

CITY AGREEMENT NO. _____

Memorandum of Understanding

Between

**The Napa Valley Unified School District and
The City of Napa**

Regarding

Napa Police Department's School Resource Officer Program for Napa, Vintage, Valley Oak, and New Technology High Schools and Redwood, Silverado, and Harvest Middle Schools

This Memorandum of Understanding ("MOU") by and between the City of Napa, a California charter city ("City") and Napa Valley Unified School District ("NVUSD") is effective on August 7, 2020. The City and NVUSD are hereinafter collectively referred to as the "Parties" (individually, "Party")

WHEREAS, for years, the City and NVUSD have successfully collaborated to operate a School Resource Officer ("SRO" or "Resource Officer") program that relies upon a relationship of mutual respect and cooperation between the City and NVUSD; and

WHEREAS, the City has provided law enforcement expertise and community resources to assist NVUSD in maintaining safety and ensuring our communities feel safe and protected within the public-school system; and

WHEREAS, NVUSD appreciates the City's support, as well as every opportunity it has to continue and strengthen the Parties' collaborative effort for community safety; and

WHEREAS, the Parties desire to enter into this MOU in order to promote safety and foster positive youth engagement within primary and secondary public schools in Napa while also working collaboratively to address the needs of families and communities of NVUSD's students.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, NVUSD and the City hereby agree as follows:

1. TERM

This MOU shall be effective as of August 7, 2020 through June 21, 2021. Either party may terminate this MOU upon 90 days advance written notice, subject to Section 12, which sets forth the excusal of certain performance and payment obligations upon the occurrence of "Closure Period(s)" as defined in that Section and confirms that invoice adjustments should reflect reductions for said Closure Period(s).

2. SCOPE OF SERVICES BY CITY

City agrees to train, supervise, assign, and deploy three (3) SROs among the following NVUSD sites: Napa High School, Vintage High School, Valley Oak Continuation High School, New Technology High School, Redwood Middle School, Silverado Middle School, and Harvest Middle School. SROs will provide law enforcement services. SROs will not engage in NVUSD's administrative or disciplinary processes.

City agrees to provide the administrative and related services for all personnel assigned under this MOU.

3. COST-SHARE/PAYMENT FROM NVUSD TO CITY

NVUSD and the City shall share the costs of the 3 SROs in accordance with the following cost-sharing chart:

	COST SHARE PER SRO	COST SHARE TOTAL (3 SROs)
Total Cost (Average Cost/Sworn Officer)	\$164,762.94 per SRO for service during school year	\$494,289
NVUSD Cost Share	\$104,385.33 per SRO (63.35%)	\$313,156
City Cost Share	\$60,477.61 per SRO (36.65%)	\$181,133

Upon receipt of quarterly invoices from the City, NVUSD shall pay to the City the NVUSD Cost Share above (\$1,739.76 per school day for 3 SROs / \$579.92 per school day per SRO), subject to reductions detailed in Section 12, which sets forth the excusal of certain performance and payment obligations upon the occurrence of "Closure Period(s)" as defined in that Section and confirms that invoice adjustments should reflect reductions for said Closure Period(s). Payments shall be made by within 30 days of the date of the invoice. As reflected in Section 12, NVUSD hereby provides reasonable and adequate notice to the City that NVUSD will start the 2020/21 academic school year in a Closure Period. Accordingly, the City's obligation to assign and/or deploy SROs will be excused for the duration of this Closure Period and NVUSD's obligation to pay will be excused on a pro-rata basis for the duration of this Closure Period, without limitation to other Closure Periods during the 2020/21 academic school year. Therefore, without limitation, the first quarterly invoice from the City will be reduced by the length of this initial Closure Period plus any other Closure Period during the first quarter, subject to any future agreement pursuant to subsection (c) of Section 12. For purpose of calculating any prorations due to Closure Periods, the 2020/21 school year contains 180 school days.

In addition to the NVUSD cost share set forth above, NVUSD will reimburse the City for costs incurred by the City to provide SRO services during mutually agreed upon extracurricular activities at the current billable overtime rate for the SRO who provides such services.

4. SRO SELECTION AND ASSIGNMENT

The City will prioritize the assignment of officers to SRO positions at NVUSD who have experience, expertise, educational background, cultural competency, and training relevant to the following practice areas:

- youth development,
- working with students,
- working with diverse cultural and language communities, and
- procedural justice.

Upon NVUSD's request, the City shall provide a brief written report about how each Resource Officer's background prepares that Officer to address these identified practice areas.

The City and NVUSD shall commit to prioritizing continued professional development of SROs relevant to these practice areas.

The City will continue to consult with NVUSD site principals to identify any special considerations related to the recruitment, selection, training, supervision, assignment, and deployment of an SRO to those principals' school-sites.

5. COMMUNITY BASED RESOURCES

The City will work with NVUSD to explore innovative ways to best serve the student population as it relates to the scope of services set forth herein.

