



City of
Los Banos
At the Crossroads of California

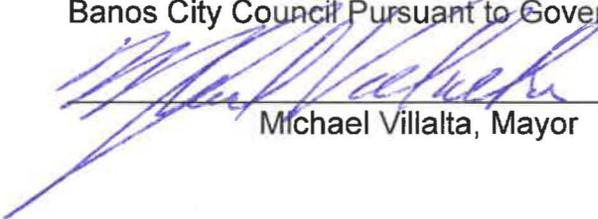
www.losbanos.org

**NOTICE AND CALL OF A SPECIAL MEETING
OF THE LOS BANOS CITY COUNCIL**

CITY HALL COUNCIL CHAMBERS
520 J Street
Los Banos, California

AUGUST 30, 2018 – 4:00 PM

Please take notice that Mayor Michael Villalta hereby calls a Special Meeting of the Los Banos City Council Pursuant to Government Code Section 54956.



Michael Villalta, Mayor



Date

CITY COUNCIL SPECIAL MEETING AGENDA

CITY HALL COUNCIL CHAMBERS
520 J Street
Los Banos, California

AUGUST 30, 2018

If you require special assistance to attend or participate in this meeting, please call the City Clerk's Office @ (209) 827-7000 at least 48 hours prior to the meeting.

The City of Los Banos complies with the Americans with Disabilities Act (ADA) of 1990.
* * * * *

Si requiere asistencia especial para atender o participar en esta junta por favor llame a la oficina de la Secretaria de la ciudad al (209) 827-7000 a lo menos de 48 horas previas de la junta.

La Ciudad de Los Banos cumple con la Acta de Americanos con Deshabilidad (ADA) de 1990.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the meeting and in the City Clerk's office located at City Hall, 520 J Street, Los Banos, California during normal business hours. In addition, such writings and documents may be posted on the City's website at www.losbanos.org.
* * * * *

Cualquier escritura o los documentos proporcionaron a una mayoría del Ayuntamiento respecto a cualquier artículo en este orden del día será hecho disponible para la inspección pública en la reunión y en la oficina de la Secretaria de la ciudad en City Hall, 520 J Street, Los Banos, California durante horas de oficina normales. Además, tales escrituras y los documentos pueden ser anunciados en el website de la ciudad en www.losbanos.org.

1. CALL TO ORDER.

4:00 PM

2. PLEDGE OF ALLEGIANCE.

3. ROLL CALL: (City Council Members)

Faria ____, Johnson-Santos ____, Lewis ____, Silveira ____, Villalta ____

4. CONSIDERATION OF APPROVAL OF AGENDA.

5. PUBLIC FORUM. (Members of the public may address the City Council on any item of public interest that is within the jurisdiction of the City Council; includes agenda and non-agenda items. No action will be taken on non-agenda items. Speakers are limited to a five (5) minute presentation. Detailed guidelines are posted on the Council Chamber informational table.)

6. CONSIDERATION OF ADOPTION OF CITY COUNCIL RESOLUTION NO. 5994 – APPROVING AMENDMENT NO. 1 TO AGREEMENT BETWEEN THE CITY OF LOS BANOS AND THE LOS BANOS UNIFIED SCHOOL DISTRICT TO PARTICIPATE IN THE SCHOOL RESOURCE OFFICER PROGRAM JULY 1, 2017 – JUNE 30, 2020.

Recommendation: Receive staff report and adopt the resolutions as submitted.

7. CONSIDERATION OF ADOPTION OF CITY COUNCIL RESOLUTION NO. 5995 – APPROVING AGREEMENT BETWEEN THE CITY OF LOS BANOS AND MERCED COUNTY OFFICE OF EDUCATION SCHOOL RESOURCE OFFICER PROGRAM JULY 1, 2018 – JUNE 30, 2019.

Recommendation: Receive staff report and adopt the resolution as submitted.

8. ADJOURNMENT.

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted on the City Hall bulletin board not less than 24 hours prior to the meeting.



