require substantial additional inquiry into not just the County's related contributions, but that of every other participating agency, in order to properly allocate the burdens shared by the parties. Such an inquiry is beyond the useful scope of this Report, especially because it is only reasonable to pursue if there is an opinion of counsel or a judicial determination that the *quantum meruit* model is the appropriate measure of the inquiry. If the parties do not resolve the matter amicably, our Office will require such a directive prior to engaging in any further, in depth analysis of the costs and contributions to the program. Absent the County Attorney's formal opinion that the MOU was not enforceable at any time, and directing our Office that the law requires an accounting based on that model, we will not expend the taxpayer's resources on such a review.

2. More Information Required Prior to Finalizing the Report. We respect the County Attorney's request that our Report not be finalized until the further investigation requested is conducted. For the reasons set forth immediately above and throughout our Report, we disagree. We feel that the Report offers significant insight into the aggregate value of the seized funds, the various potential parameters of resolving the request to wind up the program in respect to Kingston, and the serious risks associated with a failure to amicably resolve the issues. We feel it is important that the stakeholders, public officials, and the taxpayer view and consider the Report at this time.

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**EXHIBIT 3.6**

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# COUNTY OF ULSTER

PO BOX 1800  
KINGSTON, NEW YORK 12402

Office of the Comptroller  
(845) 340-3525  
(845) 340-3697-Fax



Elliott Auerbach  
Comptroller

Laura F. Walls  
Deputy Comptroller

DATE: June 20, 2011

TO: Frederick J. Wadnola, Chairman  
Paul J. Hansut, Majority Leader  
Jeanette M. Provenzano, Minority Leader  
Ulster County Legislature

FROM: Elliott Auerbach, Comptroller

RE: URGENT Task Force MOU

During the course of our audit work related to confidential investigative funds at the Sheriff's Department earlier this year we obtained copies of the Ulster Regional Gang Enforcement Narcotics Team (URGENT) Memorandum of Understanding (MOU) and believe that the vitality of this crime-fighting program may be threatened by what we did not find.

In order to ensure the value of this program is not compromised due to a procedural oversight, I am compelled to bring to your attention that we cannot find any Legislative Resolution authorizing this Inter-Municipal Agreement (IMA). We are advised by counsel that in accordance with General Municipal Law Article 5-G for the MOU to be enforceable, the governing bodies of the respective participating municipalities are required to approve such agreements by resolution.

We further inquired of the participating municipalities if the IMA MOU had been approved by the governing boards and no such approvals could be provided.

You will note the MOU addresses issues such as overtime, leasing of vehicles, and "unspecified expenditures" that will be clarified by the "three appointed members of the Governing Board". It allocates forfeiture monies, governs compensation of informants, and establishes policy on personnel complaints without legislative authorization.

Attached please find the most recent MOU signed by six of the eleven participating members so that you may review this situation with your respective counsels to ensure that this valuable law enforcement initiative remains in compliance.

**EXHIBIT 4**

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**EXHIBIT 4.1**

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# COUNTY OF ULSTER

PO BOX 1800  
KINGSTON, NEW YORK 12402

## Office of the Comptroller

(845) 340-3525  
(845) 340-3697-Fax



**Elliott Auerbach**  
*Comptroller*

**Joseph Eriole, Esq.**  
*Deputy Comptroller*

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## MEMORANDUM

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TO: Terry Bernardo, Chair, Ulster County Legislature  
David Donaldson, Minority Leader, Ulster County Legislature

CC: Langdon Chapman, Esq., Majority Counsel  
Chris Ragucci, Minority Counsel  
Beatrice Havranek, County Attorney  
Paul Van Blarcum, Sheriff  
William Weishaupt, Assistant District Attorney

FROM: Joseph P. Eriole, Deputy Comptroller

DATE: September 13, 2012

RE: **Draft Resolution No. 237 – Sept. 19, 2012; Approving a Memorandum of Understanding (“MOU”) for Various Law Enforcement Agencies Operating in Ulster County to Form “U.R.G.E.N.T.” and Authorizing the Chair to Execute the MOU**

