



**TO:** Mayor and Councilmembers  
**FROM:** Michelle Greene, City Manager  
**SUBJECT:** Memorandum of Understanding for Funding the Crossing Guard Program

**RECOMMENDATION:**

- A. Authorize the City Manager to execute a Memorandum of Understanding between the City of Goleta and the Goleta Union School District for Funding of the Crossing Guard Program for FYs 2015/16 and 2016/17, in the amount of \$40,000.
- B. Approve an additional appropriation of \$40,000 in the City Council Department Budget - Support to Other Agencies from the General Fund fund balance for FY 2016/17.

**BACKGROUND:**

The Goleta Union School District (“GUSD”) provides a crossing guard program to assist school children in safely crossing streets near elementary school sites in Goleta. The City initially supported this program in FYs 02/03 and 03/04, however, there was a funding gap from FY 04/04 until 2011 when support began again with funding of \$20,000 annually out of discretionary Measure A funds.

At this time, the City desires to enter into a Memorandum of Understanding (MOU) with GUSD to provide funding in support of the crossing guard program for the 2015/16 and 2016/17 fiscal years.

**DISCUSSION:**

The attached proposed MOU is between the City of Goleta, which will contribute funds in support of GUSD’s crossing guard program, and GUSD, which will be responsible for managing the program. The MOU has a two-year term of July 1, 2015 to June 30, 2017 and provides for a financial contribution in the amount of \$40,000. The MOU may be extended annually by mutual agreement of the City and GUSD.

The MOU provides that GUSD will ensure that crossing guards are provided with safety equipment, training, and supervision, and that reserve personnel are available in case of an absence. Within 30 days of the end of each School Year, GUSD must provide the City with an accounting of the program expenditures funded by the City’s contribution.

The GUSD Board of Trustees reviewed and approved the MOU at their meeting of September 14, 2016.

Recently, an issue was raised by Santa Barbara County Association of Governments (SBCAG) that since this is a program and not a project, that this is not appropriate to use of Measure A discretionary funds for this purpose. However, staff recommends that the City Council continue providing funding support for the GUSD crossing guard program through an allocation of General Fund monies, as this program helps ensure the safety of children and families walking to and from school in the Goleta community.

**FISCAL IMPACTS:**

An allocation of \$40,000 from General Fund fund balance to Account No. 101-5-1100-223 is needed to continue funding the GUSD crossing guard program as it is no longer available for Measure A or other transportation funds. There is sufficient General Fund fund balance to absorb this \$40,000 expenditure in FY 2016/17. The Measure A Program of Projects and the budget will be revised to show the \$40,000 of Measure A monies allocated to Streets Maintenance so that the impact to the General Fund should be neutral.

**ALTERNATIVES:**

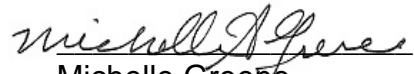
The City Council could elect not to authorize participation in the MOU or direct Staff to modify its provisions.

**Legal Review By:**

**Approved By:**



Tim W. Giles  
City Attorney



Michelle Greene  
City Manager

**ATTACHMENTS:**

1. Memorandum of Understanding Between the City of Goleta and the Goleta Union School District for Funding of Crossing Guard Program

**Attachment 1**

Memorandum of Understanding Between the City of Goleta and the Goleta Union  
School District for Funding of Crossing Guard Program

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF GOLETA AND  
THE GOLETA UNION SCHOOL DISTRICT  
FOR FUNDING OF CROSSING GUARD PROGRAM**

This Memorandum of Understanding (hereinafter "MOU") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF GOLETA (hereinafter "CITY") and the GOLETA UNION SCHOOL DISTRICT (hereinafter "DISTRICT") (hereinafter collectively referred to as "Parties").

**RECITALS**

- A. **WHEREAS**, CITY desires to enter into a MOU with DISTRICT for the purpose of providing funds for DISTRICT'S crossing guard program (hereinafter "Program"); and
- B. **WHEREAS**, DISTRICT has established the Program to provide crossing guards within Goleta to assist school children to safely travel to and from school; and
- C. **WHEREAS**, the funds contributed by CITY under this MOU will be used toward the costs of the Program; and
- D. **WHEREAS**, the purpose of this MOU is to set forth DISTRICT's respective obligations in connection with CITY's contribution to the funding of this Program.

THE PARTIES HEREBY AGREE AS FOLLOWS:

**SECTION 1. TERM OF MOU.**

The term of this MOU shall be from July 1, 2015 to June 30, 2017, inclusive, unless otherwise terminated earlier as provided for in this MOU. The agreement may be extended annually by mutual agreement between CITY and DISTRICT.

**SECTION 2. CITY'S FINANCIAL CONTRIBUTION.**

- A. CITY agrees to contribute to DISTRICT a total amount not to exceed Forty Thousand Dollars (\$40,000) (hereinafter "CITY's Contribution") for the full term of the MOU; \$20,000 within 30 days of final approval of this Agreement and \$20,000 by June 30, 2017.
- B. DISTRICT shall expend CITY's Contribution only on the Program and in accordance with the other terms and conditions of this MOU.

### **SECTION 3. DISTRICT'S RESPONSIBILITIES.**

- A. DISTRICT shall be responsible for designing, implementing, and operating the Program, including but not limited to, the hiring, training, deployment, supervision and control of all Program staff. In furtherance of that responsibility, and subject to its sole discretion, DISTRICT shall:
1. Provide Program staff with all necessary and required safety equipment;
  2. Provide all necessary training for Program staff in accordance with all state or local laws, ordinances, or regulations;
  3. Provide supervisory personnel to ensure that all school crosswalk locations are staffed during the required or appropriate times and that all Program staff are providing services in accordance with his or her training; and
  4. Provide adequate reserve personnel to staff locations left vacant by illness, injury, or by personnel who fail to report to work.
- B. Within thirty (30) days of the last day of classes of each School Year, DISTRICT shall provide CITY's Representatives in Section 13 a summary report on the Program including an accounting of the Program expenditures funded by CITY's Contribution.

### **SECTION 4. INDEPENDENT CONTRACTOR.**

- A. The Parties agree that DISTRICT and DISTRICT's employees, representatives, and volunteers shall be at all times independent contractors and not agents or employees of CITY, and that DISTRICT employees, representatives, and volunteers shall not be entitled to any salary, benefits, pension, Workers' Compensation, sick leave, insurance or any other benefit or right connected with employment by CITY, or any compensation other than as prescribed herein, and DISTRICT and DISTRICT's employees, representatives, and volunteers expressly waive any claim they may have to any such rights.
- B. Under no circumstances shall this MOU be construed as one of partnership, joint venture or employment between CITY and DISTRICT. Parties acknowledge and agree that they neither have, nor will give the appearance or impression of having, any legal authority to bind or commit the other Party in any way.

**SECTION 5. ASSIGNMENT BY DISTRICT.**

Any assignment or attempt to assign this MOU by DISTRICT without CITY's written authorization shall constitute a material breach for which CITY may terminate this MOU with thirty (30) days written notice.

**SECTION 6. LIABILITY, INDEMNIFICATION AND HOLD HARMLESS.**

- A. DISTRICT shall bear the cost of all claims processed against the Program.
- B. Neither CITY nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by DISTRICT under or in connection with any work, authority or jurisdiction delegated to DISTRICT under this MOU. It is understood and agreed that, pursuant to Government Code Section 895.4, DISTRICT shall fully defend, indemnify and save harmless CITY and all officers and employees thereof from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by DISTRICT under or in connection with any work, authority or jurisdiction delegated to DISTRICT under this MOU.
- C. DISTRICT holds CITY, its elected officials, officers, agents, and employees, harmless from all of DISTRICT's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to DISTRICT, to DISTRICT's employees, or to DISTRICT's contractors or subcontractors, which damages, losses, injuries or liability occur during the work required under this MOU, or occur while DISTRICT is on CITY property, or which are connected, directly or indirectly, with DISTRICT's performance of any activity or work required under this MOU.
- D. DISTRICT shall investigate, defend, and indemnify CITY, its elected officials, officers, agents, and employees, from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of DISTRICT or any of DISTRICT's officers, agents, employees, representatives, or subcontractors, or the willful misconduct of DISTRICT or any of DISTRICT's officers, agents, employees, representatives, or subcontractors, in supervising or facilitating the Program. The duty to defend shall include any suits or actions concerning any activity, product or work required under this MOU, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related thereto.

- E. CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 7.

**SECTION 7. INSURANCE REQUIREMENTS.**

DISTRICT must provide proof of its self-insured status, satisfactory to the City. If DISTRICT does not provide proof of its self-insured status, it must provide the following insurance protection.

At DISTRICT's sole cost and expense, and for the entire term of this MOU, DISTRICT shall obtain and maintain in full force the insurance coverage specified as follows with an insurer or insurers satisfactory to CITY's Representatives as noted in Section 13 of this MOU:

1. Comprehensive General Liability Insurance of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. This insurance shall include:
  - a. Extension of coverage to CITY, its officers, agents, elected officials, employees, and representatives as additional insureds, with respect to DISTRICT's liabilities hereunder in the insurance coverage identified in this MOU;
  - b. A provision that coverage will not be canceled or subject to reduction without CITY's prior written consent upon thirty (30) days' written notice by DISTRICT;
  - c. A provision that DISTRICT's insurance shall apply as primary insurance, and not in excess of, or contributing with, any insurance of CITY;
  - d. Contractual liability coverage sufficiently broad so as to include the liability assumed by DISTRICT in Section 6 of this MOU to the extent of the required policy limits;
  - e. A provision that the policies be provided on an "occurrence" basis.
2. Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.
3. Approval of insurance by CITY or acceptance of the certificate of insurance by CITY shall not relieve or decrease the extent to which DISTRICT may be held responsible for payment of damages resulting from DISTRICT's services or

operation pursuant to the MOU, nor shall it be deemed a waiver of CITY's rights to insurance coverage hereunder.

