

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2014-77

By Jim Maxwell Sponsored By Mayor Cyril M. Kleem
AN ORDINANCE

APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF BERA AND THE CITY OF STRONGSVILLE FOR REGIONAL PUBLIC SAFETY DISPATCH SERVICES, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Berea has historically operated an emergency dispatch operation within the offices of its Police Department; and

WHEREAS, the City of Berea strives to maximize services for the community while minimizing expenditures; and

WHEREAS, both the State of Ohio and Cuyahoga County desire cities to consolidate their individual Public Safety Answering Points (PSAPS), of which there are currently 45 in Cuyahoga County supporting 54 jurisdictions; and

WHEREAS, a plan for the consolidation of city dispatch services between the City of Berea, Ohio and the City of Strongsville, Ohio is another step in the effort to increase efficiency and improve services for the residents of Berea; and

WHEREAS, the City of Strongsville has established, and is operating, a regional dispatch center which is available to the city of Berea.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

SECTION 1. That the Mayor, is hereby authorized by this City Council to enter into an agreement with the City of Strongsville, Ohio for public safety dispatch services, pursuant to terms and conditions approved by the Director of Law and substantially similar to a copy of which is attached hereto as Exhibit "A" and incorporated as if fully rewritten.

SECTION 2. This Ordinance shall supersede all previously adopted Ordinances in direct conflict herewith.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted 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 actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the city, and for the further reason that it is immediately necessary to authorize the consolidation of city dispatch services between the City of Berea and the City of Strongsville, Ohio in an effort to increase efficiency and improve services for the residents of Berea. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: October 20, 2014

ATTEST: [Signature]
Clerk of Council

APPROVED AS TO FORM: [Signature]
Director of Law

[Signature]
President of Council

APPROVED: October 21, 2014
[Signature]
Mayor

Exhibit "A"

9/9/2014

**AGREEMENT FOR PUBLIC SAFETY DISPATCH SERVICES
BETWEEN THE CITY OF STRONGSVILLE, OHIO AND
THE CITY OF BEREA, OHIO**

This Agreement is entered into as of this ___ day of _____, 2014, by and between the **CITY OF STRONGSVILLE, OHIO** ("Strongsville"), an Ohio Municipal Corporation, with principal offices located at 16099 Foltz Parkway, Strongsville, Ohio 44149, and the **CITY OF BEREA, OHIO** ("Berea"), an Ohio Municipal Corporation, with principal offices located at 11 Berea Commons, Berea, Ohio 44017.

WHEREAS, Ohio Revised Code 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, Ohio Revised Code Section 9.60 authorizes a governmental entity to contract with another jurisdiction to obtain fire protection or emergency medical services; and

WHEREAS, Strongsville and Berea are both charter municipalities with constitutionally-granted home rule powers; and

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

WHEREAS, the Strongsville City Council on _____, 2014, passed Ordinance No. _____, authorizing this Agreement with Berea for public safety services; and

WHEREAS, the Berea City Council on _____, 2014 passed Ordinance No. _____, authorizing this Agreement with Strongsville for purchase of public safety services; and

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

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the parties, intending to be legally bound, agree as follows:

ARTICLE I – PUBLIC SAFETY DISPATCH SERVICES

A. Dispatch Services: Strongsville, through its dispatch center located at the City's Communications Center at 13213 Pearl Road, Strongsville, Ohio, ("Dispatch Center"), agrees to dispatch Berea Police Department and Fire Department calls, on a twenty-four (24) hour basis, to authorized personnel of the Berea Police Department and the Berea 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 Berea police, fire, EMS and service resources on emergency and non-emergency incidents, tracking and documenting the activity of Strongsville personnel providing

dispatch services to Berea on incidents, providing communication 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 Berea shall be equivalent to those Dispatch Services that are provided to the City of Strongsville, and any and all other communities served by Strongsville Dispatch.

B. Dispatch Services Equipment: Strongsville shall furnish all equipment necessary to provide the Dispatch Services to Berea, 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. All decisions relating to the provision, maintenance, upgrading, and replacement of such equipment are and shall remain within the sole discretion of Strongsville. However, the parties agree that notice of major capital expenditures which may impact Berea shall be provided thirty (30) days prior to implementation; with payment to be governed by Article I(F) hereafter.

Berea shall provide all equipment necessary to receive the Dispatch Services in the field provided by Strongsville, 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 ensures compatibility with Strongsville's provision of Dispatch Services. Berea agrees to update and/or replace all equipment necessary to receive the Dispatch Services provided by Strongsville as may be necessary to ensure the provision of Dispatch Services.

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

Berea shall be solely responsible to individually pay for its own user fees for all ancillary subscription services, including but not limited to LEADS, CAD, RMS, MDC airtime, public notification, reverse 911 system, Code Red Alert System, and staff call-in systems.

C. Certain Support Services: Strongsville shall further provide Berea with data entry and/or related clerical services, specifically limited to those necessary to comply with applicable LEADS requirements. Strongsville also agrees to provide prisoner booking and housing services subject to applicable daily fees, capacity limitations, and other routine terms and conditions which are reflected in the Strongsville Police Department's normal Agreement for Prisoner Housing, a copy of which is attached hereto and incorporated herein.

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

Strongsville agrees after the effective date of this Agreement and prior to the commencement of services date to increase the total number of dispatchers employed by

Strongsville as necessary within its discretion to handle the increased volume of dispatch activity generated as a result of this Agreement. Any additional positions created shall be either full-time or part-time bargaining unit positions. Thereafter, during the term of this Agreement, Strongsville will have the sole right within its discretion to hire and employ additional full-time dispatchers through the Civil Service process, as well as additional part-time dispatchers independent of the Civil Service process.

All dispatchers who are hired will become employees of the City of Strongsville. Subject to legal provisions and waiver of civil service requirements, preference for initial positions will be offered to applicants who are currently full-time or part-time public safety dispatchers in Berea, but their employment is not guaranteed, and is specifically conditioned, among other things, on all of the following:

- (1) Any personnel seeking to be hired must meet all routine City of Strongsville employment requirements for public safety dispatcher.
- (2) All accrued benefits for such applicants including but not limited to vacation leave, sick leave (subject to State law provisions), longevity, personal leave and union benefits shall have been utilized and/or paid off by Berea prior to their date of hire by the City of Strongsville. Berea agrees to reimburse Strongsville for any transfers of employee sick leave which may individually exceed four (4) weeks due to an employee invoking State law provisions.
- (3) Any prior dispatcher appointed for employment as a dispatcher by the City of Strongsville will become a member of the applicable Strongsville bargaining unit and subject to the terms of the City of Strongsville applicable bargaining unit agreement ("CBA").
- (4) Any dispatchers appointed by the City of Strongsville shall be deemed to be strictly new employees with regard to any provision of the applicable CBA including seniority, layoff order, and any other benefits or privileges that accrue with time.
- (5) Any full-time dispatchers hired/employed by Strongsville shall become civil service employees, and be subject to the applicable one-year probationary period.
- (6) Berea shall be solely responsible for any necessary training of dispatchers under their current employment who are anticipated to become employees of the City of Strongsville. Once they become employees of the City of Strongsville, the required certifications and training of such new personnel shall be the sole responsibility and expense of the City of Strongsville.

Berea agrees that it will be solely responsible for undertaking arrangements to cause the de-certification of their current collective bargaining unit for dispatchers, if deemed necessary by Berea, which should be accomplished prior to any employees being hired. Evidence of such de-certification, if any, will be provided to Strongsville. Berea will be solely responsible and liable in this regard for any claims, actions, grievances or legal issues arising under its collective bargaining agreement with its dispatchers and arising as a result of entering into this Agreement.

The parties agree that, in the event this Agreement is terminated, Strongsville will experience a lack of work and/or lack of funds and will not be obligated to retain any new dispatch positions created by this Agreement. The parties further agree, in the event this Agreement is terminated, that layoffs of dispatch personnel shall occur in accordance with the

collective bargaining agreement then in effect between the City of Strongsville and the Fraternal Order of Police Parma Lodge 15 (Dispatchers) or any other applicable agreement then in effect.

E. Operating Procedures/Operations: Control of operating procedures and operations for the dispatch center shall generally rest within the sole discretion of Strongsville. However, Strongsville agrees to undertake consultations in advance with the Berea 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 their respective designees. The board shall be established to meet periodically and make non-binding recommendations to the City of Strongsville concerning such operating procedures or policies, including but not limited to 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 the City of Strongsville. Notwithstanding the above, nothing undertaken by the City of Strongsville in connection with its operation of the dispatch center shall materially interfere with the standard operating procedures, response protocols, or other internal operations of the Berea or the other various individual contracting communities. Notwithstanding the above, the parties will utilize best efforts to seek maximum participation by all communities in the process of determining future procedures and policies for dispatch center operations.

F. Payment for Dispatch Services: Berea, in consideration of the provision of the Dispatch Services outlined herein, agrees to pay Strongsville the amount of Twenty-Five Thousand Dollars (\$25,000.00) per month by the first (1st) of each month for Dispatch Services provided in that month, for a total annual fee of Three Hundred Thousand Dollars (\$300,000.00) through December 31, 2015.

The parties agree to meet directly and/or through the Advisory Board by July 31st of each calendar year, or such other date as is mutually agreeable, to evaluate the sufficiency of payments 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 distribution, changes in workloads, economies of scale and labor costs.

In any event, if workload volume directly related to Berea increases to a point that additional staffing becomes necessary, the City of Strongsville may within its sole discretion, but after consultation with Berea, increase monthly fees, and if announced by October 1st for the following calendar year. Notwithstanding, the parties further agree that the foregoing monthly payments shall increase, as necessary, to cover any additional expenses, including contractual wage increases, health insurance increases, and other personnel-related costs, associated with Strongsville's cost of employing the additional dispatch personnel necessary to provide Dispatch Services to Berea. Strongsville shall notify Berea, in writing, of any such additional expenses at least thirty (30) days prior to the effective date of any increase in payment to Strongsville for dispatch services.

G. No Obligation to Respond/No Liability: This Agreement is not intended to and shall not be construed to require Strongsville to respond beyond the dispatch function to calls or incidents whether of a law enforcement, fire or EMS basis, nor to otherwise provide law enforcement services for events that occur in Berea. In this regard, Strongsville shall have no

liability or responsibility for the actions, errors, omissions or negligence of the Berea Police or Fire safety forces or service personnel in responding to any dispatch calls taken through the Dispatch Center. And Berea shall maintain proper levels of insurance in this regard. Notwithstanding this provision, Strongsville may render assistance in accordance with Ohio law, any current mutual aid agreements, and/or any current agreements for dispatch services.

ARTICLE II – TERM/TERMINATION

It is estimated that Strongsville shall begin providing the Public Safety Services at twelve a.m. on January 1, 2015 or as soon thereafter as Strongsville 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, the Berea shall continue to maintain their current dispatch services and shall provide necessary support to Strongsville for transition efforts. This Agreement shall remain in effect for an initial term of one (1) year, but will renew automatically from year to year unless terminated upon six (6) months advance written notice by either party terminating the Agreement, with or without cause for any reason or no reason.

ARTICLE III – FEMA GRANT

The City of Strongsville intends to seek, and has requested, the transfer of an Assistance to Firefighters Grant Program grant award from FEMA (U.S. Department of Homeland Security) originally directed to and held by the City of Olmsted Falls, to, among other things, support and reimburse Strongsville for its substantial costs already expended for establishment and build-out of the within combined dispatch center for such things as hardware, physical equipment, consoles and systems. However, to the extent possible, it is further intended that such grant would be available for future reimbursement of expenditures made by individual dispatch-participant communities for purchases of items of equipment which become assets of that particular community and are necessary for them to receive the Dispatch Services consistent with Article I Section B of this Agreement, provided such communities pay the required matching funds correlating to such grants if the County fails to provide sufficient matching funds. To more readily facilitate and implement the above, Strongsville will seek FEMA’s modification of the designated location to the Pearl Road address for the Dispatch Center, the transfer to Strongsville as grant administrator for the grant, and the transfer to Strongsville as grantee or fiscal officer for the grant. Therefore, to the extent applicable, Berea agrees to fully cooperate and do whatever is reasonably necessary, and execute whatever documents are required in order to facilitate transfer of the grant to the City of Strongsville and its designation as grant recipient.

ARTICLE IV – CUYAHOGA COUNTY SHARED SERVICES FUND

Strongsville also is likely to file an application and seek funding from Cuyahoga County through its Shared Services Fund in order to obtain funding for various aspects of the combined dispatch center, including those not eligible for funding under the FEMA grant, and/or dispatch or communication function, including purchase of equipment beneficial to those communities which receive the dispatch services. In such event, Berea agrees to fully cooperate and do whatever is reasonably necessary on its part to facilitate the application for and processing/implementation of such funding which will benefit some or all communities that are part of the combined dispatch center, including but not limited to Berea, Royalton, Strongsville and any others participating in the shared services. However, if Cuyahoga County for some reason should fail to provide all funding which has been requested, then in such event, the City

of Strongsville will have no further individual obligations arising from this Article, beyond the other terms and conditions of this Agreement.