Lucille L. Mallonee, City Clerk

Dated this 29th day of August 2018

Agenda Staff Report

TO: Mayor and City Council Members

FROM: WILLIAM A. VAUGHN, City Attorney
GARY BRIZZEE, Police Chief

DATE: August 30, 2018

SUBJECT: First Amendment to School Resource Officer Agreement – Los Banos Unified School District

TYPE OF REPORT: Regular Agenda

RECOMMENDATION:

It is recommended that the City Council adopt Resolution No. ____ A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS APPROVING AMENDMENT NO. 1 TO AGREEMENT BETWEEN THE CITY OF LOS BANOS AND THE LOS BANOS UNIFIED SCHOOL DISTRICT TO PARTICIPATE IN THE SCHOOL RESOURCE OFFICER PROGRAM JULY 1, 2017 – JUNE 30, 2020

BACKGROUND:

On July 13, 2017 the City entered into a three year School Resource Officer Agreement with the Los Banos Unified School District. Subsequent to entering into that Agreement the SJCVRMA made changes through its executive committee to the insurance coverage requirements for school resource officer agreements. The changes effect the indemnification provisions of existing school resource officer agreements. Essentially unless the school resource officer agreement incorporates the required indemnity language adopted by the CSJVRMA any claim in connection with the agreement will be excluded from coverage.

DISCUSSION:

Given the background City Staff has worked with the Staff of the LBUSD to incorporate the new language to avoid an interruption in the school resource officer program. The required language is set forth in the attached amendment. Adoption of the resolution approving the amendment meets the requirements of the CSJVRMA for continuing coverage. The risk manager for the CSJVRMA has approved the language set forth in the amendment.

FISCAL IMPACT

None.

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS APPROVING AMENDMENT NO. 1 TO AGREEMENT BETWEEN THE CITY OF LOS BANOS AND THE LOS BANOS UNIFIED SCHOOL DISTRICT TO PARTICIPATE IN THE SCHOOL RESOURCE OFFICER PROGRAM JULY 1, 2017 – JUNE 30, 2020

WHEREAS, on July 13, 2017 the City of Los Banos and the Los Banos Unified School District entered into an Agreement to Participate in the School Resource Officer Program July 1, 2017 – June 30, 2020 ;

WHEREAS, City and District desire to amend the Agreement to meet the requirements of the CSJVRMA; and

WHEREAS, the Amendment has been reviewed and approved by the City Attorney.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Los Banos does hereby approve the above mentioned Amendment No. 1 and authorizes the City Manager to execute said Amendment, in the form presented herewith.

The foregoing Resolution was introduced at a special meeting of the City Council of the City of Los Banos held on the 30th day of August 2018, by City Council Member _____, who moved its adoption, which motion was duly seconded by City Council Member _____, and the Resolution was adopted by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

**FIRST AMENDMENT
TO AGREEMENT BETWEEN THE CITY OF LOS BANOS
AND THE LOS BANOS UNIFIED SCHOOL DISTRICT
TO PARTICIPATE IN THE SCHOOL RESOURCE OFFICER PROGRAM
JULY 1, 2017 – JUNE 30, 2020**

THIS FIRST AMENDMENT entered into this 29th day of August, 2018, by and between the Los Banos Unified School District, a public school district, (District) and the City of Los Banos, a municipal corporation, (City).

RECITALS

WHEREAS, City is a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of California.

WHEREAS, District is a political subdivision of the State of California located in Merced County, California, and is organized and exists pursuant to the laws of the State of California.

WHEREAS, on July 13, 2017 the City and the District entered into an Agreement to Participate in the School Resource Officer Program July 1, 2017 – June 30, 2020 (“SRO Agreement”)

WHEREAS, City and District now desire to amend the Agreement for the remaining term.

NOW, THEREFORE, In consideration of the mutual promises contained herein and the exchange of good and valuable consideration, the receipt of which is acknowledged by each party, the City and District agree as follows:

1. The foregoing recitals are true and correct.
2. This First Amendment shall be effective immediately upon execution by both parties.
3. Section 5 of the Agreement is hereby amended in its entirety to read as follows:

“5. INDEMNITY – EDUCATIONAL SRO.

a. 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.

b. The City shall indemnify, defend, and hold harmless the District, 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 the active negligence by the City or the gross or willful misconduct of the assigned officer during the performance of work hereunder.

c. 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.

d. 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.”

4. The following Section 5.1 is added in its entirety to read as follows:

“ 5.1 INDEMNITY – GENERAL SERVICES (Additional Services)

a. The District shall indemnify, defend, and hold harmless the City, its officers, officials, employees, and volunteers (hereafter collectively City Personnel) 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 any services provided by the City or any City Personnel or their performance of work or any failure to comply with any of the City’s duties contained in the Agreement, except such loss or damage which was caused by the active negligence by City Personnel, or the gross or willful misconduct of City Personnel.

b. The City shall indemnify, defend, and hold harmless the District, 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 the active negligence by City Personnel or the gross or willful misconduct of City Personnel during the providing of services or performance of work hereunder.

If the District rejects a tender of defense by the City or City Personnel under this Agreement, and it is later determined that the City and City Personnel breached no duty of care

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date and year first above written.

CITY:

City of Los Banos,
a municipal corporation

Dated:

By: _____
Alex Terrazas,
City Manager

DISTRICT:

Los Banos Unified School District,
a public school district

Dated: August 29, 2018

By: 
Dr. Mark Marshall,
Superintendent

ATTEST:

By: _____
Lucille Mallonee,
City Clerk

APPROVED AS TO FORM:

By: _____
William A. Vaughn,
City Attorney

Agenda Staff Report

TO: Mayor and City Council Members

FROM: WILLIAM A. VAUGHN, City Attorney
GARY BRIZZEE, Police Chief

DATE: August 30, 2018

SUBJECT: School Resource Officer Agreement – Merced County Office of Education

TYPE OF REPORT: Regular Agenda

RECOMMENDATION:

It is recommended that the City Council adopt Resolution No. ____ A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS APPROVING AGREEMENT BETWEEN CITY OF LOS BANOS AND MERCED COUNTY OFFICE OF EDUCATION SCHOOL RESOURCE OFFICER PROGRAM July 1, 2018 - June 30, 2019

BACKGROUND:

The City has provided school resource officer services to MCOE at Valley Community School on an annual basis. The current Agreement has expired and the parties have negotiated a new agreement for the 2018-2019 school year.

DISCUSSION:

The new annual agreement is essentially on the same terms as the prior years. The significant changes are to the reimbursed cost of the officer's salary to the City and the indemnification provisions now required by the CSJVRMA. The City Attorney and the Police Chief will be available to provide a summary of the terms of the new agreement. As of this writing the Agreement has not been finalized. The final agreement approved by Staff will be presented at the meeting.

FISCAL IMPACT

None.

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS APPROVING AGREEMENT BETWEEN CITY OF LOS BANOS AND MERCED COUNTY OFFICE OF EDUCATION SCHOOL RESOURCE OFFICER PROGRAM July 1, 2018 - June 30, 2019

WHEREAS, the City has been providing School Resource Officers (“SRO”) at Valley Community School on an annual basis;

WHEREAS, the current agreement expired on June 30, 2018;

WHEREAS, the parties desire to enter into a new one year agreement commencing July 1, 2018 and terminating June 30, 2019; and

WHEREAS, the Agreement has been reviewed and approved by the City Attorney.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Los Banos does hereby approve the above mentioned Agreement and authorizes the City Manager to execute said Agreement, in the form presented herewith.

The foregoing Resolution was introduced at a special meeting of the City Council of the City of Los Banos held on the 30th day of August 2018, by City Council Member _____, who moved its adoption, which motion was duly seconded by City Council Member _____, and the Resolution was adopted by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

AGREEMENT
BETWEEN CITY OF LOS BANOS
AND MERCED COUNTY OFFICE OF EDUCATION
SCHOOL RESOURCE OFFICER PROGRAM
July 1, 2018 - June 30, 2019

THIS AGREEMENT entered into this 30th day of August, 2018, by and between the City of Los Banos (hereinafter referred to as "City") and the Merced County Office of Education (hereinafter referred to as "MCOE") and terminates on June 30, 2019.

WHEREAS, MCOE and the City desire to set forth in this Agreement ("Agreement") the specific terms and conditions of the services to be performed and provided by the School Resource Officers ("SRO") at Valley Community School (hereinafter referred to as "School").

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

- 1.0 Goals and Objectives – It is understood and agreed that the MCOE and the City officials share the following goals and objectives with regard to the School Resource Officer Program:
 - 1.1 To foster educational programs and activities that will increase students' and parents' knowledge of and respect for the law and the function of law enforcement agencies;
 - 1.2 To encourage the SRO to attend extra-curricular activities held at school, such as parent meetings, athletic events and concerts, Back to School Night, Open House, and Graduation;
 - 1.3 To act swiftly and cooperatively when responding to major disruptions and flagrant criminal offenses at school, such as: disorderly conduct by trespassers, the possession and use of weapons on campus, the illegal sales and/or distribution of controlled substances, and riots;
 - 1.4 To report serious crimes that occur on campus and to cooperate with the law enforcement officials in their investigation of crimes that occur at school;
 - 1.5 To cooperate with law enforcements officials in their investigations of criminal offenses which occur off campus.
- 2.0 Employment and Assignment of SRO
 - 2.1 The City agrees to make one SRO available during the term of this Agreement. The SRO shall be an employee of the City and be subject to the administration, supervision and control of the City except as such administration, supervision and control is subject to the terms and conditions of this Agreement.

- 2.2 The City agrees to provide and to pay the SRO's salary and employment benefits in accordance with the applicable salary schedules and employment practices of the City, including but not necessarily limited to: sick leave, annual leave, retirement compensation, disability salary continuation, workers compensation, unemployment compensation, life insurance, dental insurance, and medical/hospitalization insurance. The SRO shall be subject to all other personnel policies and practices of the City except as such policies or practices may have to be modified to comply with the terms and conditions of this Agreement.
- 2.3 The MCOE agrees to reimburse the City for Seventy-five Percent (75%) of the SRO's salary, including benefits, in an amount not to exceed \$114,102.00 (\$152,136.00 x .75) for the 2018-2019 school year.
- 2.4 The MCOE agrees to reimburse the City in two payments as follows: \$57,051.00 payable on or before December 1, 2018 and \$57,051.00 on or before May 1, 2019.
- 2.5 The City, in its sole discretion, shall have the power and authority to hire, transfer, discharge, and discipline the SRO; however, a School representative will participate in the selection of the SRO to be placed on the School Campus. The assigned SRO will be supervised by the Chief of Police or his/her designated subordinate.
- 2.6 In the event an SRO is absent from work, the SRO shall notify both his/her supervisor and the principal of the School to which the SRO is assigned.
- 2.7 While on site additional administrative duties will be assigned by the Chief of Police or his/her designated subordinate and completed by the SRO in support of the Los Banos Police Department.
- 2.8 The City agrees to provide statutory workers' compensation coverage, if and as required according to California Labor Code, including Employers' Liability limits of \$1,000,000.00 per accident.

3.0 Duty Hours

- 3.1 The officer in charge of the SRO program shall set specific SRO duty hours at the assigned School by mutual agreement, at the direction of the principal of the School, and the SRO Supervisor. The SRO will work 40 hours per week (full-time) in and around the School during the standard school term.
- 3.2 The SRO is not required to be on campus on non-school days with the exception of staff in service days related to Section 7.3.
- 3.3 In the event of a disaster or unusual occurrence, the SRO may be temporarily removed from the program to supplement police requirements. In the event of such occurrence, the MCOE's share of cost shall be suspended for the number of hours lost to the program unless another officer is provided.

