

ID# 15-529
6/25/15

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

CITY OF FRESNO
City Clerk's Office (Original)

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 Unified School District (hereinafter referred to as "DISTRICT").

RECITALS

WHEREAS, DISTRICT recognizes that the Fresno Police Department's ("FPD") assignment of School Resource Officers (the position is described in **Exhibit A**) at the DISTRICTS high schools and selected middle schools to perform regular duty law enforcement services is greatly beneficial to DISTRICT in assisting DISTRICT in providing its pupils with a campus which is safe, secure, and peaceful; and

WHEREAS, DISTRICT desires to contribute monies to CITY to partially off-set CITY'S operational costs for eleven School Resource Officers and a sergeant position assigned, in part, to oversee such Officers, and thereby assist FPD in continuation of its practice of assigning a School Resource Officer at DISTRICT high school and selected middle schools; and

WHEREAS, CITY is willing to provide eleven School Resource Officers and a sergeant (as described in **Exhibit A**) assigned (in part) to oversee such officers, to perform regular duty law enforcement services at DISTRICT'S high schools and selected middle schools as determined by the DISTRICT during the school year, 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 nine School Resource Officers (hereinafter referred to as "officer") to be reimbursed 75% by DISTRICT to perform regular duty law enforcement services at DISTRICT'S high schools and select middle schools (Edison, Roosevelt, McLane, Hoover, Bullard, Phoenix Secondary Community Day School, Cambridge/DeWolf, Ft. Miller, and Tehipite) during the respective school's normal hours of operation and during the timeframe that includes the standard school year which is approximately 39 weeks of the year, August through June; provided, however this does not include summer school, Thanksgiving break, Winter break, Spring break and any other days that school is not in session. CITY will provide two officers to be reimbursed 100% by DISTRICT to perform regular duty law enforcement services at DISTRICT'S high schools (Fresno and Sunnyside) for the entire fiscal year. City will provide one full-time sergeant to oversee the officers to be reimbursed 90% by the district. All officers and the sergeant assigned to oversee the officers are subject to availability. 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 officers, shortage of manpower, funding, and duty assignment of officer(s) to higher priority matters. However, in specific instances of the officer(s) 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 officers, DISTRICT may request such law enforcement services by the assigned officers on an overtime basis immediately after the schools' normal hours of operations and on a call back basis at school functions or Board of Education meetings 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 officers, shortage of manpower, funding, and duty assignment of officer to higher priority matters.

(c) 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 assigned officers, 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 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. DISTRICT acknowledges that the officer is 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 two of the officers, 75% of nine of the officers and 90% of the sergeant salaries and benefits; 33% of operation and maintenance of twelve patrol vehicles; and the balance of FPD's operational costs for the regular duty law enforcement services at DISTRICT'S high schools and selected middle schools pursuant to Section 1(a), above, DISTRICT shall pay CITY the respective annual "Total Cost for Fresno Unified School District," as set forth in **Exhibit B**, in two equal payments on each the following dates: October 1 and March 1 (Example: For the first year of this Agreement, this would be two equal payments of \$626,632). For purposes of this Agreement, "operational costs" include (i) the salary and benefits of the officers (including, without limitation, Medicare, medical insurance, uniform allowance, unemployment, pension, workers compensation premium and POST Certificate Premium Pay), (ii) the operation and maintenance of twelve patrol vehicles, and (iii) administrative fees; as are set forth in more detail in **Exhibit B**.

(b) DISTRICT shall reimburse CITY on an actual cost basis for the annual salary and benefits of the officers, and any sergeant, 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 the officers at the Fresno East High School campus and at the Tillman Center.

3. Term of Agreement. It is the intent of the parties that the term of this Agreement will begin July 1, 2015 and end 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 (1) additional two-year term by mutual written agreement.

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; provided nothing herein shall constitute a waiver by DISTRICT of governmental immunities including California Government Code Section 810 et seq.

(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; 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 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. 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, e.g., 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. 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 DISTRICT.

