

CONTRACT
between the Madison Metropolitan School District and the City of Madison
for
EDUCATIONAL RESOURCE OFFICERS
(2016/2017 through 2018/2019 school years)

1. **PARTIES.**

This is a contract between the City of Madison, Wisconsin, hereafter referred to as the "CITY" and the Madison Metropolitan School District (MMSD) hereafter referred to as "MMSD."

2. **PURPOSE.**

The purpose of this contract is as set forth in Section 3.

3. **SCOPE OF SERVICES AND SCHEDULE OF PAYMENTS.**

This Contract is for the placement of uniformed Madison police officers, known as Educational Resource Officers or ERO's, at four high schools in the Madison Metropolitan School District, an arrangement that is beneficial to both parties. Services on behalf of the CITY will be performed by the Madison Police Department ("MPD"). The CITY will perform the following services and payments will be made by MMSD according to the following attachments which are hereby incorporated and made a part of this Contract:

For Services see: Attachment A, "Scope of Services."

For Payments see: Attachment B, "Payment for Services."

4. **EFFECTIVE DATE.**

This contract shall become effective upon execution by the Mayor, on behalf of the CITY of Madison; for the dates described in Section 21 and Attachment A, herein.

5. **ENTIRE AGREEMENT.**

The entire agreement of the parties is contained herein and this contract supersedes any and all oral contracts and negotiations between the parties.

6. **ASSIGNABILITY/SUBCONTRACTING.**

CITY shall not assign or subcontract any interest or obligation under this contract without MMSD's prior written approval.

7. **DESIGNATED REPRESENTATIVE.**

A. CITY designates the Chief of Police of the Madison Police Department as Contract Agent with primary responsibility for the performance of this contract. In case this Contract Agent is replaced by another for any reason, the CITY will designate another contract Agent within seven (7) calendar days of the time the first terminates his or her employment or responsibility using the procedure set forth in Section 13, Notices.

B. MMSD designates the Assistant Superintendent for Business Services as the Contract Administrator for MMSD.

8. **PROSECUTION AND PROGRESS.**

A. Services under this Contract shall commence as described in Attachment A, Scope of Services.

B. The CITY shall complete the services under this Contract within the time for completion specified in Attachment A, the Scope of Services, including any amendments. The time for completion may be extended by the MMSD in the event of unavoidable delay caused by war, insurrection, natural disaster, or other unexpected event beyond the control of the parties.

9. **AMENDMENT.**

This contract shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representatives or promise of any agent or other person of the parties hereto. Any other change in any provision of this contract may only be made by a written amendment, signed by the duly authorized agent or agents who executed this contract.

On or before February 1, 2017 the MMSD and the CITY shall assign an equal number of representatives to a working team. The working team shall meet as necessary to review all available information, including all data related to the use of EROs, and all provisions of this contract in order to consider whether any changes and/or amendments are necessary in order to improve the use of EROs in MMSD schools and/or the communication between the parties regarding such use. Discussions shall also include a review of Section III.E.2 of the Attachment A in order to consider further clarifications of actions MMSD staff and EROs may take in lieu of issuing citations and making arrests.

10. **EXTRA SERVICES.**

The MMSD may request the CITY to perform extra services or decreased services, according to the procedure set forth in Section 18. Extra services or decreased services means services which are not different in kind or nature from the services called for in the Scope of Services, Section 3, but which may increase or decrease the quantity and kind of labor or materials or expense of performing the services. See also Attachment B, paragraph IV, regarding Overtime.

11. **NO WAIVER.**

No failure to exercise and no delay in exercising, any right, power or remedy hereunder on the part of the parties shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the CITY or MMSD therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

12. **SEVERABILITY.**

It is mutually agreed that in case any provision of this contract is determined by any court to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this contract remain in full force and effect.

13. **NOTICES.**

All notices to be given under the terms of this contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below.

FOR THE CITY: Chief of Police, Madison Police Department
211 South Carroll Street
Madison, WI 53703

FOR THE MMSD: Jennifer Cheatham
Superintendent, Madison Metropolitan School District
MMSD Administrative Offices
545 W. Dayton Street
Madison, WI 53703

14. **THIRD PARTY RIGHTS.**

This contract is intended to be solely between the parties hereto. No part of this contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

15. **LAW APPLIED.**

This contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin and Wisconsin Courts.