- 3.4 The SRO will not be replaced nor will the MCOE share of cost be reduced during times when the SRO is off work due to vacation, CTO or sick leave. During times when the SRO is off work due to a non-SRO related job injury, the City shall arrange for a replacement SRO or the MCOE share of cost shall be suspended until the SRO resumes full duty on the School campus. Non-SRO related job injury is defined as an injury occurring when the SRO is not engaged in an activity outside of the scope of his/her duties as an SRO.
- 3.5 Planned time off, such as vacations and CTO shall be coordinated with the School Principal and his/her designee and the Chief of Police or his/her designee.

4.0 Basic Qualifications of SRO

To be a SRO, an officer must first meet all of the following basic qualifications:

- 4.1 Shall be a full time Police Officer with two years of law enforcement experience;
- 4.2 Shall possess sufficient knowledge of the applicable Federal and State Laws and Regulations;
- 4.3 Shall be capable of conducting in depth criminal investigations;
- 4.4 Shall possess an even temperament and set a good example for students; and
- 4.5 Shall possess communication skills, which would enable the officer to function effectively within the School environment.

5.0 Duties of SRO

- 5.1 The SRO shall coordinate all of his/her activities with the principal and staff members concerned and will seek permission, advice and guidance prior to enacting any program within the School;
- 5.2 The SRO shall develop expertise in presenting various subjects to the students, staff, parents and community. Frequency of workshops shall be at least once per quarter. Such subjects shall include, but are not limited to: a basic understanding of the law, the role of the police officer and law related areas, careers in public safety, the impact of felony convictions on future employment, etc. The SRO will collaborate with the School Principal to determine the most beneficial subjects and the target audience for each workshop;
- 5.3 The principal shall encourage the SRO to have individual and small group discussions with students, based upon material presented in class, to further establish rapport with students;
- 5.4 When requested by the principal, the SRO shall attend parent/staff/administrative meetings to solicit support and understanding of the program;

- 5.5 The SRO shall be available for conferences with students, parents and faculty members in order to assist them with problems of a law enforcement or crime prevention nature;
- 5.6 The SRO shall become familiar with all community agencies which offer assistance to youths and their families such as mental health clinics, drug treatment centers, etc.;
- 5.7 The SRO shall assist the principal in developing plans and strategies to prevent and/or minimize dangerous situations that may result in student arrest;
- 5.8 Should it become necessary to conduct formal police interviews with students, the SRO shall adhere to MCOE Board Policy 5145.11, police policy and legal requirements for conducting such interviews, attached hereto and incorporated herein by this reference;
- 5.9 The SRO shall take law enforcement action as required. As soon as practicable, the SRO shall make the principal or his/her designee aware of such action. The SRO shall take appropriate law enforcement actions against intruders and unwanted guests who may appear at the School and related School functions, to the extent that the SRO may do so under the authority of law;
- 5.10 The SRO shall give assistance to other law enforcement personnel in matters regarding his/her School assignment, whenever necessary;
- 5.11 The SRO shall, whenever possible, participate in and attend School functions;
- 5.12 The SRO shall maintain detailed and accurate records of the operation of the SRO program. These records shall include, but are not limited to, statistical findings from his or her School. These records will be submitted to the supervisor of the SRO;
- 5.13 The SRO shall not act as a School disciplinarian, as disciplining students is a School responsibility. However, if the principal believes an incident is a violation of the law, the principal may contact the SRO, and the SRO shall then determine whether law enforcement action is appropriate.

6.0 Chain of Command

- 6.1 As an employee of the City, the SRO shall follow the chain of command as set forth in the City Policies and Procedures Manual;
- 6.2 In the performance of their duties, the SRO shall coordinate and communicate with the principal or the principal's designee(s) of the assigned School as set forth in this Agreement.

7.0 Training

- 7.1 The SRO shall receive training in the SRO Program. Training sessions will be conducted to provide SROs with appropriate in-service training, such as updates in the law, in-service firearm training and law enforcement school-related training. Additionally, the SRO shall continue to participate in all other types of training, meetings, etc., when deemed appropriate by the Chief of Police;
- 7.2 The MCOE also may provide training in Board of Education Policies, regulations and procedures;
- 7.3 When requested by the principal, the SRO will attend professional development provided by the School when the training of the SRO is necessary to effectively implement a school program. Specifically, for the 2018-2019 school year, the principal may request that the SRO attend professional development along with school staff related to improving school culture.

8.0 Supplies and Equipment

- 8.1 The City agrees to provide the standard issue firearm and rounds of ammunition for the SRO;
- 8.2 The City agrees to provide the SRO with the required duty uniform;
- 8.3 The MCOE agrees to provide an office, desk, desk chair, computer and the usual and customary office supplies to the SRO.

9.0 Access to Education Records

- 9.1 School officials shall allow the SRO to inspect and copy any public records maintained by the School including student directory information, classroom assignments and discipline files. However, the SRO may only inspect or copy confidential student education records as allowed by law;
- 9.2 If some information in a student's cumulative record is needed in an emergency to protect the health or safety of the student or other individuals, School officials may disclose to the SRO that information which is needed to respond to the emergency situation based on the seriousness of the threat to someone's health or safety, the need of the information to meet the emergency situation, and the extent to which time is of the essence;
- 9.3 If confidential student record information is needed, but no emergency situation exists, the information may be released only upon the issuance of a search warrant or subpoena to produce the records.

10.0 Performance Evaluation

10.1 It is mutually agreed that the MCOE and the School shall evaluate annually the SRO Program and the performance of the SRO. It is further understood that the MCOE and the School's evaluation of each officer is advisory only and that the City retains the final authority to evaluate the performance of the SRO.

11.0 Term of Agreement

11.1 The term of agreement is one year, commencing on July 1, 2018, ending on June 30, 2019, unless sooner terminated in accordance with this Agreement.

12.0 Notices

12.1 All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.
- B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office of mailbox.
- C. Certified Mail. When mailed certified mail, return receipt requested, notice is effective upon receipt if delivery is confirmed by a return receipt.
- D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on deliver, if delivery is confirmed by the delivery service.
- E. Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective upon receipt, provided that: a.) a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery, or b.) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 P.M. or on a non-business day.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Mailing and contact information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

Merced County Office of Education

632 W. 13th Street
Merced, CA 95341
Fax (209) 381-6766

Steve M. Tietjen, Ed.D
Superintendent of Schools
(209) 381-6601

John Magneson
Asst. Superintendent, Ed. Services
(209) 381-6638

May Moua, Ed.D
Director, Educational Services
(209) 381-6648

Lori Gattuso, Principal
Valley Community School
(209) 827-5600

City of Los Banos

520 J Street
Los Banos, CA 93635
Fax (209) 827-7006

Alex Terrazas
City Manager
(209) 827-7000

Gary Brizzee
Chief of Police
(209) 7070

Any party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

13.0 Termination

13.1 This Agreement, notwithstanding anything to the contrary herein, may be terminated by either party at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination.

13.2 Upon effective date of termination, MCOE shall have no further liability to the City, and the City shall have no further liability to the MCOE.

14.0 Disposition of Work Upon Termination

14.1 In the event of termination, all finished or unfinished documents and other materials, if any, at the option of MCOE and to the extent permitted by law, shall become the property of MCOE.