4. A Certificate of Insurance evidencing the above-specified coverage shall be completed by DISTRICT's insurer or its agent and submitted prior to the execution of this agreement.
5. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

#### **SECTION 8. COMPLIANCE WITH ALL LAWS.**

DISTRICT shall comply with all applicable municipal, state and federal laws, regulations and rules related to the operation of Program, including but not limited to laws, regulations and rules applicable to health, safety and equal opportunity employment.

#### **SECTION 9. DISPUTE RESOLUTION.**

If a question arises regarding interpretation of this MOU or its performance, or the alleged failure of a party to perform, the party raising the question or making the allegation shall give written notice thereof to the other parties. The Parties shall promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation or binding arbitration, may be pursued by agreement of Parties.

#### **SECTION 10. EFFECT OF WAIVER.**

The waiver by CITY of any term, covenant or condition of this MOU shall not be deemed a waiver of such term, covenant or condition or a waiver of any subsequent breach of such term, covenant or condition. The consent or approval by CITY to any act by DISTRICT requiring CITY's approval or consent shall not be deemed to waive provisions for CITY's approval or consent of any subsequent acts by DISTRICT.

#### **SECTION 11. BREACH.**

- A. DISTRICT's performance of each and every provision of this MOU is an integral part of the consideration for CITY to enter into this MOU. DISTRICT's failure to perform any of the provisions of this MOU shall constitute a material breach for CITY, in addition to any other rights or remedies available, may immediately terminate this MOU upon written notice to DISTRICT.
- B. CITY, at its sole option, may elect to provide written notice of the breach of this MOU and a time period in which DISTRICT may cure the specified breach. In the event that DISTRICT fails to cure the specified breach within the time period specified, CITY may terminate this MOU.

**SECTION 12. TERMINATION.**

- A. In addition to Section 11 above, this MOU may be terminated by Parties upon giving thirty (30) days written notice of termination. In the event such notice of termination is given, this MOU shall be deemed terminated and end thirty (30) days after written notice is provided.
- B. The Representatives specified in Section 13 below are authorized to terminate this MOU.
- C. No later than thirty (30) days of Parties' receipt of notice of termination under this Section or Section 11, DISTRICT shall refund the pro rata share of CITY's Contribution for the balance of the term of the MOU. Additionally, DISTRICT shall provide CITY with an accounting of its expenditure of CITY's Contributions.

**SECTION 13. REPRESENTATIVES AND NOTICE**

- A. Any and all notices which Parties desire or are required by this MOU to give or furnish to the other parties shall be personally delivered or deposited in the United States postal services, postage prepaid, U.S. mail, addressed as follows:

To CITY: Michelle Greene, City Manager  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

To DISTRICT: William Banning, Superintendent  
Goleta Union School District  
401 North Fairview Ave  
Goleta, CA 93117

Parties may change their respective addresses for purposes of delivering notices by sending notice of such change pursuant to this Section.

- B. Representatives for Parties for the purposes of this MOU are as follows:

CITY: Michelle Greene, City Manager

DISTRICT: William Banning, Superintendent

#### **SECTION 14. MISCELLANEOUS PROVISIONS.**

- A. Parties agree that this MOU shall be governed and construed in accordance with the laws of the State of California.
- B. The headings of the sections and subsections of this MOU are inserted for convenience only. They do not constitute a part of this MOU and shall not be used in its construction.
- C. Any and all exhibits which are referred to in this MOU are incorporated herein by reference and are deemed a part of this MOU. This MOU may only be amended by formal written agreement executed by all Parties.
- D. In the event that suit shall be brought by any of the parties, Parties agree that venue shall be exclusively vested in the California Superior Court of the County of Santa Barbara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Central District of California.
- E. The Recitals of this MOU are hereby incorporated into the terms, conditions, and obligations of this MOU.
- F. This MOU constitutes the entire MOU between the Parties pertaining to the subject matter containing therein and supersedes all prior or contemporaneous agreements, representations and understandings of the Parties relative thereto.
- G. If any term, covenant, condition or provision of this MOU, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this MOU, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

IN WITNESS THEREOF, the Parties hereto have caused this MOU to be executed, on the day and year first written above.

**GOLETA UNION  
SCHOOL DISTRICT:**

**CITY OF GOLETA:**

\_\_\_\_\_  
William Banning, Superintendent

\_\_\_\_\_  
Michelle Greene, City Manager

**ATTEST:**

**ATTEST:**

By: \_\_\_\_\_

\_\_\_\_\_  
Deborah Lopez, City Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

  
\_\_\_\_\_  
Tim Giles, City Attorney