16. **COMPLIANCE WITH APPLICABLE LAWS.**

MMSD, its agents and employees shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services to be performed under this Contract. The parties understand that here is a labor agreement between CITY and its Police employees, which to the extent applicable, governs the relationship between CITY and the EROs.

17. **COMPENSATION.**

Compensation shall be paid in accordance with Attachment B.

18. **SERVICE ORDERS, EXTRA SERVICE, OR DECREASED SERVICE.**

A. Written orders regarding the services, including extra services or decreased services, will be given by MMSD, using the procedure set forth in Section 13, NOTICES.

B. MMSD may, by written order, request extra services or decreased services, as defined in Section 10 of this contract.

C. If in the CITY's opinion the order for extra service would entitle it to extra compensation or extra time, or both, the CITY shall not proceed to carry out the extra service, but shall notify the MMSD, pursuant to Section 13 of this agreement. The notification shall include the justification for the claim for extra compensation or extra time, or both, and the amount of additional fee or time requested.

- D. Attachment B, Paragraph IV shall supersede this section with respect to any requests for services that require officers to work overtime.

19. **DEFAULT/TERMINATION.**

A. In the event either party shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of thirty (30) days after written notice thereof, the non-defaulting party may, at its option and in addition to all other rights and remedies which it may have at law or in equity against the other party, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights under this contract.

B. MMSD and CITY reserve the right, upon written notice, to cancel the contract effective August 25, 2018. The cancelling party shall provide written notice of termination to the non-cancelling party no later than April 1, 2018. In the event of termination under this subsection, MMSD will pay the CITY for all work completed by the CITY.

20. **LIABILITY.**

Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, commissions, committees, agencies, and representatives. It is not the intent of the parties to waive any statutory protections or impose liability beyond that imposed by state statutes. The obligations of the parties under this paragraph shall survive the expiration or termination of this agreement

21. **TERM AND RENEWAL.**

The term of this Agreement shall be for three years from September, 2016 through June, 2019 and is intended to cover MMSD's school years for 2016-2017, 2017-2018, and 2018-2019, as more particularly described in Attachment A, paragraph II.A.

22. **NON-DISCRIMINATION.**

In the performance of work under this contract, MMSD agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. MMSD further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

In the performance of work under this contract, CITY agrees not to discriminate against any MMSD employee, volunteer, student or student family member because of race, religion,

marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. CITY further agrees not to discriminate against any employee or applicant for employment, subcontractor or person who offers to subcontract on this contract because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

**THE MADISON METROPOLITAN
SCHOOL DISTRICT**

(Witness)

By: _____

Date: _____

Date: _____

(Print Name): Michael G. Barry

Title: Board of Ed Secretary

Signature Page – Continued
ERO Contract with MMSD
2016-2017, 2017-2018, 2018-2019 School Years

THE CITY OF MADISON, WISCONSIN
a municipal corporation:

By: _____
Paul Soglin, Mayor

Date: _____

By: _____
Maribeth Witzel-Behl, City Clerk

By: _____
Michael C. Koval, MPD Chief of Police

Date: _____

APPROVED:

David, Schmiedicke, Finance Director

Date: _____

Eric Veum, Risk Manager

Date: _____

APPROVED AS TO FORM:

Michael P. May, City Attorney

Date: _____

ATTACHMENT A

SCOPE OF SERVICES

The CITY of Madison (“CITY”) through the Madison Police Department (“MPD”) will provide the following service to the Madison Metropolitan School District (“MMSD”):

- I. The Chief of Police will assign one uniformed Police Officer to West High School, one uniformed Police Officer to East High School, one uniformed Police Officer to Madison Memorial High School, and one uniformed Police Officer to LaFollette High School, each officer in the capacity of Educational Resource Officer (ERO). These assignments will be on a full time basis for each school year beginning in September, 2016 and ending June 2019, as more particularly described in par. II A. The assigned officers will be selected in cooperation with the principals of the named high schools. If an ERO is eligible for a one year extension, the principals of the named high schools may provide input on said extension, understanding the final decision is that of the Chief of Police. The West, South, North, and East District Captains will act on behalf of the Chief of Police in recommending the assignment selections.