15.0 Modification of Agreement

15.1 Notwithstanding any of the provisions of this Agreement, the parties may agree to amend the Agreement. No alteration of the terms of this Agreement shall be valid

unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

16.0 Indemnification of Liability

- 16.1 Each party shall maintain general liability insurance in an amount not less than one million seven hundred fifty thousand dollars (\$1,750,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Each party's general liability policies shall be endorsed using Insurance Services Office form CG 20 10 or its equivalent to provide that the other party and its officers, officials, employees, and agents shall be additional insureds under such policies.
- 16.2 MCOE 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 SRO'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 SRO.
- 16.3 If the MCOE rejects a tender of defense by the City and/or the assigned SRO under this Agreement, and it is later determined that the City and/or the SRO breached no duty of care and/or was immune from liability, MCOE shall reimburse the City and/or SRO 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 SRO settles a liability claim, with or without participation by the MCOE.
- 16.4 The Parties acknowledge that it is not the intent of the Agreement to create a duty of care by the City or the assigned SRO 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 SRO and the absence of the assigned SRO 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.

17.0 Integration of Prior Terms and Conditions

- 17.1 This Agreement, including all recitals, and Exhibits, constitutes the entire agreement of the Parties. This Agreement may be amended or modified only by the mutual written agreement of the Parties. This Agreement is invalid unless approved by the legislative body of each Party, although it may be executed by an authorized

agent of each Party. An authorized agent of the City shall be a person specifically authorized by the legislative body of the City to execute this Agreement, at the level of City Manager or City Attorney or equivalent.

18.0 Applicable Law; Venue

18.1 Any dispute concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

19.0 Confidentiality

19.1 This Agreement shall comply with all applicable Federal, State, and County laws relating to the confidentiality of information. MCOE and City shall not publish, use or permit or cause to be published, disclosed, or use confidential information pertaining to minor, without express written permission from the minor's parent or legal guardian, except as permitted by law.

20.0 Nondiscrimination in Employment, Services, Benefits and Facilities

20.1 MCOE and City shall comply with all applicable Federal, State and local anti-discrimination laws, regulations, and ordinances. Neither party shall unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of the other, or recipient of services contemplated to be provided or actually provided under this Agreement because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. Both parties shall ensure that evaluation and treatment of their employees and applicants for employment, and recipients of services, are free from such discrimination and harassment.

Both parties represent that they are in compliance with and agree to continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.), the Fair Employment and Housing Act (Government Code §12900 et seq.), and regulations and guidelines issued pursuant thereto.

22.0 Agency Relationship

22.1 This Agreement is not intended to and shall not; create the relationship of principal-agent, master-servant, or employer-employee between the City and MCOE.

23.0 Severability

23.1 If a court of competent jurisdiction holds any provisions of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them will not be affected.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

MERCED COUNTY OFFICE OF EDUCATION

By: _____
Steven M. Tietjen, Superintendent of Schools

Date

CITY OF LOS BANOS
a municipal corporation

By: _____
Alex Terrazas, City Manager

Date

ATTEST:

By: _____
Lucille L. Mallonee, City Clerk

Date

APPROVED AS TO FORM:

By: _____
William A. Vaughn, City Attorney

Date

QUESTIONING AND APPREHENSION

Questioning on School Grounds

The school or law officer shall keep a record of any interviews of students by law officers on school premises. Such records shall include the date and time, name and identifying number of the officer, the agency employing the officer and his/her official capacity, the time when he/she arrived and left, the fact that the school administrator or designee was or was not present during the interview, the reason for the questioning and/or release, and any other pertinent information.

Apprehension

Police officers, officers of the juvenile court, and other authorized law enforcement officials have an absolute right to enter a school to take a student into custody or to make an arrest of a student.

If a minor student is removed from school into the custody of a peace officer, the school administrator or designee shall immediately notify the parent/guardian or responsible relative regarding the student's release and the place to which he/she is reportedly being taken, except when the minor has been taken into custody as a victim of suspected child abuse. (Education Code 48906)

The school administrator or designee shall record the time(s) of contact or attempted contact with the parent/guardian.

If the student is suspected of being a victim of child abuse, the Superintendent or designee shall give the telephone number and address of the student's parent/guardian to the law enforcement officer, and the officer then has the responsibility of immediately notifying the parent/guardian. (Education Code 48906)

(cf. 5141.4 - Child Abuse Prevention and Reporting)

The Superintendent or designee shall immediately be notified of the student's removal. This initial verbal notice will be followed by a written report by the school administrator or designee and shall include the date and time of arrest, the identity, badge number and official capacity of the officer and the reason for release.