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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

FRESNO UNIFIED SCHOOL DISTRICT

By: 
Jerry Dyer, Chief of Police
Fresno Police Department

By: 
Ruth F. Quinto
Deputy Superintendent/CFO
Fresno Unified School District

ATTEST:
YVONNE SPENCE, CMC
City Clerk

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: 
8/6/2015

By: 
Amanda Freeman
Deputy City Attorney

Addresses:

CITY:
Fresno Police Department
Attention: Support Division
P.O. Box 1271
2323 Mariposa Mall
Fresno, CA 93715-1271

DISTRICT:
Fresno Unified School District
Attention: Michael Hanson,
Superintendent
2309 Tulare
Fresno, CA 93721

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

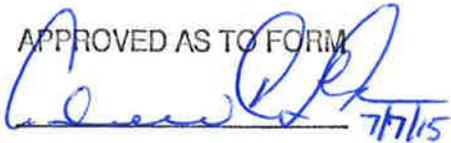
APPROVED AS TO FORM

Andrew DeLaTorre, Director
Benefits & Risk Management

Exhibit A

Position Description School Resource Officer School Year 2015-2016

The Fresno Police Department School Resource Officers (SROs) work under the direct supervision of the Fresno Police Department (FPD).

The basic duties of the SROs are to operate as Peace Officers 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. SROs 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 Unified School District
(Effective July 1, 2015 – June 30, 2016)**

FY 16 SRO Sergeant & Officer Costs

ID#	School	Last Name	First Name	Rank	Actual Cost*	% Charged to FUSD	Total Fee to FUSD	OT Ra
04352		Cancio	Rodney	Sgt	\$ 146,270	90%	\$ 131,643	\$ 69
07261	Tehipite	Alvarado	Anthony	Officer	\$ 116,627	75%	\$ 87,470	\$ 58
01652	Sunnyside	Diaz	Roland	Officer	\$ 124,321	100%	\$ 124,321	\$ 58
02412	Bullard	Elizondo	Hector	Officer	\$ 124,321	75%	\$ 93,240	\$ 58
05615	Cambridge	Gomez	Daniel	Officer	\$ 124,010	75%	\$ 93,008	\$ 58
05408	McLane	Harris	Leondre	Officer	\$ 124,321	75%	\$ 93,240	\$ 58
09913	Edison	Hughes	Melody	Officer	\$ 124,321	75%	\$ 93,240	\$ 58
10045	Ft Miller	Leyva	Christine	Officer	\$ 116,627	75%	\$ 87,470	\$ 58
02346	Phoenix	Standley	David	Officer	\$ 117,978	75%	\$ 88,484	\$ 58
02030	Fresno	Teklemariam	Terri	Officer	\$ 124,321	100%	\$ 124,321	\$ 58
08071	Hoover	Underwood	James	Officer	\$ 124,321	75%	\$ 93,240	\$ 58
06691	Roosevelt	Vang	Ying (NMI)	Officer	\$ 124,321	75%	\$ 93,240	\$ 58
		Subtotal					\$ 1,202,918	

The above schedule provides the total salary and fringe for each School Resource Officer assigned to the Fresno Unified School District for Fiscal Year 2014. The amount to be paid by FUSD is based on the percentage of salary and fringe stated for each officer, and the annualized straight time costs will be a total of \$1,202,918.

Please note the optional overtime rate for each officer. The total overtime charges to FUSD will be based on the actual number of hours each officer is utilized.

Patrol vehicle operations and maintenance cost \$10,000 per year, per vehicle. The district is charged 33%. Total charges for twelve vehicles is 12 X \$10,000 X 33.33% = \$39,996.

Officer safety equipment cost (weapon, radio, leather gear, ballistic vest, etc.) is \$5,000 per officer. The district is only charged for the two recent additional officers (Leyva and Alvarado).

Total Salary Costs for Period	\$ 1,202,918
Total Vehicle Costs for Period	\$ 39,996
Safety Equipment @ 5K ea for 2 new officers	\$ 10,000
Administrative Fee	\$ 350

Total Cost for Fresno Unified School District **\$ 1,253,264 *****

**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 Unified School District, in writing, of its annual salary and fringe benefits by May 31st before the respective year.*