



CITY COUNCIL REPORT

DATE: September 27, 2017

TO: CITY COUNCIL

FROM: JENNIFER CALLAWAY, ADMINISTRATIVE SERVICES DIRECTOR *JC*

SUBJECT: AUTHORIZE THE CITY ADMINISTRATOR TO EXECUTE AGREEMENTS BETWEEN THE CITY OF SONORA AND SONORA SCHOOL DISTRICT, SONORA UNION HIGH SCHOOL, TUOLUMNE COUNTY SUPERINTENDENT OF SCHOOLS AND MOTHERLODE ADVENTIST JUNIOR ACADEMY FOR SCHOOL RESOURCE OFFICER SERVICES

RECOMMENDATION:

It is recommended that the City Council of the City of Sonora authorize the City Administrator to execute the following:

1. Agreement for School Resource Officer Services between the City of Sonora and Sonora School District (Attachment A).
2. Agreement for School Resource Officer Services between the City of Sonora and Sonora Union High School.
3. Agreement for School Resource Officer Services between the City of Sonora and Tuolumne County Superintendent of Schools; and
4. Agreement for School Resource Officer Services between the City of Sonora and Motherlode Adventist Junior Academy.

BACKGROUND:

The City of Sonora receives Board of State and Community Corrections (BSCC) funds annually as a result of resources made available by Assembly Bill 109 (AB 109). The intent of AB 109 is to protect public safety, reduce recidivism, and to improve outcomes for convicted offenders. The bill is designed to provide additional funding to help law enforcement agencies and the communities in response to prison realignment. School Resource Officer (SRO) services meet the eligibility requirements set forth by BSCC for use of these funds. The City first started funding SRO services in the BSCC Police Grant Fund (Fund 384) during fiscal year 2016/17 and continued to fund SRO services in the current fiscal year. With these services being grant

funded, the City is able to provide the SRO services at no expense to either the School District or the City. The city budgeted SRO services for Sonora School District, Tuolumne County School District, Sonora Union High School, and Motherlode Adventist Junior Academy.

DISCUSSION:

The City of Sonora began providing SRO services at the beginning of the school year. In early September, staff received notification from the Central San Joaquin Valley Risk Management Association (CSJVRMA), of which the City of Sonora is a member. The City obtains property, liability, vehicle and workers compensation insurance coverage through the CSJVRMA. Per direction provided by the CSJVRMA, all member agencies providing SRO services are now required to have an agreement in place to provide SRO services and such agreement is required to have mandatory indemnity language. Per the CSJVRMA, member cities will not have coverage when providing SRO services without such an agreement in place with the required indemnity language. The indemnity language is to provide protection for the City in case of an incident at one of the School districts, essentially stating that the School Districts will assume the liability for any incidents that result from SRO services being provided.

Upon learning of the new indemnity language requirement, the City ceased providing SRO services with the four local school districts identified above and began the process of getting appropriate agreements with required language assembled and distributed to the four school districts. The Chief of Police notified all four school districts that the agreements had to be fully executed with no changes to the required language before the City would resume SRO services. All four school districts received the same contract.

The Sonora School District has agreed to the proposed agreement and executed the agreement on their behalf (Attachment A). Staff is recommending that the City Council authorize the City Administrator to execute the agreement on behalf of the City of Sonora, thereby permitting SRO services to resume immediately at Sonora Elementary School.

Staff has not yet received executed agreements from Sonora Union High School, Tuolumne County Superintendent of Schools or the Motherlode Adventist Junior Academy. However, upon receipt of those agreements, staff recommends that the City Council authorize the City Administrator to execute the remaining three agreements, thereby permitting SRO services to resume as soon as possible and minimizing any further service disruptions.

Attachment A: Agreement for SRO Services between the City of Sonora and Sonora School District.

SCHOOL RESOURCE OFFICER AGREEMENT

THIS SCHOOL RESOURCE OFFICER AGREEMENT ("Agreement") is entered into on this 13 day of Sept, 2017 (the "Effective Date"), by and between the City of Sonora, a California municipal corporation ("City"), and the Sonora Unified School District, a California unified school district ("District"). City and District may be referred to individually as a "Party" or collectively as the "Parties". There are no other parties to this Agreement.