- II. The ERO will be organizationally assigned to the MPD district in which the school is located:
 - A. ERO will be under the command of the appropriate district commander and subject to all rules and regulations of the Madison Police Department.
 1. The Services performed by EROs under this Contract will commence one week prior to the date school starts and conclude at the end of exam week of each school year covered under this Contract.
 2. ERO’s hours of work (8 hours of regular duty, 15 minutes of briefing time) will be 8:00 a.m. to 4:15 p.m. or a similar schedule to coincide with the hours school is in session. This includes administrative time allocated for ERO report completion and ERO class preparation.
 3. In the event of a disaster, terrorist attack or other emergency, the Chief of Police has the right to temporarily remove EROs from the schools and reassign them to general law enforcement responsibility. In such event, the Chief of Police shall provide MMSD the earliest practicable notice of the need for and likely duration of the temporary removal. Police personnel shall also promptly meet with MMSD personnel in order to provide advice and assistance to minimize any negative impact on school. The meetings shall occur in advance of the removal unless it is impossible to do so.

- B. ERO will coordinate daily activities with the school principal/designee.
1. The ERO's commander will be a resource to resolve any conflicts which may arise in this area.
 2. The ERO's commander must approve any time off requested by the ERO.
- C. The Parties and their respective personnel will work cooperatively to carry out this ERO contract so as to enhance the safety of students and staff and maintain an environment in which education and learning can take place. It is the intent of this agreement that the relationship between the Parties be characterized by cooperation and mutual respect for each Party's policies, duties and responsibilities. It is understood that MPD remains responsible to adhere to and comply with its own policies and all applicable local, state and federal law.
- D. The Parties will share information as necessary for the administration and performance of this Agreement, consistent with local, state and federal law relating to confidentiality and disclosure of public records, including but not limited to MMSD pupil records, created or maintained by educational institutions and law enforcement agencies. Consistent with the foregoing, the Parties shall cooperate and coordinate responses to and investigations of incidents in their mutual interest and promptly debrief all critical incidents or incidents in which the ERO has used force against a student or staff member. EROs will follow the MPD Use of Force Documentation Standard Operating Procedure.
1. For the purposes of access to student records by an ERO, the ERO is also considered a "school official" as provided in the Federal Educational Rights and Privacy Act (FERPA) 20 U.S.C. 1232g. An ERO may be provided access to student information only as needed by the ERO to perform his duties related to educational or school administration activities when the ERO use of such student information remains under the direct control of the MMSD. Such information may include student behavior intervention plan(s) and safety plan(s). An ERO may also be granted access thereto in the event of an emergency situation threatening the health or safety of a student or other individual. The ERO may only redisclose such student information consistent with FERPA and Wisconsin pupil records laws.
 2. Records or other information created and maintained by an ERO for the purpose of ensuring the safety and security of persons or property in MMSD schools, or for the enforcement of local, state, or federal laws or ordinances shall not be considered student records – even when such records serve the dual purpose of enforcing school rules –

and are not subject to the same prohibitions of access or disclosure by ERO.

III. The Parties are committed to providing a balanced approach to police service in the schools reflecting both the educational role and the law enforcement role of the ERO. The ERO duties will include but not be limited to:

A. Law enforcement activities.

1. Conduct initial investigations into criminal and ordinance violations occurring on campus and take appropriate enforcement actions
2. Act as liaison with local law enforcement agencies to exchange basic information concerning students consistent with state and federal laws, and to provide assistance to law enforcement agencies as well as the principal in matters relating to delinquent and criminal activities associated with students who attend the school in the MMSD.
3. Work with school administration to identify conditions which could be harmful to the welfare of students and the safety of the school environment and address those conditions.
4. Collaborate with schools to provide appropriate training regarding ERO response to critical incidents, including crisis intervention and de-escalation techniques, response to school fights and disturbances, and response to students with mental health needs or cognitive disabilities, as well as the use of Restorative Practices and Youth and Community Courts.

B. In collaboration with school-based administrators and educational staff, educational resources to students on issues related but not limited to:

1. Alcohol and other drugs.
2. Understanding laws, ordinances and the juvenile code.
3. The role of law enforcement in the educational setting as well as the role of law enforcement in the community.
4. Violence and other crime prevention as well as personal safety information and instructions.

C. Educational resources to parents in areas listed in sec. III.B. above.

D. Along with other MPD and MMSD resources, provide training and information to school staff on topics related to alcohol, other drugs, gangs, violence and other crime prevention as well as personal safety and violence diffusion techniques.