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It is our understanding that you are considering adoption of the referenced resolution at the September 19, 2012 legislative session. Our office had previously requested that you refrain from acting on the resolution until our report occasioned by the City of Kingston’s request for an accounting of the program was complete. In our last transmission to you, we indicated that we expected the report to be published by the end of this month. In the last two weeks, we have met with representatives of the Sheriff’s Department, the District Attorney’s Office, the City of Kingston, and the County Attorney’s Office, to review the draft report and solicit their comments. We have received comments from the Sheriff’s Department, the District Attorney’s Office, and the City of Kingston. The County Attorney’s Office has been working with us as they collect the necessary information to provide us with their comments, as well. We expect we can hold to our self-imposed deadline of publishing the report by the end of the month.

In the event you are not persuaded to await the publication of the report prior to adoption of the new Memorandum of Understanding ("MOU"), we write to provide you with our specific concerns as to the MOU, for your consideration.

First, we note that nothing in our investigation or pending report suggests that URGENT should not go forward as a program. The agencies involved are convinced of its effectiveness, and we do not doubt their view of the program in that regard. Moreover, it is our position that if URGENT is to continue, a new MOU should be executed and approved by the County Legislature.

However, our investigation does reveal that certain shortcomings of previous versions of the MOU remain in the proposed, retroactive MOU, as well as some concerns specific to the new MOU being, in our view, worthy of your careful consideration. They are as follows:

1. The MOU is backdated to cover the period from January 1, 2011 through December 31, 2012. It is unclear to us why it must be backdated at all. If a new MOU among participating entities duly authorized to execute the document, is the goal, then backdating it seems to create more problems than it solves. It should be asked what past transactions or liabilities are deemed by the parties to require "ratification." We do not suggest that there may not be a sound answer to this question, but we think it prudent to inquire.
2. In further connection with the backdating of the MOU, our information indicates that Kingston participated in URGENT until at least July, 2011. Thus, we question whether the retroactive agreement can bind Kingston without their signature. We note that Kingston appears in the body of the MOU, a fact which was addressed by the signatories in a "Letter Amendment" dated August 29, 2012, signed by the members presently participating in the Program, by setting forth that references to Kingston in the MOU should be "read as deleted." But it is unclear to us whether deleting the word "Kingston" from an agreement which is, on its face, meant to cover a time period during which Kingston appears to have been a participant, is legally effective. Not to mention that Kingston, which is obviously seeking an accounting and appears to believe it is entitled to a disbursement of URGENT seizure funds, may challenge whether their position can be altered in any way without their consent, or whether any of the rights or obligations set forth in the MOU can be applied to them. If they cannot, then this alters the rights and obligations of the parties who intend to be bound, as well.
3. The MOU says that it can be modified at any time by consent of all the parties. Again, for the reasons set forth immediately above, without Kingston as part of the MOU, it is unclear what authority the other parties would have to modify the MOU.
4. The MOU says that the "Governing Body" of URGENT must include Kingston, a term consistent with past iterations of the MOU. The letter amendment referred to above states that Kingston will no longer be a member of the Governing Body, but it does not say who will replace them as a permanent member of that body.
5. The treatment of forfeiture revenues (MOU Section VI) should be carefully examined for clarity of intent and procedure. For instance, it does not take into account the apparent practice of the District Attorney's office of filing for its own 20% share of seized funds seized through URGENT. Our office does not take a position on the appropriateness of the practice. The District Attorney's office has

offered good reasons for its position, and it may be that the participating agencies take no exception to the practice. But as written, the MOU creates an expectation (and a legal right among the participating agencies) that seized funds, less the 20% federal administrative fee, will be distributed as set forth in the document. If the D.A.'s office will no longer engage in this practice, then our comment on this point is immaterial. But if they will continue to do so, it should be made clear in the MOU.

6. Section VI(A)(2) says that the 80% of forfeited funds which remain after the federal fees are deducted will be "earmarked for the URGENT fund." We have no objection to this use of the forfeited funds; indeed, it seems to us the highest and best purpose of the joint program that the seized funds should be used to fund the program's operation and success. We also believe that memorializing this use (rather than a model of distribution to all participating agencies) is an improvement over past MOU models. However, the mechanism for achieving this use of the funds should be made clear. For instance, after forfeited funds are processed by the federal government, the share which the seizing entity gets back is wired directly into a County account. According to our review, these returned funds should not be comingled with other funds. Therefore, in order to utilize the forfeiture money for operating expenses properly, either a periodic, or transaction-by-transaction, authorized transfer would have to be made from the forfeiture account to the operating account, and all purchase orders or debits for program expenditures should be made only from the operating account. These "accounting" procedures should be specified, to avoid comingling and to allow for clear requisition and payment procedures by both URGENT and County Finance.
7. Section VI(A)(3) says that after the amount of seized funds "reaches" \$150,000, it will be distributed "equally" among "Member Agencies" ... "computed on a percentage basis." Computation of the share owed to each agency cannot be done on both an "equal" and a "percentage" basis, unless all Member Agencies contribute on an equal basis. The paragraph seems to indicate that the percentage model is really the intended model, but even that is unclear in that it says that "each person assigned to URGENT shall be given an equal share," making it unclear whether the percentage is to be determined by Member Agency or assigned personnel.
8. The distribution on a percentage basis is similar to at least one concept Kingston has proffered to us as to their right to a disbursement; in other words, we believe they feel they can make a case that their contribution to the program in relation to other Member Agencies entitles them to a sort of *quantum meruit* allocation of any distribution. The proposal for distribution in VI(A)(3) appears to take a similar approach, and thus may play into Kingston's theory. Since it is offered as a retroactive agreement that would govern the relationship while Kingston was still in the program, this may prejudice the other Member Agencies and the County in "defending" such a claim by Kingston. Whether or not Kingston is entitled to a distribution or not, we do not take a position on the legal sufficiency of any such argument. We only caution that it is a concern.
9. The authority of the Governing Body is broad, and fundamental to the operation of the program in several respects, according to the MOU. Therefore, the third permanent member of the MOU should be stated clearly.

10. The MOU should specify notice procedures for meetings of the entire group of Member Agencies and of the Governing Body, and should specify that minutes will be recorded and retained.

We reiterate that it is not our intent to block the execution of a new MOU. We think a new MOU is imperative if URGENT is to continue. Nor is it our intention to unnecessarily delay the adoption of the appropriate agreement. We do not view any of our concerns as likely to create an impasse, and as to the questions we raise, we expect they can be answered and appropriate language drafted to clarify the issues in the MOU. But we can report that the issues we raise have made the analysis of the URGENT seizures, operating funds, and distribution "rights" of the parties to date extremely problematic, and with some careful attention, we think such problems in the future can be avoided.

We recognize and respect the desire of the Sheriff's Office and Member Agencies to put a MOU in place immediately for this important program. But we believe a short delay to allow the County Attorney's office and legislative counsel to consider these issues will result in a stronger document, easily approved by the Member Agencies and the County Legislature, and laying the groundwork for the long-term future of this program.

We would be happy to discuss these issues further. We thank you for your consideration.

**EXHIBIT 4.2**

**ULSTER COUNTY  
OFFICE OF THE DISTRICT ATTORNEY**

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CLIFFORD OWENS  
SHAWN WEED

TO: VICTORIA A. FABELLA, CLERK  
ULSTER COUNTY LEGISLATURE DEPT.  
VIA EMAIL vfab@co.ulster.ny.us

FROM: HOLLEY CARNRIGHT, DISTRICT ATTORNEY  
PAUL VANBLARCUM, SHERIFF

DATE: SEPTEMBER 18, 2012

RE: ULSTER REGIONAL GANG ENFORCEMENT NARCOTICS TEAM  
(URGENT) MOU

Deputy Comptroller Eriole has written suggesting that a resolution to adopt a MOU regarding URGENT be adjourned to enable his office to complete their report. We agree.

We are confident any questions raised by Mr. Eriole can be quickly resolved and that, if need be, a slightly modified MOU can be submitted for your review in advance of your October meeting on the 16th. In the meantime, if you have any questions concerning this matter you may reach me at my office or Paul at his office, 340-3303.

Cc: County Executive Michael Hein  
County Attorney Beatrice Havranek  
All U.C. Legislature Members