

RESOLUTION 18-11

A RESOLUTION AUTHORIZING EXECUTION OF A MEMORANDUM OF UNDERSTANDING AGREEMENT WITH THE CANINE OFFICER FOR THE POLICE CANINE SERVICES AND RESPONSIBILITIES WITH THE CITY OF CHERRYVALE.

WHEREAS, the City of Cherryvale has determined that it is beneficial to provide a police canine unit consisting of a dog and a handler, to provide such services to the citizens and employees of the City of Cherryvale; and

WHEREAS, the City of Cherryvale has entered into an agreement with the Montgomery County Sheriff's Department for use of a canine that will remain the property of the Montgomery County Sheriff's Department; and has assigned a handler, which has given rise to the need for an agreement to cover the extra responsibilities and obligations associated with the canine unit; and

WHEREAS, the City of Cherryvale now desires to create an Agreement to clarify the obligations and responsibilities for the proper and lawful operation of a canine unit; and


WHEREAS, the Governing Body finds that it is in the best interest of the City and will promote the health, safety, and general welfare of the community.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Cherryvale that the attached agreement as set forth in Exhibit "A" is hereby adopted and the Mayor is directed to sign said agreement and any other documents associated therewith on behalf of the City.

Passed by the City Council of the City of Cherryvale, the 6th day of August, 2018.


John M. Wright, Mayor

Attest:


Karen Davis, City Clerk

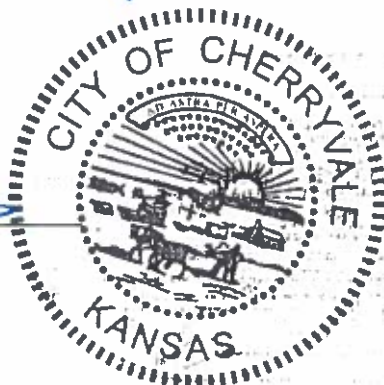


EXHIBIT "A"

MEMORANDUM OF UNDERSTANDING

ARTICLE 1 – GENERAL PROVISIONS

SECTION 1.1 PREAMBLE

- a.) This Memorandum of Understanding (MOU) is made and entered into between the City of Cherryvale, hereinafter referred to as the "City" and Joshua Shields, hereinafter referred to as the "Handler". The purpose of the Memorandum of Understanding (MOU) is the establishment of special terms and conditions of employment as the City's canine handler.

SECTION 1.2 SEVERANCE

- a.) If any provision of this Agreement should be found invalid, unconstitutional, unlawful, or unenforceable by reason of any existing or subsequently enacted constitutional or legislative provision shall be severed; all other provisions of the Agreement shall remain in full force and effect for the duration of the Agreement.
- b.) In the event that any provision of the MOU should be found invalid, unconstitutional, unlawful, or unenforceable, the City and the Handler agree to meet and confer in a timely manner in an attempt to negotiate a substitute provision. Such negotiations shall apply only to the severed provision of the Agreement and shall not in any way modify or impact the remaining provisions of the existing MOU.

SECTION 1.3 SOLE AGREEMENT

- a.) This document embodies a written memorandum of the entire understanding and mutual agreement of the parties and supersedes all prior Memoranda of Understanding and/or verbal agreements between parties hereto concerning the Handler duties.
- b.) The City and the Handler agree that to the extent that any provision addressing terms and conditions of employment as the canine handler found outside this MOU and that are in conflict thereof, this MOU shall prevail.
- c.) If, during the term of the MOU, the parties should mutually agree to modify, amend, or alter the provisions of this MOU in any respect, any such change shall be effective only if and when reduced to writing and executed by the authorized representatives of the City and the Handler. Any such changes validly made shall become a part of this MOU and subject to its terms.

