

**CITY OF KIRTLAND**

**RESOLUTION NUMBER 20-R-32**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF WILLOUGHBY FOR THE CONSOLIDATION OF DISPATCH SERVICES, AND DECLARING AN EMERGENCY.**

**WHEREAS**, O.R.C. Section 737.04 authorizes the legislative authority of any municipal corporation to enter into a contract with another municipal corporation, upon any terms that are agreed upon, for police protection services; and

**WHEREAS**, O.R.C. Section 9.06 authorizes a governmental entity to contract with another jurisdiction to obtain fire protection or emergency medical services; and

**WHEREAS**, the Cities of Kirtland and Willoughby are both charter municipalities with constitutionally granted home rule powers; and

**WHEREAS**, the City of Kirtland's finances require imminent action to eliminate costs from its budget; and

**WHEREAS**, the City of Kirtland has weighed its options and has made the determination that its police and fire dispatch services must be eliminated and consolidated with that of the City of Willoughby; and

**WHEREAS**, a Memorandum of Understanding has been drafted to memorialize an agreement with the City of Kirtland and the City of Willoughby to undertake Kirtland's police and fire dispatch services, a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, it is necessary to create appropriate line items and budgetary funds to pay for the dispatch services with the City of Willoughby; and

**WHEREAS**, due to the current state of emergency in Ohio and the governor's current stay at home order stemming from the COVID-19 pandemic, the Kirtland Public Library and the Kirtland Community Center have both been closed to protect both the community and the staff from potential infection; and

**WHEREAS**, Kirtland Codified Ordinance 220.25 requires the posting of copies of enacted legislation for fifteen consecutive days in three places within the City, those being City Hall, the Kirtland Public Library, and the Kirtland Community Center; and

**WHEREAS**, Kirtland Codified Ordinance 220.25 grants City Council the authority to modify the posting requirement.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Kirtland, County of Lake and State of Ohio, that:

**SECTION 1:** The Mayor is hereby authorized to enter into a Memorandum of Understanding between the City of Kirtland and the City of Willoughby to consolidate its dispatch services and have the City of Willoughby provide dispatch services for the City of Kirtland, a copy of which is attached hereto as Exhibit A, or substantial compliance with the same, and is incorporated herein fully as if by reference. Further, the Mayor is authorized to execute any and all documentation in the furtherance of the intents of that agreement.

**SECTION 2:** The Mayor and the Director of Finance are authorized to appropriate funds and designate specific line items to provide for the payment of dispatch services and to reallocate funding from existing line items.

**SECTION 3:** The City Council, pursuant to its authority in Kirtland Codified Ordinance, Section 220.25 and due to the COVID-19 pandemic, hereby modifies the requirement to post this enacted legislation in three places and requires the following:

1. The Clerk of Council is hereby directed to post the enacted legislation in City Hall for fifteen (15) consecutive days after the effective date of this legislation; and
2. Due to the closures of the Kirtland Public Library and the Kirtland Community Center, the Clerk of Council is not required to post said enacted legislation in those locations; and
3. The Clerk of Council is hereby directed to post the enacted legislation on the City of Kirtland's website for fifteen (15) consecutive days after the effective date of this legislation.

**SECTION 4:** It is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**SECTION 5:** This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that it is necessary to provide for the needs of the municipality; wherefor, this Resolution shall be in full force and effect immediately upon its passage by the affirmative vote of five (5) members of Council and approval by the Mayor, otherwise this Resolution shall be in effect from and after its adoption at the earliest period allowed by law.

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Third Reading: \_\_\_\_\_

DATE PASSED: \_\_\_\_\_

\_\_\_\_\_  
President of Council

Submitted to the Mayor for his  
Approval on this \_\_\_\_\_ day of  
\_\_\_\_\_, 2020.