- E. Participate in school administration activities related to:
1. The development of a security plan for the campus.
 2. Supporting and reinforcing the implementation of school policies and rules using appropriate, available educational resources and intervention techniques. The parties understand that the intent is not to use the ERO to enforce school policies and rules, but to turn over such enforcement to school authorities. Consistent with MPD and MMSD goals, whenever possible, EROs should utilize Restorative Practices and/or Youth and Community Courts in lieu of issuing citations or arrest warrants. Specifically, in alignment with the underlying philosophies of the District's Behavior Education Plan, which focuses on the use of progressive disciplinary approaches and intervention in lieu of exclusionary practices, EROs should use problem solving techniques and other available options in lieu of issuing citations or making arrests whenever possible.
 3. Faculty and building administrative team meetings.
 4. Student discipline. It is understood by the parties that confidential student record information with regard to specific student discipline cases will not be shared with non-school personnel except as provided by MMSD policy, state and federal law, and Section II.D. above. Confidential law enforcement record information with regard to specific cases will not be shared with non-police personnel except as provided by MPD policy or applicable law.
 5. Providing expert technical advice to school administration related to topics such as school searches for drugs, weapons or other contraband.
- F. Coordination and Planning.
1. The Chief of Police or designee and the Superintendent of Schools or Designee shall ensure that the assigned EROs, their district commander, the school principal or designee, and other MPD or MMSD employees as appropriate will meet at the beginning of each school year to develop a mutually agreed upon plan for implementing items III.A. through E. herein. This meeting shall be held before the first day of school, unless, due to unavoidable schedule conflicts, another date is agreed to by ALL participants and the date is chosen and agreed prior to the first day of school.

2. The annual implementation plan described in paragraph 1 above shall reflect the balanced approach to police services desired by the Parties. To that end the plan shall identify specific classroom educational opportunities to be provided or facilitated by the ERO in the course of the school year.
3. The participants listed in paragraph 1 above, shall attend additional meetings as necessary throughout the school year to ensure success of the plan developed at the meeting held at the beginning of the school year.
4. The Parties agree to provide training to newly selected EROs. The training will be provided jointly by MPD and MMSD, and will be scheduled prior to the new ERO assuming his/her position, unless it is impractical to do so. This training will include a one day orientation for MPD staff and MMSD staff. In addition, MMSD, as directed by the Safety Coordinator or school principal, and MPD may designate additional training for new and continuing EROs subject to Attachment B, section VII. When MMSD has designated additional training, the Safety Coordinator will e-mail said training to the ERO and the MPD Captain of Centralized Services and if there is no objection from MPD, the ERO shall attend said training.
5. Each ERO shall submit to the Chief of Police or designee and Superintendent of Schools or designee, at least weekly, a summary of citations, problem solving activity and incidents at the school to which the ERO is assigned. In addition, the ERO shall submit to the Chief of Police or designee and the Superintendent of Schools or designee an annual report on or before July 15 detailing ERO activities for the most recently concluded school year and summarizing the safety/security situation in each high school with an assigned ERO. MMSD and MPD shall work together to determine the format for such report.
6. Annually, MMSD shall publish an Educational Resource Officer Report that covers arrest and citation incidents at MMSD high schools. This report shall be made available via MMSDs website and any other means MMSD determines to be appropriate.

IV. Replacement selection:

- A. If it is reasonably anticipated that the assigned ERO will be unable to perform the duties for periods of less than one month for reasons related to vacation, illness or injury, the District Captain, after consulting the school principal and MMSD

Coordinator of Safety, will determine if there is a need to assign police personnel available to fill the temporary vacancy.

- B. If the ERO resigns or is otherwise unable or unwilling to perform the duties and the reasonably anticipated absence is one month or longer or is permanent, selection of a replacement shall be made pursuant to sec. I of this Attachment A.
 - C. If the ERO will be absent from school or will experience a significant delay of one hour or more in arriving at school, s/he will contact the district commander and the school principal or designee as soon as practicable prior to the start of the school day to inform him/her of the absence/delay. In the event the ERO is unable to make such contact due to an emergency or unforeseen circumstance, the ERO will make such contact as soon as s/he is able to do so.
 - D. Performance concerns or complaints regarding the ERO's work shall be promptly brought to the attention of the ERO's commanding officer for investigation and disposition. MMSD may request MPD to assign a replacement ERO at the school, MPD agrees to review said request and meet with MMSD to discuss all concerns. MPD further agrees to take said request in consideration when determining whether an ERO should be removed from the school. MPD understands that when MMSD brings a concern or complaint alleging the ERO has involvement in criminal conduct, or consistent violations of MPD and/or MMSD policies these have the potential to undermine the ERO's effectiveness and ability to perform their assigned duties. MPD fully understands the seriousness raised in these cases and agrees that when these complaints are brought to the attention of MPD, MPD will thoroughly investigate said complaints and take any necessary discipline actions deemed appropriate, which may include the immediate removal of the ERO from the school.
- V. MMSD Will Provide the Following:
- A. Regular, periodic feedback regarding ERO performance as well as immediate information regarding significant, serious ERO performance concerns to the ERO's commander who shall be responsible to take appropriate action.
 - B. Secure work space for the ERO.
 - C. Ancillary support services such as occasional clerical assistance, facsimile machines, copiers and telephones.
 - D. Training with regard to school policies, practices, procedures and needs from the ERO.
 - E. The Chief of Police, or designee shall provide regular, periodic feedback regarding school personnel cooperation with ERO in performance of his/her duties. MMSD shall be responsible to take appropriate action.

