



AGENDA ITEM NO.

COUNCIL MEETING 01/13/09

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

January 13, 2009

FROM: JERRY P. DYER, Chief of Police
Police Department

BY: KEITH FOSTER, Deputy Chief
Support Division Commander

SUBJECT: AUTHORIZE THE CHIEF OF POLICE TO ENTER INTO AN AGREEMENT WITH THE
CENTRAL UNIFIED SCHOOL DISTRICT TO PROVIDE SCHOOL RESOURCE OFFICERS

KEY RESULT AREA

Public Safety

RECOMMENDATIONS

It is recommended that Council authorize the Police Department to enter into an Agreement with the Central Unified School District (CUSD) to accept funding for two School Resource Officers.

EXECUTIVE SUMMARY

The Central Unified School District, in an effort to provide a safer learning environment for students attending high school, has agreed to fund two (2) School Resource Officers (SROs) at the District's high school and two middle schools. The term of the agreement is retroactive from July 1, 2008, through June 30, 2009. Central Unified will pay the sum of \$208,778 for the two officers assigned as SROs during this time period. This amount represents 100 percent of the actual cost for the two positions for 12 months and 33 percent of the operation and maintenance costs for two patrol vehicles. This contract is a renewal of an existing agreement.

KEY OBJECTIVE BALANCE

This contract provides for improved financial management by reducing the burden on the General Fund for providing police services to CUSD. Customer satisfaction is improved as CUSD receives the services requested to assist in maintaining safe learning environments on their respective District's high school and two middle school campuses. Employee satisfaction improves as police calls for services generated on campus are handled by SROs, providing more proactive time for patrol officers.

BACKGROUND

The primary mission of the Fresno Police Department School Resource Officer is to improve the quality of life for students, parents, school employees, and related community members directly affected by the program. Specific desired outcomes of the program include:

- Reduction of criminal activity and fear on campus, and foster a positive relationship with the school community.
- Handle calls for service at designated campuses.
- Identify school-related enforcement problems and develop solutions in a problem-solving manner.
- Provide a coordinated team effort between the Fresno Police Department and Fresno County Probation.
- A general improvement in the relationship between the parties listed herein.

This agreement between agencies will lead to the enhancement of collaborative problem solving, a reduced impact on the General Fund, and bolster the quality of life for the students, parents, and staff of the respective schools.

FISCAL IMPACT

CUSD will fund 100 percent of the cost of two police officers, resulting in no fiscal impact to the Police Department. Funding for two (2) SROs for 12 months is included in the FY 2009 budget.

JPD:JR:pgh
01/06/09

Attachment: Agreement

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
AND CENTRAL UNIFIED SCHOOL DISTRICT**

THIS AGREEMENT is made and entered into the 1st day of July, 2008, by and between the City of Fresno, a municipal corporation (hereinafter referred to as "CITY"), and Central Unified School District (hereinafter referred to as "DISTRICT").

RECITALS

WHEREAS, DISTRICT recognizes that the Fresno Police Department's ("FPD") assignment of School Resource Officers at DISTRICT'S high school and two middle schools to perform regular duty law enforcement services is greatly beneficial to DISTRICT in assisting DISTRICT in providing its pupils with campuses which are safe, secure, and peaceful; and

WHEREAS, DISTRICT desires to contribute monies to CITY to partially off-set CITY'S operational costs and thereby assist FPD in continuation of its practice of assigning School Resource Officers at DISTRICT's high school and two middle schools; and

WHEREAS, CITY is willing to provide two School Resource Officers to perform regular duty law enforcement services at DISTRICT's high school and two middle schools subject to availability of such officers.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Law Enforcement Services.

(a) CITY will provide two School Resource Officers (hereinafter referred to as "officers") to perform regular duty law enforcement services at DISTRICT'S high school and two middle schools during the respective school's standard school year and normal hours of operation; subject, however, to the availability of the officers. For purposes of this Agreement, "availability" shall be in the sole determination of FPD's Chief of Police, or his/her designated representative, taking into consideration any factors including, without limitation, health of officer, shortage of manpower, funding, and duty assignment of officer(s) to higher priority matters.

(b) On an as-needed basis and subject to the availability of the officers, DISTRICT may request such law enforcement services by the respectively assigned officer on an overtime basis immediately after the school's normal hours of operations 7:30 a.m. to 4:30 p.m. and on a call back basis at school functions later in the evenings and on weekends. For purposes of this Agreement, "availability" shall be in the sole determination of FPD's Chief of Police, or his/her designated representative, taking into consideration any factors including, without limitation, the officer's personal availability, health of officer, shortage of manpower, funding, and duty assignment of officer(s) to higher priority matters. In the event DISTRICT requires law enforcement services for school functions in evenings or on weekends in addition to, or due to the unavailability of, the respectively assigned officer, then DISTRICT shall obtain such services under separate agreement with CITY for "Contract Law Enforcement Services" in accordance with Fresno Municipal Code section 2-1517.1, as it may be amended from time-to-time, and the applicable provisions (currently Chapter 8) of the then current Memorandum of Understanding between CITY and Fresno Police Officers Association (Non-Supervisory Police-Unit 4) as it may be amended from time-to-time.

(c) The parties agree that CITY retains control over assignments, wages, and other terms and conditions of employment by CITY of officers. DISTRICT acknowledges that the officers are held to the requirements of the law and FPD policy. DISTRICT agrees that it shall not have authority to direct the officer's law enforcement activity. DISTRICT will immediately notify FPD of any concerns regarding such activity.

