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Regular Council Meeting

2023 AUG -7 P 4:21

August 10, 2023

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FRESNO CITY COUNCIL



Supplement Packet

ITEM(S)

1-U (ID 23-1193)

Approve an agreement with the Fresno County Superintendent of Schools (FCSS) for the Fresno Police Department to provide a student resource officer (SRO) at the high school, Violet Heintz Educational Academy to perform regular law enforcement duties.

Contents of Supplement: Agreement

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

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

THIS AGREEMENT is made and entered into effective the 15th day of August 2023, by and between the City of Fresno, a California municipal corporation (CITY), and Fresno County Superintendent of Schools (FCSS.)

RECITALS

WHEREAS, FCSS recognizes that the Fresno Police Department's (FPD) assignment of Student Resource Officers (SRO) at FCSS Violet Heintz Education Academy to perform regular duty law enforcement services is greatly beneficial to FCSS in supporting safe, secure, and a peaceful school campus; and

WHEREAS, roles and expectations of SRO are described in Exhibit A; and

WHEREAS, it is the goal of the FCSS-FPD partnership to support safe campus environments where all students feel cared for and connected, and where policies, practices, and interactions help create a culture free from bias toward specific student groups; and

WHEREAS, FCSS desires to contribute monies to CITY to offset CITY'S operational costs for one SRO and a portion of sergeant position assigned, in part, to oversee such officers, and thereby assist FPD in continuation of its practice of assigning SROs at FCSS school site; and

WHEREAS, CITY is willing to provide one SRO and a portion of sergeant assigned (in part) to oversee such officers, to perform regular duty law enforcement services at FCSS school site, subject to availability of such officers.

AGREEMENT

NOW, THEREFORE, it is mutually agreed as follows:

1. Law Enforcement Services

- (a) CITY will provide one officer to be reimbursed 95% by FCSS to perform regular duty law enforcement services at FCSS school site (Violet Heintz Education Academy) for the entire fiscal year. City will provide one full-time sergeant to oversee the officers, which cost will be reimbursed 15% by FCSS. 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, and duty assignment of officer(s) to higher priority matters. However, in specific instances of the officer(s) taking sick or

personal leave or FPD approved law enforcement training, then another available police officer will be assigned temporarily at the site during such leave or training. If another officer is not available to be assigned temporarily, the FCSS will not be charged for services for that time period. During periods of time when students are not regularly present at Violet Heintz Education Academy, subject to mutual agreement by FPD, the assigned officer may be reassigned to another site requested by FCSS.

- (b) On an as-needed basis and subject to the availability of the officers, FCSS 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 FCSS 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 FCSS 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 FCSS shall obtain such services under separate agreement with CITY for "Contract Law Enforcement Services", 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 officers. FCSS acknowledges the officers are 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.
- (e) CITY and FCSS agree to work collaboratively to fulfill the responsibilities described in Exhibit B, pertaining to SROs, FPD and FCSS.

2. FCSS Contribution

- (a) FCSS shall pay 95% of one officer and 15% of the sergeant salaries and benefits; 100% of vehicle lease fee of one patrol vehicle; and the balance of FPD's operational costs for the regular duty law enforcement services at FCSS high schools pursuant to Section I(a), above. FCSS shall pay CITY the respective annual "Total Cost for Fresno County Superintendent of Schools," as set forth in Exhibit C, in four equal payments on each the following dates: October 1, January 1, April 1 and June 1.

For purposes of this Agreement, "operational costs" include (i) the salary and

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 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 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

benefits of the officers (including, without limitation, Medicare, medical insurance, uniform allowance, unemployment, pension, workers compensation premium, special unit pay 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 C.

(b) FCSS shall reimburse CITY on an actual cost basis for the annual salary and benefits of the officers, and any sergeant, assigned pursuant to Section I (b), above. FCSS shall reimburse CITY monthly, in arrears, no later than 30 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 officers at the schools.

3. Term of Agreement

It is the intent of the parties that the term of this Agreement will begin August 15, 2023 and end on August 14, 2024, unless terminated earlier in accordance with this Agreement. The parties shall have the option to renew for two (2) additional one (1) year periods by mutual written agreement, prior to the expiration of the current option.

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 seven (7) calendar days prior written notice if 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 seven (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) 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. 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 FCSS, City 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.

(b) 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.

(c) 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, e.g., Certificates of Insurance or other similar documentation, shall not be required of either party under this Agreement.

7. Nondiscrimination

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.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

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

CITY OF FRESNO
a California municipal corporation

By: _____
Georgeanne A. White
City Manager

FRESNO COUNTY SUPERINTENDENT
OF SCHOOLS
a local agency

By: _____
Dr. Michele Cantwell-Copher
Superintendent

APPROVED AS TO FORM
ANDREW JANZ
City Attorney

By: _____
Taylor W. Rhoan
Deputy City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

Addresses:

CITY:
Fresno Police Department
Attention: Patrol Administration
P. O. Box 1271
2323 Mariposa Mall
Fresno, CA 93715-1271
Phone: (559)
FAX: (559)

FCSS:
Fresno County Superintendent of Schools
Attention: Legal Services
1111 Van Ness Avenue
Fresno, CA 93721-2000
Phone: (559)
FAX: (559)

Attachments:

Exhibit A - Roles and Expectations of SROs
Exhibit B - Responsibilities of SROs, Fresno Police Department, and
Fresno County Superintendent of Schools
Exhibit C -Cost Breakdown of Police Services

EXHIBIT A

Roles and Expectations of Student Resource Officers (SROs)

SROs work under the direct supervision of the Fresno Police Department (FPO). The basic duties of SROs are to be visible and active to assist school staff with crime and safety issues, with the objective of supporting safe school environments.