ATTACHMENT B

PAYMENT FOR SERVICES

- I. Briefing Time: Educational Resource Officers are allowed fifteen (15) minutes per day for briefing. The pay rate for briefing is 1.5 times the average hourly rate for patrol officers. A fringe benefit rate is applied to this salary. Briefing time will reflect the hours billed for that time period.
- II. Payment for Services: CITY will invoice MMSD on a monthly basis. Invoices will include the following information: Work location, name of police officer, date and hours worked, description of assignment (e.g. permanent ERO, ERO training, illness, injury), rate of pay, fringe benefits rate, total salary and fringe benefits.
- III. Rate of Pay: CITY will invoice MMSD based on the average hourly rate for Police Officers. Benefits are based on the rate for commissioned staff, set annually by the CITY Comptroller.. Based on actual ERO charges of \$ 359,000 for 2015, estimated actual costs are: \$ 356,000 for 2016, \$ 362,000 for 2017, and \$ 369,400 for 2018. MPD will continue to search for alternative funding through grants and other initiatives to help offset the costs to MMSD, if at all possible.
- IV. Overtime; Any hours worked by the ERO in order to complete a task related to law enforcement in the school (citation or arrest) which exceed the normal shift will be invoiced at the overtime rate of pay of the officer and shall be paid by MMSD.. This does not include work completed under any special event contract. The actual rate of pay shall be the officer's actual payroll salary plus the fringe benefit rate. Billing for such extra work shall be done by the CITY on a monthly basis. Payment shall be made by MMSD within thirty (30) days of the date of billing.
- V. ERO – Short Term Absences (Less Than One Month):
 - A. Illness and Non-Work Related Injury: CITY will invoice MMSD for permanent ERO's sick leave which is up to nine (9) days per school year. CITY will invoice MMSD for a replacement officer's time if overtime is required.
 - B. Work Related Injury: MMSD will not be invoiced for time missed due to a work related injury. Worker's Compensation Insurance will cover this expense. MMSD will be invoiced for any time worked by a replacement officer.
 - C. Vacations and Regular Days off: When it is not possible for EROs to schedule vacations and regular days off outside of the time in which school is in session, and it is necessary to assign a replacement officer, and a replacement officer is assigned to perform the ERO services, MMSD will be invoiced at the rate of pay for the permanent ERO's salary and fringe benefits.
 - D. Bereavement: Pursuant to MPPOA contract, Educational Resource Officers shall be allowed three (3) days for each bereavement related to a death in the immediate

family of the officer or his/her spouse. MMSD will pay for two (2) days of bereavement and the CITY will pay for one (1) day of bereavement leave.

VI. ERO – Long Term Absences (One Month or Longer)

If an Education Resource Officer resigns or is otherwise unable or unwilling to perform his/her duties and the reasonably anticipated absence is one month or longer, a replacement officer shall be selected. Once the decision is made to select a replacement officer, MMSD will only be invoiced for salary and fringe benefits for the replacement officer.

VII. Training: Educational Resource officers will be allowed four (4) days each year for in-service training and training necessary to maintain law enforcement certification, which shall be paid by the CITY. EROs may receive additional training which is specifically related to their ERO position. If MMSD requests additional training provided by or specified by MMSD, MMSD will pay for the officer's salary and fringe benefits on these training days. In addition, subject to prior approval by MMSD and the district commander, MMSD will pay up to five hundred dollars (\$500) annually per officer for training/conference fees for instruction related to school policing and youth issues.

VIII. Use of Squad Cars and Equipment. MMSD shall pay the CITY \$110 for four vehicles (\$27.50 per vehicle) per week for each school year during the hours that the ERO is on duty. EROs shall park the squad cars in designated, reserved parking spots.