RECITALS

- A. District requests City to help provide increased safety at its public schools by utilizing one (1) officer of the Sonora Police Department as a School Resource Officer (the "SRO").
- B. City desires to accommodate District's request for a SRO.
- C. It is not the intent of the Parties for District to delegate to City District's duty to protect its students from foreseeable dangers.
- D. The Parties acknowledge District has broader legal authority than City to set and enforce rules relating to the safety at public schools.
- E. The Parties acknowledge student privacy rights limit the City's and SRO's access to District information.
- F. The Parties acknowledge that this limited access may impact City's and the SRO's ability to identify a potential threat.
- G. The Parties acknowledge the SRO's duties and travel between campuses will take the SRO off-campus and result in the lack of a law enforcement presence during such times.

NOW, THEREFORE, in exchange of the mutual covenants set forth below, the Parties agree as follows:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. City agrees to provide to District one (1) SRO during the Term. The SRO shall be City's employee and shall be subject to City's administration, supervision, and control, except as such administration, supervision, and control is subject to the terms and conditions of this Agreement. The SRO shall perform the services described in and incorporated hereto as **Exhibit "A"** (the "Services").

SECTION 2. TERM. The term of this Agreement shall be from the Effective Date to June 30, 2018, unless terminated earlier pursuant to Section 10 of this Agreement (the "Term"). The first date of service shall be ____, __, 20__.

SECTION 3. EMPLOYMENT AND ASSIGNMENT.

- a. City agrees to provide and to pay SRO's salary and employment benefits in accordance with the City's applicable salary schedules and employment practices. Salary and employment benefits include, but are not necessarily limited to: sick leave, annual leave, retirement compensation, disability salary continuation, a workers compensation, unemployment compensation, life insurance, dental insurance, and medical/hospitalization insurance.

- b. City, in its sole discretion, shall have the power and authority to hire, discharge and discipline the SRO. The SRO shall be subject to the City's personnel policies and practices. District shall assist City with evaluation of the SRO, however, City shall have the responsibility to evaluate, manage, and supervise the SRO. District shall immediately notify City of any concerns regarding the performance of the SRO.
- c. SRO duty hours shall generally be from 8:00 a.m. to 4:00 p.m during regularly scheduled school days, but should remain flexible enough to conform to the needs of the school during other school related events. Such events would include, but are not limited to football games, basketball games, school dances, night rallies, and other school sponsored events deemed applicable by the school and/or the Sonora Police Department. The SRO's time will be shared by various school sites throughout the City of Sonora's jurisdiction. The SRO is a part-time position and will generally only be available two (2) to three (3) days a week. These days will remain flexible in order to best meet the needs of the various school sites. It is not a material breach of this agreement if the SRO and/or marked police vehicle is absent from campus for any reason.

SECTION 4. INDEMNITY.

4.1. Indemnity. The District shall indemnify, defend, and hold harmless the City, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of or in connection with the assigned officer's performance of work or his or her failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the active negligence by the City, or the gross or willful misconduct of the assigned officer.

4.2 If the District rejects a tender of defense by the City and/or the assigned officer under this Agreement, and it is later determined that the City and/or the officer breached no duty of care and/or was immune from liability, the District shall reimburse the City and/or officer for any and all litigation expenses (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost). A duty of care or immunity determination may be made by a jury or a court, including a declaratory relief determination by a court after the City and/or officer settles a liability claim, with or without participation by the District.

4.3 The Parties acknowledge that it is not the intent of the Agreement to create a duty of care by the City or its assigned officer that they would not owe in the absence of the Agreement. The Agreement does not create an affirmative duty of care (including, without limitation, a duty to protect, a duty to deter and/or a duty to intervene) by the City or the assigned officer and the absence of the assigned officer and/or the patrol vehicle is not a material breach of this Agreement. The Parties further acknowledge that by entering into this Agreement neither the City nor its assigned officer intends to waive any immunities to which they would be entitled in the absence of the Agreement.

SECTION 5. INSURANCE.

a. District, at its sole cost and expense, shall obtain and maintain, in full force and effect during the Term, the insurance coverage described in and attached hereto as **Exhibit "B"**. District and its contractors or subcontractors, if any, shall obtain a policy endorsement naming City as an additional insured under any general liability policy or policies. This Section 9 shall survive the termination of this Agreement.

b. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors and subcontractors of District retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the Term, identical insurance coverage, naming City as an additional insured under such policies as required above.

c. Certificates evidencing such insurance shall be filed with City concurrently with the execution of this Agreement. The certificates will be subject to the approval of City Administrator and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the City Administrator thirty (30) days prior written notice of the cancellation or modification. District shall be responsible for ensuring that current certificates evidencing the insurance are provided to City Administrator during the entire Term.

d. The procuring of such required policy or policies of insurance will not be construed to limit District's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, District will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or expiration of the Term.