The roles and expectations of SROs are as follows:

- Support a safe campus environment.
- Provide a link between the students, school, community and FPD.
- Interact and build relationships with students and staff.
- Serve as role models to students.
- Be visible in the halls and common areas of the campus, particularly during times of high student movement, for safety and crime prevention.
- Work with the principal and provide safety recommendations to help make the campus safer for all.
- Respond to reports of on-campus criminal activity, using proper discretion to address criminal activity which includes investigation, documentation, and enforcement of the incident based on the totality of the circumstances and the law violated.
- Develop SRO activities based on the goals of the school administration and FPD expectations.
- Be visible after school during time of crime surges.
- Attend meetings with FCSS management on-campus, as requested by FCSS.

EXHIBIT B

Responsibilities of SROs, Fresno Police Department and Fresno County Superintendent of Schools

It is the goal of the Fresno County Superintendent of Schools partnership to support safe campus environments where all students feel cared for and connected, and where policies, practices and interactions help create a culture free from bias toward specific student groups.

SRO Responsibilities:

- Seek opportunities to engage in positive interactions and build relationships with students
- Participate in informational sessions with students, parents/guardians and staff regarding roles and expectations of SROs
- Track positive interactions with students
- Track who initiates student-SRO contacts (Officer, school administrator, other staff, etc.)
- Participate in cultural proficiency and restorative practices trainings provided by Fresno County Superintendent of Schools, if aligned to Police Department standards of practice and training
- Participate in quarterly review of student-SRO contact data with school administration and FCSS support staff, and collaboratively develop a plan to reduce disproportionate impacts on specific student groups
- Be present with school staff and parents/guardians in conflict resolution involving students
- Become familiar with Youth Court as a potential referral for students, when offenses are aligned to the Youth Court process

Fresno Police Department Responsibilities:

- Clearly define roles and expectations of SROs, and consistently communicate and implement them FCSS-wide
- Develop a system to track positive student interactions, and regularly share this information with the community
- Develop a system to track who initiates student-SRO contacts (Officer, school administrator, other staff, etc.)
- Collaboratively with Fresno County Superintendent of Schools develop and implement measures to track and monitor effectiveness of SRO services
- Provide student-SRO contact data in Excel format aligned to the FCSS's student groups
-
- Provide opportunities for FCSS involvement in the hiring and/or selection of the officer assigned to provide services to FCSS under this Agreement, and take input and requests from FCSS into consideration with regard to the hiring and/or selection of the officer assigned to provide services under this Agreement.

- Promptly address any concerns raised by FCSS with regard to the officer assigned to provide services to FCSS under this Agreement, if any, and give consideration to furnishing a different officer to provide services under this Agreement if ever requested by FCSS, following meeting with FCSS to understand the substance of any concerns.

Fresno County Superintendent of Schools Responsibilities:

- Collaboratively with the Police Department, develop and implement measures to track and monitor effectiveness of SRO services
- Provide SROs with cultural proficiency and restorative practices training, if aligned to Police Department standards of practice and training
- Create opportunities for student, parent/guardian and staff engagement with SROs
- Continue to identify and invest in mental health support services for students.
- Provide direct and honest input and feedback to FPD regarding the hiring and/or selection of the officer assigned to provide services to FCSS under this Agreement.
- Promptly raise with FPD any concerns regarding the officer assigned to provide services to FCSS under this Agreement, if any.

EXHIBIT C

Cost Breakdown of Police Services to Fresno County Superintendent of Schools (Effective .August 15, 2023 - .August 14, 2024)

FY23 SRO Sergeant & Officer Costs

Last Name	First Name	Rank	School	Annual Salary & Fringe	%Allocated To FCSS	Annualized Straight Time Cost to FCSS	Optional OT Rate**
		Sgt.	VHEA	\$212,727	15%	\$ 31,909	\$98.63
		Officer	VHEA	\$197,526	95%	\$187,649	\$81.84
TOTAL						\$219,558	

The above schedule provides the total salary and fringe for each Student Resource Officer assigned to the Fresno County Superintendent of Schools for Fiscal Year 2023-24. The amount to be paid by FCSS is based on a percentage of salary and fringe stated for each officer and the annualized straight time costs for a total of \$ 219,558

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

Patrol vehicle lease cost is \$10,800 per year, per vehicle. Total charges for one vehicle is \$10,800

Total Salary Costs for Period	\$ 219,558
Total Vehicle Costs for Period	\$ 10,800
Administrative Fee	\$ 350

Total Cost for Fresno County Superintendent of Schools **\$230,708*****

**Includes salary and all applicable benefits (including, without limitation, Medicare, Health and Welfare, uniform, pension, workers compensation premium and POST Certificate 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 straight-time hourly wage rate, overtime hourly rate and vehicle operations and maintenance cost in effect July 1 for the respective year. The Administrative Fee shall remain \$350 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.*