ATTEST:

Approved by the Mayor on this \_\_\_\_\_  
day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Clerk of Council  
Dispatch MOU with Willoughby

\_\_\_\_\_  
Mayor Kevin F. Potter

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "Memorandum"), made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2020, by and among the **CITY OF WILLOUGHBY, OHIO** ("Willoughby"), an Ohio municipal corporation having an address for purposes hereof at One Public Square, Willoughby, Ohio 44094 and the **CITY OF KIRTLAND, OHIO** ("Kirtland"), an Ohio municipal corporation having an address for purposes hereof at 9301 Chillicothe Road, Kirtland, Ohio 44094, under the following circumstances:

### WITNESSETH:

**WHEREAS**, O.R.C. Section 737.04 authorizes the legislative authority of any municipal corporation to enter into a contract with another municipal corporation, upon any terms that are agreed upon, for police protection services; and

**WHEREAS**, O.R.C. Section 9.06 authorizes a governmental entity to contract with another jurisdiction to obtain fire protection or emergency medical services; and

**WHEREAS**, Willoughby and Kirtland are both charter municipalities with constitutionally-granted home rule powers; and

**WHEREAS**, Kirtland seeks to obtain additional police and fire protection services from Willoughby in the form of dispatch services ("Public Safety Services"); and

**WHEREAS**, Willoughby is authorized to enter into this Memorandum by Resolution No. 2020-\_\_\_\_\_, duly passed by the Council of the City of Willoughby on \_\_\_\_\_ (the "Willoughby Resolution"); and

**WHEREAS**, Kirtland is authorized to enter into this Memorandum by Resolution No. 20-R-\_\_\_\_\_, duly passed by the Council of the City of Kirtland on \_\_\_\_\_ (the "Kirtland Resolution"); and

**WHEREAS**, it is the desire of Willoughby and Kirtland to provide for public safety services in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and promises herein contained, the sufficiency of which are acknowledged by the parties hereto, Willoughby and Kirtland hereby agree as follows:

### **Section 1.**      **Public Safety Dispatch Services**

#### **A.**      **Dispatch Services**

Willoughby, through its dispatch center currently located at 36700 Euclid Avenue, Willoughby, Ohio ("Dispatch Center"), agrees to dispatch Kirtland Police Department and Fire Department calls, on a twenty-four (24) basis, to authorize personnel of the Kirtland Police

EXHIBIT  
A

Department and the Kirtland Fire Department and other public safety resources (such as animal control), generally with regard to emergency and non-emergency incidents, and with communication support and services/systems directly related to the dispatch function ("Dispatch Services"). Dispatch Services include, but are not limited to, the following: dispatching of Kirtland Police, Fire, EMS, and service resources on emergency and non-emergency incidents, tracking and documenting the activity of Willoughby personnel providing Dispatch Services to Kirtland on incidents, providing communications support on incidents, providing routine call information data, maintaining Dispatch Services to be Police LEADS capable, and fire station alerting system. The Dispatch Services, including processing of calls, to be made available and provided to Kirtland shall be equivalent to those dispatch services that are provided to Willoughby, and any all other communities served by Willoughby Dispatch.

**B. Dispatch Services Equipment**

Willoughby shall furnish all equipment necessary to provide the Dispatch Services to Kirtland, including, but not limited to, all initial base station radio equipment, furniture, consoles and telephone equipment directly related to dispatch functions, and shall routinely maintain such equipment in a reasonable manner, subject to the equipment to be furnished by Kirtland and transferred to Willoughby as provided for herein. All decisions relating to the provision, maintenance, upgrading, and replacement of such equipment are and shall remain within the sole discretion of Willoughby. However, the parties agree that notice of major capital expenditures which may impact Kirtland shall be provided sixty (60) days prior to implementation.

Kirtland shall furnish and transfer, as part of this Memorandum, all its right, title and interest in its CallWorks CallStation PSAP, originally purchased by Kirtland in 2018 from Motorola Solutions, Inc., Schaumburg, Illinois, and further identified as an all-inclusive IP based NG9-1-1, Single Back Room system and Call Handling Platform ("Kirtland's CallWorks System"), together with any and all associated rights, contractual benefits and servicing, and warranties related to Kirtland's CallWorks System, to Willoughby.

Kirtland shall provide all equipment necessary to receive the Dispatch Services provided by Willoughby in the field, including portable radios, mobile radios, mobile data terminals, in-car radio equipment, video cameras and monitors, and any other communications equipment, and shall maintain and replace such equipment in a manner that insures compatibility with Willoughby's provision of Dispatch Services. Kirtland agrees to update and/or replace all equipment necessary to receive the Dispatch Services provided by Willoughby as may be necessary to ensure the provision of Dispatch Services.