ARTICLE II – HOURS OF WORK AND OVERTIME

SECTION 2.1 HOURS OF WORK/ COMPENSATION

- a.) It is agreed that canine handlers reasonably spend approximately 3.5 hours per work week performing such work for the dogs care and maintenance, which equates to 30 minutes per day, seven days per week. According to the Department of Labor, these duties could include but are not limited to; bathing, brushing, exercising, feeding, grooming, cleaning, cleaning the dog's kennel or transport vehicle, administering medicine, and training the dog at home.
- b.) Police Officers assigned as the canine handler shall receive the following schedule compensation, to reflect 3.5 hours per week required for canine care and maintenance:
 1. When the police department is fully staffed, the Handler will not be scheduled for more than 38.5 hours per work week and will be given the remaining 3.5 hours off for the at home care of the canine. (Emergency personnel are

scheduled for 42 hours per work week and 84 hours per semi-monthly pay period.

2. The Handler will document these hours in a special section on his department time sheet.
- c.) Any off-duty canine care or maintenance time exceeding 3.5 hours per week will need prior approval by the Chief of Police in order for the Handler to be compensated. Additional care for canines from Handler above 3.5 hours per week that is not pre-approved will be assumed by Handler with no additional compensation.
- d.) The City and Handler understand and agree that this additional compensation is intended to compensate the canine handler for all off duty hours spent on care and maintenance of their canine unit, in compliance with the Fair Labor Standards Act (FLSA) and interpretive cases and rulings.
- e.) The parties acknowledge that the FLSA, which governs the entitlement to compensation for canine duties, entitles the parties to agree to a reasonable number of hours per month for the performance of off duty canine care and duties. The hours derived at in this agreement were mutually agreed upon by both parties in advance. It is the intent of the parties through the provisions of this section to comply with the requirements of the FLSA. In addition, both parties believe that this section of the MOU does comply with the requirements of the FLSA.

ARTICLE III – MISCELLANEOUS PROVISIONS

SECTION 3.1 OTHER PROVISIONS

- a.) The City will pay for the cost, or provide through donations, dog food, and veterinary expenses.
- b.) All veterinary treatment must be pre-approved by the Chief of Police unless an emergency condition exists. The Chief of Police further reserves the right to determine if the expenses to be incurred outweigh the value of the canine to the needs of the City.
- c.) The City will pay for the training and certification necessary for the canine to be used as a Police narcotics canine.
- d.) If a canine that is owned by the City under a Canine Transfer Contract, becomes permanently disabled or is no longer able to perform its duties, as determined by the Cherryvale Police Department within its sole discretion, the canine ownership may be transferred back to the Handler under terms of said Contract. If so transferred, neither the Handler nor the canine will be entitled to any benefits described in this section or MOU, unless the Handler is assigned or provides another City owned canine.

ARTICLE IV – CLOSING PROVISIONS

SECTION 4.1 ACKNOWLEDGEMENT

Handler acknowledges that this MOU is NOT intended to supersede, replace, or otherwise change the employment arrangement between the City and the Handler prior to the Handler assignment, but IS intended to clarify the responsibilities of the Handler and any additional obligations of the City for the care, use, and training of the City's canine.

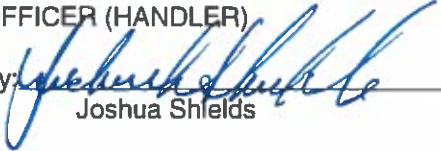
SECTION 4.2 TERM

The term of this MOU shall commence on August 6, 2018, and expire upon the earliest date of the following: the Handler's termination or separation of employment with the City of Cherryvale, or the Handler's change of duties to exclude canine handling per assignment of the Chief of Police, or the termination of the use of the canine by the City.

SECTION 4.3 SUMMATION

The City and Handler understand, agree, and acknowledge by signing below that this MOU is merely intended to clarify responsibilities between the City and the Handler and a compensation plan of a canine officer for off-duty hours spent caring, grooming, feeding, and otherwise maintaining a canine unit, in compliance with all state, federal, and local laws, interpretive cases and rulings.

OFFICER (HANDLER)

By: 
Joshua Shields

08/06/2018
Date

CITY OF CHERRYVALE

By: 
John Wright, Mayor

8/6/18
Date

ATTEST

By: 
Karen Davis, City Clerk

8/6/18
Date