6. COMMUNITY OUTREACH

The SROs will strive to continue participation in positive student activities in the school community in order to build trusting and respectful relationships with students, families and staff. SROs will endeavor to collaborate with school-based community organizations, parent teacher organizations, School Advisory Councils, student government, and NVUSD staff to develop opportunities for positive collaboration.

7. CAMPUS SAFETY

SROs will strive to assist with providing a safe and secure environment for NVUSD students. SROs efforts will include handling police calls for service, when available, at an assigned school-site during SRO working hours.

8. NVUSD OBLIGATIONS REGARDING REQUESTS FOR POLICE ASSISTANCE

NVUSD staff members and site administrators shall only request police assistance when (1) necessary to protect the physical safety of students and/or staff; (2) required by law, including Education Code Section 48902; or (3) appropriate to address criminal behavior. NVUSD shall not

request SRO involvement in a situation that is traditionally addressed through NVUSD's routine disciplinary procedures.

9. LIMITED ACCESS TO FILES AND VIDEO RECORDINGS

The release of certain student records is governed by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR part 99) ("FERPA"). For purposes of access to student records under FERPA, including video recordings that are created by NVUSD and otherwise qualify under FERPA as a student record, SROs are considered "school officials" and may be provided students' personally identifiable information ("PII") on an as-needed basis to carry out SRO duties for legitimate educational purposes. SROs and the City's contracted Youth Divisions Specialist (YDS) may have access to and use of student information system records or above-identified video recording footage only at the specific written direction of the NVUSD Superintendent or their designee. The Parties agree to the following understandings and/or restrictions:

- (i) Use Restricted to Legitimate Educational Purpose. At all times an SRO's and YDS's access to these above-identified records shall be limited to the extent that access serves a legitimate educational purpose, in the discretion of NVUSD.
- (ii) No Impermissible Dissemination or Transfer. An SRO or YDS granted access to FERPA-protected PII may not disclose that PII, without prior written consent, to others, including other officers who are not acting in the capacity as SROs, unless the disclosure fits within one of the defined exceptions in FERPA.
- (iii) Not For Routine Discipline. SROs and YDS's will not be granted access for routine disciplinary purposes; and
- (iv) Access Log. NVUSD shall be required to maintain a log of access.

Video footage of public spaces such as streets, parking lots, and exterior spaces that are not directly related to an NVUSD student or students (including where a student's image is incidental or captured only as part of the background) are not "student records" under FERPA. To the extent stored footage does not contain a student record, SRO access to this footage is not regulated by FERPA. NVUSD shall provide SROs access to this video footage for criminal investigations, for training purposes, and for other purposes within the scope of services set forth herein, including where NVUSD Superintendent or Superintendent's designee grants ongoing access to this footage.

10. RIGHT TO TERMINATE/SUSPEND CONTRACT

NVUSD or City may terminate this MOU without cause any time after the Effective Date, by giving ninety (90) days' written notice to the other Party. In the event of termination, NVUSD shall compensate City for all services provided to NVUSD prior to the date of termination under this MOU, subject to reductions, pro-rata provisions, and other limitations set forth in Section 3 and 12.

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11. INDEMNIFICATION

To the full extent permitted by law, City will indemnify, hold harmless, release, and defend NVUSD (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "Liability") of any nature, arising out of, pertaining to, or relating to City's acts or omissions under this Agreement. Consistent with Civil Code Section 2782, City will not be obligated to indemnify NVUSD for the proportionate share of the Liability caused by NVUSD's active negligence, sole negligence, or willful misconduct. City's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by City, including, but not limited to, workers' compensation insurance.

To the full extent permitted by law, NVUSD will indemnify, hold harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all Liability of any nature, arising out of, pertaining to, or relating to NVUSD's acts or omissions under this Agreement. Consistent with Civil Code Section 2782, NVUSD will not be obligated to indemnify City for the proportionate share of the Liability caused by the City's active negligence, sole negligence, or willful misconduct. NVUSD's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by NVUSD, including, but not limited to, workers' compensation insurance.

12. COVID-19-RELATED CLOSURE(S)

The intent of this Section is to establish a plan for the reduction of in-person school days during the 2020/21 school year due to COVID-19-related school-site closures. Upon the occurrence of a period or multiple periods of closure of NVUSD school-sites and/or site-wide virtual learning with no in-person component for students at the school-site, for any reason related to COVID-19, either due to the NVUSD's independent decision(s) or at the direction(s) of local, state, or federal authorities, or both ("Closure Period(s)"), the Parties agree that (a) the City's performance of its obligations to deploy Resource Officers at any school-site with no students during said Closure Period(s) will be impossible and/or impractical, but only during said Closure Period(s); (b) the City's obligation to assign and/or deploy SROs will be excused for the duration of said Closure Period(s) except as otherwise agreed to in accordance with subsection (c); (c) in the event that NVUSD informs the City in advance in writing that SRO services are needed for a limited "in-person" component of students at school-sites, the Parties will meet and mutually agree upon the number of SROs required and the number of school days required to be worked by each SRO per week; and (d) NVUSD's obligation to pay will be excused on a pro-rata basis, reducing the overall sum due under this MOU based upon the number of 2020/21 school days comprising said Closure Period(s); provided however, NVUSD will pay the City for any SRO services provided by City pursuant to subsection (c) in accordance with the daily rates set forth in Section 3. The Parties will work on a collaborative basis to adjust any invoices and/or corresponding documentation to reflect any such mutual excusal of performance and payment.