2. DISTRICT Contribution.

(a) To off-set 100% of FPD's operational costs during the initial term of this Agreement for the regular duty law enforcement services at DISTRICT'S high school and two middle schools pursuant to Section 1(a), above, upon receipt of invoice, DISTRICT shall pay CITY a total of \$208,778. Payment shall be in two equal payments of \$104,389 each on the following dates: upon execution of the Agreement by both parties and March 1, 2009. For any 1-year extension period (July 1 through June 30), DISTRICT shall pay CITY the total amount to off-set 100% of FPD's operational costs at CITY'S then current rates for its respective fiscal year (July 1 through June 30). DISTRICT will pay such total amount in two equal payments each on the following dates: September 1st and March 1st of the then 1-year extension period. CITY will provide such total amount of operational costs at least 120 days prior to the respective 1-year extension period. For purposes of this Agreement, "operational costs" include (i) the salaries and fringe benefits of the officers (including, without limitation, uniform, pension, workers compensation premium and any POST Certificate Premium Pay), and (ii) the operation and maintenance of two patrol vehicles based upon the following formula for one year period: $2 \times [(1600 \text{ miles} \times 12 \text{ months}) \times \text{CITY's then current dollar rate per mile (e.g., the dollar rate for fiscal year 2009 is } \$58.5) \times 33\%]$.

(b) DISTRICT shall reimburse CITY on an actual cost basis for the salary and fringe benefits of the officers assigned pursuant to Section 1(b), above. DISTRICT shall reimburse CITY monthly, in arrears, no later than 15 days upon receipt of an invoice from CITY. CITY shall be paid in accordance with the overtime and call back rates then in effect at the time of performance as governed by the then current Memorandum of Understanding between CITY and Fresno Police Officers Association (Non-Supervisory Police-Unit 4) as may be amended (e.g., upon execution of this Agreement, overtime is paid at one and one-half times the base rate of pay, and call back rates are a minimum of 3 hours at the rate of time and one-half).

(c) DISTRICT shall provide office space for officers at their respective schools.

3. Term of Agreement and Option to Extend.

(a) It is the intent of the parties that the initial terms of this Agreement begin July 1, 2008, effective as to all terms and conditions of the Agreement, and end on June 30, 2009, unless terminated earlier or extended in accordance with this Agreement.

(b) DISTRICT shall have the right to extend the initial term in Section 3(a) above, on the same terms and conditions as provided in this Agreement, for two 1-year consecutive terms. DISTRICT may exercise its respective rights to extend by providing written notice to CITY at least 120 days in advance of the end of the respective initial term or 1-year extension.

4. Termination of Agreement.

(a) Either party may terminate this Agreement without cause upon 30 calendar days prior written notice to the other party.

(b) This Agreement may be terminated immediately by either party upon 7 calendar days prior written notice should the other party fail substantially to observe, fulfill or perform any obligation, covenant, term or condition in accordance with this Agreement. A party will

have failed substantially to observe, fulfill or perform any obligation, covenant, term or condition of this Agreement, if such failure is not cured within such 7 calendar days prior written notice and this shall constitute a material default and breach of this Agreement. The party terminating the Agreement may exercise any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law, or proceed by appropriate court action to enforce the terms of the Agreement, or to recover direct, indirect, consequential or incidental damages for the breach of the Agreement.

(c) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

5. Indemnification.

(a) DISTRICT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, DISTRICT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of DISTRICT or any of its officers, directors, trustees, employees, agents or volunteers in the performance of this Agreement.

(b) CITY shall indemnify, hold harmless and defend DISTRICT and each of its officers, directors, trustees, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, DISTRICT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of CITY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

(c) In the event of concurrent negligence on the part of DISTRICT or any of its officers, directors, trustees, employees, agents or volunteers, and CITY or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

(d) This section shall survive expiration or termination of this Agreement.

6. Insurance. It is understood and agreed that DISTRICT and CITY maintain insurance policies or self-insurance programs to fund their respective liabilities. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement.

7. Nondiscrimination. Neither party shall employ discriminatory practices in their respective performance under this Agreement on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

8. Independent Contractor and Not a Partnership. For purposes of this Agreement, CITY and DISTRICT shall act in an independent capacity and not as officers or employees or agents of the other. Nothing in this Agreement establishes, constitutes, or will be construed as establishing or constituting a partnership or agency or employment relationship between CITY and

DISTRICT. Officers providing services under this Agreement shall remain the employees of CITY, and shall not be employees of DISTRICT.

9. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

10. Binding. Once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

11. Assignment. Neither party may assign or transfer, by operation of law or otherwise, all or any of its rights or obligations under this Agreement without the prior written consent of the other party.

12. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

13. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

14. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

15. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

16. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

17. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

18. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

19. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated

agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and DISTRICT.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a municipal corporation

CENTRAL UNIFIED SCHOOL DISTRICT

By: _____
Jerry Dyer, Chief of Police

By:  _____
Mike Berg
Assistant Superintendent
Chief Business Officer
Central Unified School District

ATTEST:
REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By:  _____
Nancy A. Algier Date
Senior Deputy

Addresses:

CITY:
Fresno Police Department
Attention: Captain Andy Hall,
Northwest Policing District
3781 N. Hughes
Fresno, CA 93721

DISTRICT:
Central Unified School District
Attention: Mike Berg,
Assistant Superintendent
Chief Business Officer
4605 N. Polk
Fresno, CA 93722

NAA:eb (41306eb/agmt) 10/30/08