Kirtland acknowledges that Willoughby, in the future, may incur additional costs in upgrading, repairing, and replacing equipment necessary to provide the Dispatch Services for the benefit of Kirtland and other communities. Kirtland and Willoughby agree to negotiate, in good faith, their respective responsibility for any such costs for the benefit of Kirtland that are not reimbursed by grants or covered by applicable warranty.

Kirtland shall be solely responsible to individually pay for its own user fees for such services as LEADS, CAD, RMS, MDC airtime, or Lake County Telecommunications fees.

**C. Personnel**

Willoughby shall provide all personnel necessary to provide Dispatch Services to Kirtland. All staffing issues, including the number of dispatchers working at any given time, shall be determined by the Willoughby Chief of Police, Fire Chief and Safety Director. Willoughby shall be solely responsible for the management of all Dispatch Center personnel and all personnel-related issues are within the sole management discretion of Willoughby.

Willoughby agrees that after the effective date of this Memorandum and prior to the commencement of services date to increase the total number of dispatchers employed by Willoughby as necessary, within its discretion, to handle the increased volume of dispatch activity generated as a result of this Memorandum. All dispatchers who are hired will become employees of Willoughby.

**D. Operating Procedures/Operations**

Control of operating procedures and operations for the Dispatch Center shall generally rest with the sole discretion of Willoughby. However, Willoughby agrees to undertake consultations in advance with Kirtland and any other contracting communities regarding any proposed material changes in operating procedures or policies, through a joint advisory board composed of two (2) representatives from each contracting community, being the Police and Fire Chiefs of each participating municipality/township or designees. The board shall be established to meet periodically and make non-binding recommendations to Willoughby concerning such operating procedures or policies, including, but not limited, review, revisions, and recommended changes concerning training standards and requirements; standard operating guidelines, policies and procedures; and purchasing and replacement of technical equipment to enhance operations and public safety. Supervision and management over dispatch personnel shall lie solely with Willoughby. Notwithstanding the above, nothing undertaken by Willoughby in connection with its operation of the Dispatch Center shall materially interfere with standard operating procedures, responsible protocols or other internal operations of Kirtland.

**E. Payment for Dispatch Services.**

Kirtland, in consideration of the provision of the Dispatch Services outlined herein, agrees to pay Willoughby for the five (5) year term of this Memorandum, the total gross amount of Six Hundred Thousand Dollars (\$600,000) with each Total Net Payment due in full on the first day of each annual period under this Memorandum but further in accordance with the following schedule:

<b><u>Term Period</u></b>	<b><u>Dispatch Cost</u></b>	<b><u>Total Net Payment Amount</u></b>
Year One (2020-2021)	\$120,000	*\$120,000

\*Willoughby and Kirtland agree that the above identified Total Net Payment Amount for the Year One (2020-2021) term period of One Hundred Twenty Thousand Dollars (\$120,000) and due and owing upon the effective date of the Memorandum, shall be deferred and allocated equally for payment by Kirtland to Willoughby under the remaining annual anniversary dates for the four (4) remaining years of the Memorandum term and as more fully established immediately below. In the event that this Memorandum is terminated after the Year One Term Period (2020-2021) is completed but prior to the completion of its full five (5) year term, then Kirtland shall immediately pay

Willoughby the net Year One Annual Amount which remains due and owing upon the date of termination.

<u>Term Period</u>	<u>Dispatch Cost</u>	<u>Total Net Payment Amount</u>
Year Two (2021-2022)	\$120,000 (plus Year One deferral of \$30,000)	\$150,000

<u>Term Period</u>	<u>Dispatch Cost</u>	<u>Total Net Payment Amount</u>
Year Three (2022-2023)	\$120,000 (plus Year One deferral of \$30,000)	\$150,000

<u>Term Period</u>	<u>Dispatch Cost</u>	<u>Total Net Payment Amount</u>
Year Four (2023-2024)	\$120,000 (plus Year One deferral of \$30,000)	\$150,000

<u>Term Period</u>	<u>Dispatch Cost</u>	<u>Total Net Payment Amount</u>
Year Five (2024-2025)	\$120,000 (plus Year One deferral of \$30,000)	\$150,000

Kirtland and Willoughby agree to meet directly and/or through its representatives by February 28<sup>th</sup> of each calendar year or such other date as is mutually agreeable, to evaluate the sufficiency of payment for future Dispatch Services and to discuss, in good faith, any proposed changes whether increases or decreases in user fees based on an operational cost analysis to include evaluation of costs, distributions, change of workload, economies of scale, and labor costs.