NVUSD is required to give City at least 30 days' notice prior to re-opening campuses and/or in-person components at school sites and expecting SRO assignments to be reinstated.

The City is hereby on notice, which the Parties agree is reasonable notice, that NVUSD will begin the 2020/21 academic school year in a Closure Period due to COVID-19-related school-site closures, which does not require any SROs, and the Parties will proceed with the beginning of this upcoming school year based upon that mutual understanding. Accordingly, the City's obligation to assign and/or deploy SROs will be excused for the duration of this Closure Period and NVUSD's obligation to pay will be excused on a pro-rata basis for the duration of this Closure Period, without limitation to other Closure Periods during the 2020/21 academic school year. Therefore, without limitation, the first quarterly invoice from the City will be reduced by the length of this initial Closure Period plus any other Closure Period during the first quarter, subject to any future agreement pursuant to subsection (c) of this Section.

13. GENERAL PROVISIONS.

- A. State and Federal Withholdings. It is understood that the City is a public agency providing assistance to NVUSD. Accordingly, the City will be responsible for all local, state and federal employment withholding taxes and workers compensation for its employees.
- B. Safe Workplace. NVUSD will provide a safe workplace for Resource Officers working on NVUSD premises.
- C. Notices. All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

To City:

CITY OF NAPA
P.O. Box 660
NAPA, CA 94559-0660
Attn: Robert Plummer

To NVUSD:

Napa Valley Unified School District
2425 Jefferson Street
Napa, CA 94558
Attn: Director of Student Services

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this Subsection.

- D. Headings. The heading titles for each paragraph of this MOU are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the MOU.
- E. Severability. If any term of this MOU (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the MOU shall be construed as not containing that term, and the remainder of this MOU shall remain in full force and effect; provided, however, this subsection shall not be

applied to the extent that it would result in a frustration of the Parties' intent under this MOU.

- F. **Governing Law, Jurisdiction, and Venue.** The interpretation, validity, and enforcement of this MOU shall be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this MOU shall be filed and heard in a court of competent jurisdiction in the County of Napa.
- G. **Attorney's Fees.** In the event any legal action is commenced to enforce or interpret this MOU, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred, whether or not such action proceeds to judgment.
- H. **Assignment and Delegation.** This MOU, and any portion thereof, shall not be assigned or transferred, nor shall any duties herein be delegated without the written consent of City. Any attempt to assign or delegate this MOU without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.
- I. **Waivers.** Waiver of a breach or default under this MOU shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this MOU.
- J. **Time.** Time is of the essence in carrying out the duties hereunder.
- K. **Modifications.** This MOU may not be amended or modified orally. No amendment or modification of this MOU is binding unless it is in a writing signed by both Parties.
- L. **Privileges and Immunities.** In accordance with California Government Code section 6513, all of the privileges and immunities from liability, all exemptions from laws, ordinances and rules, and all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of the trustees, officers, employees or agents of the Parties when performing their functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties associated with performance of this Agreement.

14. ENTIRE AGREEMENT

This MOU, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the services described herein. This MOU supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral, including City Agreement No. C2017 256 entitled "School Resource Officer Agreement, dated August 16, 2017, as well as any amendments thereto. The documents incorporated by reference into this MOU are complementary; what is called for in one is binding as if called for in all.

15. EACH PARTY'S ROLE IN DRAFTING THE AGREEMENT.

Each Party to this MOU has had an opportunity to review the MOU, confer with legal counsel regarding the meaning of the MOU, and negotiate revisions to the MOU. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the MOU.

SIGNATURES ON FOLLOWING PAGE.

16. SIGNATURES.

The individuals executing this MOU represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU as designees of their respective Parties.

17. COUNTERPARTS.

This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have executed this MOU to be effective on the Effective Date set forth below.

CITY:
CITY OF NAPA, a California charter city

NVUSD:
**NAPA VALLEY UNIFIED
SCHOOL DISTRICT**

By: _____
Robert Plummer, Police Chief

By: _____
Rabinder Mangewala, Assistant
Superintendent of Business Services

ATTEST:

Tiffany Carranza, City Clerk

Date: _____
("Effective Date")

COUNTERSIGNED:

Joy Riesenberg, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney