WILLMAR SPECIAL CITY COUNCIL MEETING

MONDAY, SEPTEMBER 25, 2023 @ 6:30 PM

Willmar Event/ Civic Center

2707 Arena Dr., Willmar, MN 56201

AGENDA

1. Call Meeting to Order
2. Roll Call
3. Pledge of Allegiance
4. Proposed Additions or Deletions to Agenda
5. Consent Items

   Approve:

   A. Contract Between City of Willmar and Willmar Supervisor Unit
6. Approve Consent Agenda Items
7. Items Removed from Consent Agenda
8. Regular Business

   A. School Resource Officer Suspension Agreeement
9. Adjourn

City of Willmar

City Council Action Request

Council Meeting Date:	September 25, 2023	**Agenda Item Number:**	5.A.
Agenda Section:	Consent Items	**Originating Department:**	Administration
Resolution:	No	**Prepared By:**	Leslie Valiant, City Administrator
Ordinance:	No	**Presented By:**	Leslie Valiant, City Administrator
Item:	Contract Between City of Willmar and Willmar Supervisor Unit		

RECOMMENDED ACTION:
Approve the 2023 - 2025 Supervisors Union contract

OVERVIEW:
The supervisors union has approved the 2023 - 2025 contract. The new contract has a 4, 4 and 3% wage increase for 2023, 2024, and 2025 respectfully. For 2023, employees paid the entire health insurance increase. For 2024 and 2025 the City will contribute an additional 2.5% increase towards health insurance coverage.

BUDGETARY/FISCAL ISSUES:

ALTERNATIVES TO CONSIDER:

ATTACHMENTS:
1. Contract between City of Willmar and Willmar Supervisor Unit

CONTRACT

BETWEEN

THE CITY OF WILLMAR

AND

WILLMAR SUPERVISOR UNIT

2023-2025
(January 1, 2023 – December 31, 2025)

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ARTICLE 1. PURPOSE

1.1 The purpose of this Contract is to establish certain benefits and conditions of employment for Supervisory Employees (hereafter referred to as "Employees") in order to achieve and maintain sound, harmonious and mutually beneficial working conditions.

1.2 The Employer and Employees, through this Contract, continue their dedication to the highest quality of public service.

ARTICLE 2. RECOGNITION

2.1 The Supervisor bargaining unit includes the following:

All supervisory and confidential Employees employed by the City of Willmar; Minnesota, who are public Employees within the meaning of Minn. Stat. 179A.03, subd. 14, excluding Department Heads and all other Employees.

Assistant City Engineer (not licensed)
Assistant to the City Administrator
Assistant Finance Director
Deputy Fire Chief
Information Systems Coordinator
Police Captain
Public Work Superintendent
Wastewater Superintendent

2.2 Employee positions may be created, established, consolidated or deleted by duly adopted resolution of the City Council.

ARTICLE 3. GRIEVANCE PROCEDURE

3.1 DEFINITION OF GRIEVANCE: A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Contract.

3.2 BARGAINING UNIT REPRESENTATIVES. The Employer will recognize representatives designated by the bargaining unit as the grievance representatives of the bargaining unit having the duties and responsibilities established by this Article. The bargaining unit shall notify the Employer in writing of the names of such representatives and of their successors when so designated.

3.3 PROCESSING OF A GRIEVANCE. It is recognized and accepted by the bargaining unit and the Employer that the processing of grievances as hereinafter provided is limited by the job duties and responsibilities of the Employees and shall therefore be accomplished during normal working hours only when consistent with such Employee duties and responsibilities. The aggrieved Employee and representative shall be allowed a reasonable amount of time without loss in pay when a grievance is investigated and presented to the Employer during normal working hours provided the Employee and the representative have notified and received the approval of the designated supervisor who has determined that such absence is reasonable and would not be detrimental to the work programs of the Employer.

3.4 PROCEDURE. Grievances, as defined by Section 3.1, shall be resolved in conformance with the following procedure:

Step 1. No grievance shall be entertained or processed unless it is submitted within ten (10) working days after the first occurrence of the event giving rise to the grievance, or within ten (10) working days after the Employee through the use of reasonable diligence should have obtained knowledge of the first occurrence of the event giving rise to the grievance. The written grievance signed by both the Employee and representative shall set forth the nature of the grievance, the facts on which it is based, the alleged violation, and the relief requested.

The Department Head shall discuss the grievance within five (5) working days with the Employee and representative at a time mutually agreeable to the parties. If the grievance is settled as a result of such meeting, the settlement shall be reduced to writing and signed by the Department Head, the Employee and representative. If no settlement is reached, the Department Head shall give the Employer's written answer to the Employee and representative within five (5) working days following their meeting and shall also forward a copy to the Council and City Administrator.

Step 2. If the grievance is not settled in Step 1 and the Employee desires to appeal, it shall be referred by the Employee in writing to the City Administrator within ten (10) working days after the designated Department Head's answer in Step 1 is due. A meeting or discussion between the City Administrator and the Employee and representative shall be held within ten (10) working days at a time mutually agreeable to the parties. If the grievance is settled as a result of such meeting, the settlement shall be reduced in writing and signed by the City Administrator, the Employee and representative. If no settlement is reached, the City Administrator shall give the Employer's written answer to the Employee within five (5) working days following the meeting.

Step 3. If the grievance is not settled in Step 2 and the Employee desires to appeal, it shall be referred by the Employee in writing to the Council within ten (10) working days after the City Administrator's answer in Step 2. A meeting or discussion between the Council and the Employee and representative shall be held within ten (10) working days at a time mutually agreeable to the parties. If the grievance is settled as a result of such meeting, the settlement shall be reduced in writing and signed by the Chairman of the Council, the Employee and representative. If no settlement is reached, the Council shall give the Employer's written answer to the Employee within five (5) working days following the meeting.

Step 4. If the grievance is not settled in Step 3 and the Employee desires to appeal, it shall be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act of 1971. The Employer and the Employee shall endeavor to select a mutually acceptable arbitrator to hear and decide the grievance. If they are unable to agree on an arbitrator, the Employee shall request from the Director of the Bureau of Mediation Services, the State of

Minnesota, a list of five (5) names within ten (10) working days following receipt of the Employer's answer in Step 3. The parties shall alternately strike names from a list of five (5) arbitrators until only one (1) name remains. The remaining arbitrator shall hear and decide the grievance. If the parties are unable to agree on who shall strike the first name, the question shall be decided by a flip of the coin. Each party shall be responsible for equally compensating the arbitrator for his/her fee and necessary expenses.

3.4.1 In the event that a grievance is filed by a Supervisor that reports directly to the City Administrator, the first step in the grievance procedure will be with the City Administrator.

3.5 If a grievance is not presented within the time limits set forth above, it shall be considered waived. If a grievance is not appealed to the next step within the specific time limit or any agreed upon extension thereof, it shall be considered settled on the basis of the Employer's last answer. If the Employer does not answer a grievance or an appeal thereof within the specific time limits, the Employee may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each step, except the time limit for filing the grievance, may be extended by mutual written agreement of the Employer and Employee in each step, which extension shall not be unduly withheld by either party. The term "working days" shall mean the days Monday through Friday, excluding holidays.

3.6 The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Contract. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Employee, and shall have no authority to make a decision on any other issue not so submitted. The arbitrator shall be without power to make decisions contrary to or inconsistent with or modifying or varying in any way the application of laws, rules and regulations having the force and effect of law. The arbitrator's decision shall be submitted in writing within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension. The decision shall be binding on both parties and shall be based solely on the arbitrator's interpretation or application of the express terms of this Contract and to the facts of the grievance presented.

The fees and expenses for the arbitrator's services and proceedings shall be borne equally by both parties provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings, the cost shall be shared equally.

3.7 CHOICE OF REMEDY If, as a result of the written Employer's response in Step 3, the grievance remains unresolved, and if the grievance involved the suspension, demotion or discharge of an Employee who has completed the required probationary period, the grievance may be appealed either to Step 4 of Article III or a procedure such as Civil Service, Veteran's Preference or Fair Employment. If appealed to any procedure other than Step 4 of Article III, the Employee shall indicate in writing which procedure is to be utilized and shall sign a statement to the effect that the choice of any other hearing precludes the aggrieved Employee from making a subsequent appeal through Step 4 of Article III.

ARTICLE 4. PROBATIONARY PERIOD

4.1 A newly hired, rehired or promoted Employee will serve a probationary period at the discretion of the City Council. The normal probationary period shall be 12 months.

4.2 At any time during the probationary period referred to in 4.1, a newly hired, rehired or promoted Employee may be terminated at the discretion of the City Administrator.

4.3 At any time during the probationary period referred to in 4.1, a promoted or reassigned Employee may be demoted, reassigned or terminated at the discretion of the City Administrator, subject to approval of the City Council.

ARTICLE 5. HOLIDAY LEAVE

5.1 The following holidays shall be paid holidays for all Employees:

New Year's Day	January 1
Martin Luther King Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving	
Christmas Day	December 25

5.2 A paid holiday falling on Sunday will be observed on the following Monday, and one falling on Saturday will be observed on the preceding Friday.

ARTICLE 6. VACATION LEAVE

6.1 Employees shall be granted vacations compensated according to the following schedule:

A. From the beginning of continuous employment through the fourth (4th) year of continuous employment, each Employee shall accrue and be granted vacation at the rate of fifteen (15) working days per year.

B. From the beginning of the fifth (5th) year and on through the ninth (9th) year of continuous employment, each Employee shall accrue and be granted vacation at the rate of eighteen (18) working days per year.

C. From the beginning of the tenth (10th) year and on through the fourteenth (14th) year of continuous employment, each Employee shall be granted vacation at the rate of twenty (20) working days per year.

D. From the beginning of the fifteenth (15th) year and thereafter, each Employee shall accrue and be granted vacation at the rate of twenty-five (25) working days per year.

6.2 If an Employee retires, resigns or is terminated without receiving the vacation due him or her that year, he/she shall be paid for such vacation, not to exceed twice their annual allotment of accumulated vacation, provided that the employee has given two (2) weeks' notice of termination and if discharged such termination is not due to misconduct or dishonesty the part of the Employee.

6.3 Each Employee shall annually receive three (3) personal leave days. These days are to be taken when the Employee's workload permits and are not cumulative from year to year.

6.4 Employees shall be allowed to accumulate vacation and to have credited to them twice their annual vacation. Vacation may be taken in increments of one hour (minimum) to 25 working days (maximum). If 25 working days of vacation are used at one time, an Employee must work a minimum of two weeks before further vacation can be taken.

6.5 Employees who have accumulated a total of at least 120 vacation hours may cash out up to 40 hours of vacation one time per calendar year when they have used at least 40 hours of vacation time in the 12 months preceding the date that they make the request for such cash out. The Employer will cash out vacation time in this section with the first regular payroll that is at least 3 calendar days after receipt of the Employee's request.

ARTICLE 7. SICK LEAVE

7.1 Employees shall be granted eight (8) hours of sick leave, with pay, for each month of service; unused sick leave to an Employee's credit shall be cumulative from one year to the next.

7.2 Sick leave of up to three (3) days per incident may be used in the case of acute sickness, emergency or accident in the Employee's immediate family, as such term is defined in Section 8.1.

7.3 An Employee entitled to receive weekly workers' compensation wage loss benefits who has accumulated sick leave benefits at the time of a compensable injury, shall be allowed to utilize accumulated sick leave benefits to supplement the difference between the workers' compensation wage loss payment and their average weekly wage at the time of the injury. Employees will only be allowed to utilize the sick leave accrued as of the date of injury.

7.4 Employees with seven (7) or more years of consecutive service with the Employer shall be granted, upon termination of employment with the Employer, the cash value of the accumulated total sick leave; computed at last current salary at time of severance, in accordance with the following schedule: seven (7) years, seventy (70%) percent; eight (8) years, eighty (80%) percent;

nine (9) years, ninety (90%) percent; ten (10) years, one hundred (100%) percent. In the event an Employee with at least seven (7) years continuous service dies while so employed, his/her heirs as designated under the PERA plan shall be entitled to an amount equal to the percent of accrued sick leave benefits that said Employee would have earned under the termination clause (payable at the time of Employee's death). Termination and/or death benefits shall be limited to 900 hours in 1992 and thereafter. This Section shall be subject to the requirements set forth in Section 11.3.

7.5 The payout of sick leave specified in section 7.4 of this Agreement shall be placed in the Employee's Post-Retirement Health Care Savings Plan (HCSP) in accordance with all IRS regulations.

This payment shall be made within 45 days following the approval of the HCSP plan by MSRS or within 45 days of the Employee's separation date, whichever is later. If an Employee dies before any or all of the applicable payment is paid into the HCSP, the money cannot be placed into the HCSP. In this event, the payment shall be paid to the separating Employee's estate.

All Employees shall participate in the HCSP, unless they apply for and are approved by MSRS under a qualified exemption.

Employees can draw from their HCSP account in accordance with state law. Any description of the benefits is intended to be informational only. The management of contributed funds into the HCSP is the responsibility of the Employee and/or the investment option provider selected by the Employee. The Employer's only obligation is to deposit eligible sick leave/severance payment. The Employer has no other responsibility or obligations and no other claims can or shall be made against the Employer.