Willoughby acknowledges that it has performed a case call review on its Dispatch Center and has budgeted the necessary personnel at the present time to accommodate the consolidation of Kirtland's dispatch services. In any event, if workload volume solely related to Kirtland increases to a point that additional staffing becomes necessary, Willoughby may, within its sole discretion but after consultation with Kirtland, increase the annual fees if announced by October 1 for the following calendar year. Notwithstanding, the parties further agree that the forgoing payment shall increase, as necessary, to cover any additional expenses, including contractual wage increases, health insurance increases, and other personnel-related costs associated with Willoughby's cost of employing the additional dispatch personnel necessary to provide Dispatch Services to Kirtland. Willoughby shall notify Kirtland, in writing, of any such additional expenses at least sixty (60) days prior to the effective date of any increase in payment to Willoughby for Dispatch Services.

**F. No Obligation to Respond /No Liability**

This Memorandum is not intended to and should not be considered to require Willoughby to respond beyond the dispatch function to calls or incidents whether by a law enforcement, fire or EMS basis, nor to otherwise provide law enforcement services for any events that occur in Kirtland. In this regard, Willoughby shall have no liability or responsibility for the actions, errors, omissions, or negligence of the Kirtland Police or Fire safety forces or service personnel in responding to any dispatch calls taken through the Dispatch Center. Kirtland shall maintain proper levels of insurance

in this regard. Notwithstanding this provision, both Willoughby and Kirtland shall continue to render assistance in accordance with Ohio law, any current mutual aid agreements between the parties, and/or any current agreements for Dispatch Services.

**Section 2. Term/Termination**

It is estimated that Willoughby will begin providing the public safety services at 12:00 a.m. on August 1, 2020, or as soon thereafter as Willoughby reasonably determines that all training, staffing, systems (including LEADS), and operational prerequisites are set in place and ready ("commencement of services date"). In the interim, Kirtland shall continue to maintain their current Dispatch Services and shall provide necessary support to Willoughby for transition efforts. This Memorandum shall remain in effect for an initial term of five (5) years unless terminated upon six (6) months advance written notice by either party terminating the Memorandum, with or without cause for any reason or no reason; however, neither party may terminate this Memorandum within the first three (3) years of its effective date.

**Section 3. Public Records**

The parties agree and acknowledge that records created pursuant to this Memorandum may be public records under the Ohio Public Records Act and agree to coordinate with each other, in a timely manner, on responses to public records requests and with regard to determination of records, schedules, retention periods, and times for destruction. Notwithstanding this provision, the parties agree that nothing in this Section shall be construed as limiting a party from responding to a public records request in accordance with Ohio law. Processes will be established to enable Kirtland to obtain access to its recordings and radio and telephone traffic.

**Section 4. Notices**

All notices or other correspondence relating to this Memorandum must be in writing (including e-mail or facsimile) and must be delivered or sent guaranteed overnight delivery, by facsimile or e-mail (to be followed by personal or overnight guaranteed delivery, if requested) or by postage prepaid registered or certified mail, return receipt requested, and will be deemed to be given for purposes of this Memorandum on the date such writing is received by the intended recipient. Unless otherwise specified in a notice sent in accordance with this Section, all communications in writing must be given to the parties at the following addresses:

Willoughby:  
City of Willoughby  
One Public Square  
Willoughby, OH 44094  
Attn: Mayor

with a copy to:

Michael C. Lucas, Law Director  
City of Willoughby  
One Public Square  
Willoughby, OH 44094



Kirtland:  
City of Kirtland  
9301 Chillicothe Rd.  
Kirtland, Ohio 44094  
Attn: Mayor

with a copy to:

Matthew A. Lallo, Law Director  
4230 St. Rt. 306, Suite 240  
Willoughby, OH 44094

**Section 5. Certification of Funds**

O.R.C. Section 5705.41 requires Kirtland to certify that the funds necessary to pay for this Memorandum have been either collected or are in the process of collection. Kirtland and Willoughby acknowledge and agree this Memorandum may automatically renew, and does not provide for a specified final term or end date.