In the event that funding from Cuyahoga County Shared Services is granted, Berea and the parties agree to establish procedures for implementation and prioritization of such funding.

ARTICLE V – PUBLIC RECORDS

The parties agree and acknowledge that records created pursuant to this Agreement 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 Article 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 Berea to obtain access to its recordings of radio and telephone traffic.

ARTICLE VI – NOTICE

All notices required hereunder shall be in writing and delivered to the following addresses:

Strongsville:

Contact Name: Mayor Thomas P. Perciak
Address: 16099 Foltz Parkway, Strongsville, OH 44149
Telephone: 440-580-3100
e-mail: tom.perciak@strongsville.org

With a copy to:

Contact Name: Kenneth A. Kraus, Law Director
Address: 16099 Foltz Parkway, Strongsville, OH 44149
Telephone: 440-580-3145
e-mail: strongsville.law@strongsville.org

Berea:

Contact Name: Mayor Cyril Kleem
Address: Berea City Hall, 11 Berea Commons, Berea, OH 44017
Telephone: 440-826-5820
e-mail: ckleem@cityofberea.org

With a copy to:

Contact Name: James Walters, Law Director
Address: Berea City Hall, 11 Berea Commons, Berea, OH 44017
Telephone: 440-826-5831
e-mail: jwalters@cityofberea.org

Any notice or communication shall be deemed effectively given (a) on the date of delivery, if delivered by hand or (b) on the date mailed if sent by overnight express delivery or U.S. Mail.

ARTICLE VII – CERTIFICATION OF FUNDS

Ohio Revised Code Section 5705.41 requires Berea to certify that the funds necessary to pay for this Agreement have been appropriated and either collected or are in the process of collection. Berea and Strongsville acknowledge and agree this Agreement may automatically renew, and does not provide for a specified final term or end date.

Berea, in accordance with Ohio Revised Code Section 5705.41, will initially certify this Agreement for Three Hundred Thousand Dollars (\$300,000.00) and shall re-certify this Agreement each year it is in effect for such amounts as may be required to ensure its respective obligations under this Agreement. Upon obtaining the appropriation of additional funds, the Agreement shall be re-certified by the Treasurer or Finance Director of Berea; and a copy of the additional certification shall be provided to Strongsville's Finance Director.

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

ARTICLE VIII – MISCELLANEOUS PROVISIONS

A. Entire Agreement: This Agreement represents the entire and integrated agreement between Strongsville and Berea concerning the within subject, and supersedes all prior negotiations, representations or agreements, either written or oral.

B. Modification of Contract: It is understood and agreed that this Agreement 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.

C. Multiple Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

D. Assignment of Contract: Neither party shall assign, delegate, or subcontract any portion of the Dispatch Services without prior written express approval of the other party.

E. Choice of Law/Forum: This Agreement shall be deemed made and entered into in the State of Ohio and shall be governed by and construed in accordance with the law of Ohio. Any controversy or claim related directly or indirectly to this Agreement will be resolved in the appropriate court in Cuyahoga County, Ohio.

F. Severability: If any provision of this Agreement, or any covenant, obligation or agreement contained here is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable

provision were not contained herein. Such 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.

G. Other Similar Agreements by Strongsville: Nothing in this Agreement is intended to nor shall it serve to in any way limit the sole and unfettered discretion of the City of Strongsville to contract with other municipalities, townships or political subdivisions for dispatch services and to establish appropriate fees for such purpose totally independent of the arrangement and fees determined for services provided under the within Agreement.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the _____ day of _____, 2014.

CITY OF BEREA (“BEREA”)

CITY OF STRONGSVILLE (“STRONGSVILLE”)

Mayor Cyril Kleem
City of Berea

Mayor Thomas P. Perciak
City of Strongsville

Approved as to form:

Approved as to form:

City of Berea Law Department
James Walters, Law Director
Berea City Hall, 11 Berea Commons,
Berea, OH 44017
440-826-5831

City of Strongsville Law Department
Kenneth A. Kraus, Law Director
16099 Foltz Parkway
Strongsville, OH 44149
440-580-3145

INITIAL CERTIFICATION OF AVAILABLE FUNDS

I certify that the money required to meet the first year of this proposal has hereby been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of this fund, free from any previous obligation or certification as required by Ohio Revised Code §5705.01 to §5705.47.

Date

Finance Director, City of Berea, Ohio