ARTICLE 8. FUNERAL LEAVE

8.1 Employees may be allowed up to three (3) working days paid leave at the Employee's straight time rate in the event of death of a member of the Employee's immediate family. Such funeral leave will not be deducted from sick leave. The Employee's immediate family is defined as the Employee's child, father or father-in-law, grandfather, mother or mother-in-law, grandmother, grandchildren, sister or sister-in-law, brother or brother-in-law, spouse, stepchildren, stepparents, and a member of the Employee's own immediate household. Any persons not listed is up to the discretion of the Supervisor for the Employee to use funeral leave. It is understood that payment under the above provisions is only for a day or days when the Employee was scheduled to work and would have worked except for the death of such relative.

ARTICLE 9. JURY DUTY (COURT APPEARANCE) OR MILITARY DUTY

9.1 An Employee may be granted a leave of absence with pay for service upon a jury, appearance before a court, legislative committee or other body as a witness in a proceeding involving the Federal Government, the State of Minnesota, or a political subdivision thereof, in response to a subpoena or other direction by proper authority; or attendance in court in connection with his/her official duties.

ARTICLE 10: WORK SCHEDULE

10.1 The normal work week for full-time Employees shall be forty (40) hours. However, it is expected that Employees will provide the service necessary to carry out the responsibilities of their positions. Employees are exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) and shall not be entitled to accrue overtime or compensatory time for hours worked in excess of forty (40) hours per week.

10.2 The pay period system will provide twenty-six (26) pay periods per year with concurrent adjustments of accrued benefits.

10.3 Special Leave. Any Employee who is mentally or physically incapacitated to perform his/her duties, or who for any stated reason considered good by the City Administrator finds it necessary to absent himself/herself from his/her duties, may on written request approved by the City Administrator, be granted special leave of absence without pay for a period not to exceed one year. Such request shall be submitted in writing stating the reason why such absence is desired and the date of his/her return. The Employee granted a special leave shall be reinstated in the same position as he/she held when the special leave was granted. Special leaves may be reviewed after one year by the City Administrator and if mutually agreed upon by both parties, an extension may be granted.

10.4 Reinstatement. Any Employee who has been given a special leave of absence or layoff in accordance with this Contract shall be eligible for reinstatement or recall to the same position from which the leave of absence or layoff took place in the event the Employer elects to fill that position.

ARTICLE 11. INSURANCE

11.1 Health Insurance. In calendar years 2023, 2024, and 2025, the Employer will pay up to the following amounts monthly towards insurance premiums for calendar years 2023, 2024 and 2025, respectively, for Employees in a high deductible Health Savings Account (H.S.A.) plan for either the single or family coverage chosen by the Employee within the H.S.A. plan offered by the Employer: (i) for single coverage, $581.93 in 2023, $596.48 in 2024, and $611.39 in 2025; and (ii) for family coverage, $1,533.49 in 2023, $1,571.83 in 2024, and $1,611.12 in 2025. In addition, in calendar years 2023, 2024, and 2025, the Employer will deposit into the Employee's H.S.A. the amount of $250.00 each month for those enrolled in the single plan, and $500.00 each month for those enrolled in the family plan, chosen by the Employee within the H.S.A. plan offered by the Employer. If the annual deductible for the H.S.A. plan is greater than the annual contribution limit on health savings accounts, the difference will be paid to the Employee or their healthcare provider. If an Employee in the H.S.A. plan experiences a hardship during the year, the Employee may appeal in writing to the City Administrator for the Employer's full annual contribution to be deposited into the Employee's health savings account.

11.2 The Employer agrees to pay for a long-term disability program for such Employees comparable to what is now in effect.

11.3 Employees who retire may continue to participate in the Employer's health insurance group in accordance with the provisions of Minnesota Statute § 471.61, subd. 2b. An Employee who elects to continue to participate in the Employer's health insurance group after retirement shall be responsible for paying the full premium.

Payout of sick leave/severance to eligible Employees shall be in accordance with Article 7.4 of the collective bargaining agreement. Such payout shall be placed in the Employees' Health Care Savings Plan in accordance with all IRS regulations.

This payment shall be made within 45 days following the Employee's termination date, whichever is greater. If an Employee dies before any or all of the applicable severance is paid into the HCSP, the money cannot then be received by the HCSP. In this event, the severance payment shall be paid to the retiring Employee's estate.