QUESTIONING AND APPREHENSION

The Merced County Office of Education (MCOE) believes that the safety of students and staff is essential to achieving the goal of student learning. In accordance with standards specified in law, law enforcement officers may interview and question students on school premises and may remove them when appropriate.

(cf. 0450 – Comprehensive Safety Plan)

(cf. 1400 – Relations between Other Governmental Agencies and the Schools)

(cf. 3515.3 – District Police/Security Department)

(cf. 4158/4258/4358 – Employee Security)

(cf. 5141.4 – Child Abuse Prevention and Reporting)

(cf. 5145.12 – Search and Seizure)

The County Superintendent or designee shall collaborate with local law enforcement agencies to establish procedures which enable law enforcement officers to carry out their duties on school campus, including when necessary the questioning and/or apprehension of students.

When any law enforcement official requests an interview with a student, the school administrator or designee shall request the officer's identity, his/her official capacity, and the legal authority under which the interview is being conducted. The school administrator or designee shall maintain a record of all documentation relative to law enforcement interviews of students.

The school administrator or designee shall accommodate the interview in a way that causes the least possible disruption for the student and school and provides the student appropriate privacy. At the law enforcement's discretion and with the student's approval, the school administrator or designee may be present during the interview.

Except in cases of child abuse or neglect, the school administrator or designee shall notify the student's parent/guardian as soon as practicable after law enforcement has interviewed the student on school premises.

Subpoenas

Although subpoenas may legally be served at school on students age 12 or older, the MCOE believes that serving officials should be strongly urged to serve subpoenas at the home of the student whenever possible. When served at school, the principal or designee shall take reasonable steps to protect the student's privacy and to minimize loss of class time for the student.

Legal Reference: (see next page)

QUESTIONING AND APPREHENSION

Legal Reference:

EDUCATION CODE

44807 *Duty concerning conduct of pupils*

48264 *Arrest of truants*

48265 *Delivery of truant*

48902 *Notice to law authorities*

48906 *Release of minor pupil to peace officers; notice to parent, guardian or relative*

48909 *Narcotics and other hallucinogenic drugs (re arrest)*

CODE OF CIVIL PROCEDURE

416.60 *Service of summons or complaint to a minor*

PENAL CODE

830-832.17 *Peace officers*

1328 *Service of subpoena*

WELFARE AND INSTITUTIONS CODE

627 *Custody of minor*

CODE OF REGULATIONS, TITLE 5

303 *Duty to remain at school*

COURT DECISIONS

People v. Lessie (2010) 47 Cal. 4th 1152

Greene v. Camreta (2009, 9th Cir.) 588 F.3d 1011

In re William V. (2003) 111 Cal. App. 4th 1464

ATTORNEY GENERAL OPINIONS

34 *Ops. Cal. Atty. Gen. 93 (1959)*

54 *Ops. Cal. Atty. Gen. 96 (1971)*

Management Resources:

WEB SITES

California Department of Justice, Office of the Attorney General: <http://caag.state.ca.us>

QUESTIONING AND APPREHENSION

QUESTIONING OF STUDENTS BY LAW ENFORCEMENT

Instructions to law enforcement: In response to the decision of the 9th Circuit Court of Appeals in *Greene v. Camreta*, the Merced County Office of Education (MCOE) requests that law enforcement officials provide the information below prior to interviewing an MCOE student on school grounds as part of an investigation. Failure to provide this information or satisfy the criteria below may result in the school administrator or designee's refusal to allow the interview to proceed. Your cooperation is appreciated.

Please indicate, by checking the box below, the authority upon which this student interview is based:

Parent/guardian consent

Court order or warrant

Exigent circumstances

Name of Interviewer and Badge Number

Student's Name

Interviewer Signature

Date of Interview

Name of Agency

Name of School Official Receiving Form