SECTION 6. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

a. The Parties understand and agree that staffing or operational demands may require City to withdraw the SRO for other duties and agree that City may do so at its sole discretion at any time. If City withdraws the SRO pursuant to this Section 10, it shall notify District as soon as practical.

b. Either Party may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving the other Party thirty (30) days prior written notice.

c. No payment, partial payment, acceptance, or partial acceptance by City will operate as a waiver on the part of City of any of its rights under this Agreement.

SECTION 7. NOTICES.

All notices or communications required hereunder between City and District shall be in writing, and may be given either personally, by registered or certified mail, or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have

been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (b) three (3) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Sonora
94 North Washington Street
Sonora, CA 95370
Attn: Timothy A. Miller, City Administrator

With copy to: Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attn: Douglas L. White, Esq.

To District: Leigh Shampain
Sonora School District
830 Greenley Rd
Sonora, CA 95370

SECTION 8. CONFLICT OF INTEREST.

- a. The Parties acknowledge and agree that they will comply with all laws applicable to governmental agencies and related conflicts of interest.
- b. If City determines District is a “Consultant” as that term is defined by the Political Reform Act of 1974 (Government Code section 81000 *et seq.*), District shall file the appropriate financial disclosure documents required by City’s conflict of interest code established pursuant to Government Code section 87300 *et seq.*

SECTION 9. PERSONAL INFORMATION. If, pursuant to this Agreement, City shares with District personal information, as defined in Civil Code Section 1798.81.5(d) about a California resident (“Personal Information”), District shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. District shall not use Personal Information for direct marketing purposes without City’s express written consent. Similarly, the City shall maintain reasonable and appropriate security procedures to protect personal information pertaining to District students.

SECTION 10. GENERAL PROVISIONS.

a. *Recitals.* The Recitals to this Agreement are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and sections 1 through 14 of this Agreement, sections 1 through 14 shall prevail.

b. *Governing Law; Venue.* The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California. Venue for any legal proceedings related to the enforcement of this Agreement shall be in the Superior Court for the County of Tuolumne.

c. *Severability.* If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

d. *Waiver.* Waiver of any condition, breach or default under this Agreement does not constitute a continuing waiver, or the waiver of a subsequent breach. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

e. *Supersedes Prior Agreement.* It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements written, electronic, or oral between the Parties hereto with respect to the subject matter of this Agreement.

f. *Amendment of this Agreement.* This Agreement may only be amended by the written mutual consent of the Parties.

g. *Captions.* The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

h. *Attorney's Fees and Costs.* If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

i. *Counterparts.* This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

j. *Authority.* All signatories to this Agreement warrant and represent that they have the power and authority to enter into this Agreement on behalf of their respective Parties.

k. *Document Preparation.* This Agreement shall not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

l. *Advice of Legal Counsel.* Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement.

EXHIBIT "B" INSURANCE REQUIREMENTS

~~Sonoma~~ **UNIFIED** SCHOOL DISTRICT (District), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW

TYPE OF COVERAGE	MINIMUM TYPE	MINIMUM LIMITS	
		EACH OCCURRENCE	AGGREGATE
WORKER'S COMPENSATION EMPLOYER'S LIABILITY		STATUTORY \$1,000,000	
COMMERCIAL GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE	Coverage must be at least as broad as ISO CG 00 01 and must include property damage, bodily injury and personal injury coverage.	\$5,000,000	\$10,000,000
AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	District shall provide auto liability coverage for owned, non--owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than \$5,000,000 per accident.	\$5,000,000	\$10,000,000
PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
EMPLOYMENT PRACTICES LIABILITY, INCLUDING COVERAGE FOR THIRD-PARTY CLAIMS	Include coverage for any claim brought against the City by or on behalf of any third party claiming actual or alleged discrimination, sexual harassment or violation of third party's civil rights.	\$1,000,000	
DISTRICT, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS.			

- I. INSURANCE COVERAGE MUST INCLUDE:
 - A. A PROVISION FOR A WRITTEN THIRTY DAY (30) ADVANCE NOTICE TO CITY OF SONORA CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
 - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
 - C. ANY DEDUCTIBLE AND/OR SELF-INSURANCE RETENTION AMOUNTS REQUIRE CITY'S PRIOR APPROVAL.
- II. DISTRICT MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"
 - A. PRIMARY COVERAGE: WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.
 - B. CROSS LIABILITY: THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.