ID# 15-316
6/25/15

CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT
CITY OF FRESNO, CALIFORNIA
AND FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

THIS AGREEMENT is made and entered into effective the 1st day of July, 2015, by and between the City of Fresno, a California municipal corporation (hereinafter referred to as "CITY"), and Fresno County Superintendent of Schools, a political subdivision of the State of California (hereinafter referred to as "FCSS").

RECITALS

WHEREAS, FCSS recognizes that the Fresno Police Department's ("FPD") assignment of a School Resource Officer (the position is described in **Exhibit A**) at FCSS' Kermit Koontz Educational Complex, located at 1320 N. Mariposa in Fresno, and Violet Heintz Education Academy, located at 4939 E. Yale in Fresno, to perform regular duty law enforcement services is greatly beneficial to FCSS in assisting FCSS in providing its pupils with a campus which is safe, secure, and peaceful; and

WHEREAS, FCSS desires to contribute monies to CITY to off-set CITY'S operational costs and thereby assist FPD in continuation of its practice of assigning a School Resource Officer at FCSS's Kermit Koontz Educational Complex and Violet Heintz Education Academy; and

WHEREAS, CITY is willing to provide one School Resource Officer (as described in **Exhibit A**) to perform regular duty law enforcement services at FCSS's Kermit Koontz Educational Complex and Violet Heintz Education Academy, subject to availability of such officer.

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 one School Resource Officer (hereinafter referred to as "officer") to be reimbursed 100% by DISTRICT to perform regular duty law enforcement services at FCSS' Kermit Koontz Educational Complex and Violet Heintz Education Academy for the entire fiscal year. The officer (and the sergeant assigned to oversee the officer) are subject to the availability of the officer. 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. However, in specific instances of the officer taking personal leave or FPD approved law enforcement training, then another available police officer will be assigned temporarily at the schools during such leave or training.

(b) On an as-needed basis and subject to the availability of the officer, FCSS may request such law enforcement services by the assigned officer on an overtime basis immediately after the schools' normal hours of operations 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 to higher priority matters.

(c) In the event FCSS requires law enforcement services for school functions in evenings or on weekends in addition to, or due to the unavailability of, the assigned officer, then FCSS 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 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.

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

2. FCSS Contribution.

(a) To reimburse 100% of FPD's operational costs at CITY'S then current rates during the term of this Agreement for the regular duty law enforcement services at FCSS' Kermit Koontz Educational Complex and Violet Heintz Education Academy pursuant to Section 1(a), above, FCSS shall pay CITY the then-applicable "Cost Breakdown of Police Services to the Fresno County Superintendent of Schools," as set forth in Exhibit B, in two equal payments on each of the following dates: December 1st and March 1st. (Example: For the first year of this Agreement, this would be two equal payments of $64,002 FCSS shall pay CITY the total amount to off-set one hundred percent (100%) of FPD's operational costs at CITY'S then current rates for its respective fiscal year (July 1 through June 30). For purposes of this Agreement, "operational costs" include (i) the salary and benefits of the officer (including, without limitation, medicare, medical insurance, uniform allowance, unemployment, pension, workers compensation premium and POST Certificate Premium Pay), (ii) the operation and maintenance of one patrol vehicle, and (iii) administrative fees; as are set forth in more detail in **Exhibit B**. The Cost Breakdown of Police Services for 2015-2016 shall be determined by the Fresno Police Department in the same manner as 2014-2015, and shall be based upon the straight-time hourly wage rate, overtime hourly rate and vehicle operations and maintenance costs in effect July 1 for the respective year. The Administrative Fee shall remain $350.00 for each year. The Fresno Police Department will notify FCSS, in writing, of its determination of the Cost Breakdown of Police Services by May 31st before the respective year.

(b) FCSS shall reimburse CITY on an actual cost basis for the salary and benefits of the officer assigned pursuant to Section 1(b), above. FCSS 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) FCSS shall provide office space for the officer at the Kermit Koontz Educational Complex and at the Violet Heintz Education Academy.

3. Term of Agreement. It is the intent of the parties that the term of this Agreement will begin July 1, 2015, and on June 30, 2018, unless terminated earlier in accordance with this

Agreement. The parties shall have the option to extend the term of this Agreement for one additional two-year term by mutual written agreement.

4. Termination of Agreement.

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

(b) This Agreement may be terminated immediately by either party upon seven (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 day's 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) FCSS 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, FCSS 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 FCSS or any of its officers, directors, trustees, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by FCSS of governmental immunities including California Government Code Section 810 et seq.

(b) CITY shall indemnify, hold harmless and defend FCSS 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, FCSS 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; provided nothing herein shall constitute a waiver by CITY of governmental immunities including California Government Code Section 810 et seq.

(c) In the event of concurrent negligence on the part of FCSS 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 FCSS and CITY maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its officers, officials, agents, employees and volunteers. 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, and 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 FCSS 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 FCSS. Officers providing services under this Agreement shall remain the employees of CITY, and shall not be employees of FCSS.

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. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, attached and incorporated into and made a part of this Agreement.

19. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

20. 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.

21. 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 FCSS.

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

CITY OF FRESNO,
a California municipal corporation

By: _____
Jerry Dyer, Chief of Police Date
Fresno Police Department

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS,
a political subdivision of the State of California

By: _____ 6/17/15
Jim A. Yovino Date
Fresno County Superintendent of Schools

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____ 8/6/2015
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____ 7.30.15
Amanda Freeman Date
Deputy City Attorney

APPROVED AS TO FORM:
Legal Counsel for Fresno County Superintendent of Schools

By: _____ 6-9-15
Christopher Lozano Date
Legal Counsel

Addresses:

CITY:

Fresno Police Department
Attention: Support Division
2323 Mariposa Mall
Fresno, CA 93721

FCSS:

Fresno County Superintendent of Schools
Attention: Pam Coronado, Administrator of Court and Community/ Community Day Schools
1111 Van Ness Avenue
Fresno, CA 93721

Attachment:

Exhibit A – Position Description
Exhibit B – Cost Breakdown for Police Services

Exhibit A
Position Description

School Resource Officer
School Year 2013-2014

The Fresno Police Department School Resource Officer (SRO) works under the direct supervision of the Fresno Police Department (FPD).

The basic duties of the SRO are to operate as a Peace Officer to assist site staff with crime and safety issues. Guidelines for SRO duties are as follows:

- Be a visible, active, and high profile police officer on a school campus. You are on campus to provide a presence to promote safety and positive relationships. The presence of a uniformed officer on campus gives the environment a feeling of safety and security.

- Provide a link between the school community and the FPD. Get to know the students and teachers. Interaction with staff and students is a high priority. If asked, help the teachers with material to help explain your job and the criminal justice system.

- Children need good role models. As an officer, this should be one of your goals. Help break down barriers between the police and the students.

- Walk the halls and common areas of the campus, particularly during times of high student movement to provide crime prevention and assist with student/staff safety.

- Detect and deter criminal activity, take reports of incidents, and refer matters of law enforcement concern to the appropriate authority. If it is a police matter, it should be referred to police supervision. A matter more closely aligned with school district issues should be referred to school administrative staff.

- Investigate crime and make safety recommendations to site staff. Work with the principal toward making the school safer for both yourself and the people on campus. Fit your activities into the goals of the site administration. Commitment to the goal of safe schools and good law enforcement should be your mission.

Exhibit B
Cost Breakdown of Police Services to the Fresno County Superintendent of Schools (Effective July 1, 2015 – June 30, 2016)

FY 16 SRO Officer Costs

Last Name	First Name	Rank	Annual Salary/Fringe*	% Allocated to FCSS	Annualized Straight Time Cost to FUSD	Optional OT Rate**
RUELAS	JESSE	Officer	$124,321	100%	$124,321	$ 58.00

The above schedule provides the total salary and fringe for the School Resource Officer (SRO) assigned to the Fresno County Superintendent of Schools for Fiscal Year 2016. The amount to be paid by FCSS is based on the percentage of salary and fringe stated for the officer. The annualized straight time cost is $124,321.

Also noted is an optional overtime rate for the officer. The total overtime charges to FCSS will be based on the actual number of hours the officer is utilized.

Patrol vehicle operations and maintenance cost $10,000 per year, per vehicle. The district is charged 33% or $3,333.

Total Salary Costs for Period	$ 124,321
Total Vehicle Costs for Period	$ 3,333
Administrative Fee	$ 350
Total Cost for Fresno Unified School District	**$ 128,004*** **

**Includes salary and all applicable benefits (including, without limitation, Medicare, health and welfare, uniform, pension, workers compensation premium and POST Certificate Premium Pay that are actually provided during the respective year of this Agreement)*

*** Includes salary and Medicare*

**** The respective officer and sergeant costs shall be determined by the Fresno Police Department and shall be based upon the actual straight-time hourly wage rate, overtime hourly rate and vehicle operations/maintenance cost in effect July 1* for the respective *year. The Administrative Fee shall remain $350.00 for each year. The Fresno Police Department will notify Fresno County Superintendent of Schools, in writing, of its annual salary and fringe benefits by May 31st before the respective year.*