Kirtland, in accordance with O.R.C Section 5705.41, will initially certify this Memorandum for One Hundred Fifty Thousand Dollars (\$150,000) and shall recertify this Memorandum for each year it is in effect for such amounts as may be required to insure its respective obligations under this Memorandum. Upon obtaining the appropriation of additional funds, the Memorandum shall be recertified by the Treasurer or Finance Director of Kirtland; and a copy of the additional certification shall be provided to Willoughby's Finance Director.

Failure to certify additional funds as required by this Memorandum shall be grounds for immediate termination of this Memorandum.

**Section 6. Modification of Memorandum**

It is understood and agreed that this Memorandum may not be changed, modified, or altered except by an instrument, in writing, signed by both parties and duly approved and authorized by each party's legislative authority in accordance with the laws of the State of Ohio and of each individual party.

**Section 7. Assignment of Memorandum**

Neither party shall assign, delegate or subcontract any portions of the Dispatch Services set forth within this Memorandum without prior written express approval of the other party.

**Section 8. Extent of Covenants; No Personal Liability**

All covenants, stipulations, obligations and agreements of the parties contained in this Memorandum are effective and enforceable to the extent authorized and permitted by applicable law. The obligations of Willoughby and Kirtland may be enforced to the extent permitted by law by mandamus or any suit or proceeding in law or equity. No such covenant, stipulation, obligation or agreement will be deemed a covenant, stipulation, obligation or agreement of any present or future member, officer, agent, or employee of any of the parties hereto in their individual capacity.

**Section 9. Mandamus**

Each obligation of Willoughby or Kirtland required to be undertaken under this Memorandum is binding upon Willoughby and Kirtland, as applicable, and upon each officer or employee thereof as from time to time may have under law to take any action on behalf of the Willoughby or Kirtland that may be necessary to perform all or any part of that obligation, as a duty of Willoughby and Kirtland and of each of those respective officers and employees resulting from an office, trust or station within the meaning of Ohio Revised Code Section 2731.01 providing for enforcement by writ of mandamus.

**Section 10. Severability**

If any provision of this Memorandum, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law. Furthermore, in lieu of such invalid or unenforceable provision, there will be added automatically as a part of this Memorandum a provision as similar in terms to such invalid or unenforceable provision as may be possible that is and will be valid and enforceable.

**Section 11. Separate Counterparts**

This Memorandum may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute one and the same instrument. It shall not be necessary in proving this Memorandum to produce or account for more than one of those counterparts.

**Section 12. Governing Law and Choice of Forum**

This Memorandum will be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the Willoughby, its agents and employees, and Kirtland, its agents and employees, arising out of or relating to this Memorandum shall be heard by the Court of Common Pleas for Lake County, Ohio which shall have exclusive jurisdiction.

**Section 13. Other Similar Agreements by Willoughby**

Nothing in this Memorandum is intended to, nor shall serve to, in anyway limit the sole and unfettered discretion of Willoughby to contract with other municipalities, townships, or political subdivisions for Dispatch Services and to establish appropriate fees for such purpose totally independent of the arrangements and fees determined for services provided for under the within Memorandum.

IN WITNESS WHEREOF, Willoughby has caused this Memorandum to be duly executed by Robert A. Fiala, its Mayor, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, as authorized by Resolution No. 2020-\_\_\_\_\_; and Kirtland has caused this Memorandum to be duly executed by Kevin P. Potter, its Mayor, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, as authorized by Resolution No. 20-R-\_\_\_\_\_.

Approved as to Form:

THE CITY OF WILLOUGHBY, OHIO

\_\_\_\_\_  
Michael C. Lucas, Director of Law

By: \_\_\_\_\_  
Robert A. Fiala, Mayor

Approved as to Form:

THE CITY OF KIRTLAND, OHIO

\_\_\_\_\_  
Matthew A. Lallo, Director of Law

By: \_\_\_\_\_  
Kevin F. Potter, Mayor

**CITY FISCAL OFFICER'S CERTIFICATE**

The undersigned, as fiscal officer of the City of Kirtland, hereby certifies that the moneys required to meet the obligations of the City during the first two (2) years under the Memorandum have been lawfully appropriated by the City Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.01 and 5705.47.

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Director of Finance  
City of Kirtland, Ohio

Dated: \_\_\_\_\_