11.4 The Employer agrees to pay for a $50,000 life insurance program for the Employees. The Employer will provide additional term life insurance solely at Employee cost, subject to individual participation approval by the insurance carrier.

11.5 If there is sufficient participation interest within the Employer, the Employer will provide the options for a dental insurance program solely at Employee cost.

11.6 Affordable Care Act. In the event the health insurance provisions of this Contract fail to meet the requirements of the Affordable Care Act and its related regulations or cause the Employer to be subject to a penalty, tax or fine, the Employees covered by this Contract will meet immediately to bargain over alternative provisions so as to comply with the Act and avoid any penalties, taxes or fines for the Employer.

ARTICLE 12. COMPUTING SALARIES

12.1 For the purpose of computing salaries for a period of less than one month, the annual rate shall be divided by 2080 hours and the result shall be multiplied by the actual hours worked. Annual salaries for the duration of this Contract are set forth in Exhibit A.

12.2 Salary adjustments may be approved during the Contract year when an Employee is assigned major new responsibilities on his/her job description. When job duties are assigned which would be greatly different and the Employee assumes major new responsibilities, the City Administrator and Human Resource Director shall review this matter at the time a major change is made in the job description for the Employee and the salary adjustment made when the Employee assumes the new major responsibilities.

ARTICLE 13: RECLASSIFY POSITION CLASSIFICATIONS

13.1 The Employer reserves the right to reclassify position classifications as identified in Exhibit A to reflect changes in job responsibilities. All Employees who are promoted and/or transferred to a different position with the Employer shall retain all sick leaves, comp time, and vacation time. Employees shall not lose any sick leave, comp time, or vacation as a result of promotion or transfer.

ARTICLE 14. CLOTHING ALLOWANCE

14.1 The Employer shall annually provide a clothing allowance to the Police Captain up to eight hundred dollars ($800.00) annually. The allowance will be based on a voucher system under the direction of the Department Head and subject to a list of items issued by the Department Head or may be paid in a lump sum for the year. If necessary, the Department Head has the authority to order the Employee to replace his/her uniform or parts thereof.

The initial uniform shall consist of:

Parka	1	Trousers	2
Cap (winter)	1	Leather Goods	
Cap (summer)	1	Breast and Cap Badge	1
Jacket	1	Set of Hand Cuffs (Captain)	1
Shirts (winter)	2	Hand Gun (Captain)	1
Shirts (summer)	2	Name Tag	1

14.2 The Employer shall annually provide a clothing allowance to the following employees for up to the following amounts:

- Wastewater Superintendent: $200
- Public Works Superintendent: $200
- Deputy Fire Chief: $800

ARTICLE 15. SAFETY (LAWSUIT)

15.1 The Employer shall provide through insurance coverage or otherwise, legal defense and indemnification to Employees in accordance with Minnesota statutes.

ARTICLE 16. WAIVER

16.1 The parties mutually acknowledge that during the negotiations which resulted in this Contract, each had the unlimited right and opportunity to make demands and proposals with respect to any term or condition of employment not removed by law from bargaining. All agreements and understandings arrived at by the parties are set forth in writing in this Contract for the stipulated duration of this Contract. The Employer and the Union each voluntarily and unqualifiedly waives the right to meet and negotiate regarding any and all terms of this Contract, even though such terms or conditions may not have been within the knowledge or contemplation of either/or both parties at the time this contract was negotiated or executed.

16.2 Any and all prior agreements, resolutions, practices, policies, rules and regulations regarding terms and conditions of employment, to the extent inconsistent with the provisions of this Contract, are hereby superseded.

ARTICLE 17. SAVINGS CLAUSE

17.1 This Contract is subject to the laws of the United States, the State of Minnesota and the City of Willmar. In the event any provision of this Contract shall be determined to be contrary to law by a court of final jurisdiction or administrative ruling or in violation of legislation or administrative regulations, such provisions shall be voided. All other provisions of this Contract shall continue in full force and effect. The voided provision may be renegotiated at the written request of either party.

ARTICLE 18. DURATION

18.1 This Contract shall be in full force and effect from January 1, 2023 through December 31, 2025.

SUPERVISOR BARGAINING UNIT:	CITY OF WILLMAR:
______________________	______________________ CITY ADMINISTRATOR
______________________	______________________ MAYOR
Date: 9-21-23	Date: __________

Exhibit A

Employees employed as of the date this Agreement is executed will be paid base pay in the following years that is the following percentage increase above their base pay as of December 31 of the preceding calendar year:

- 4% in 2023
- 4% in 2024
- 3% in 2025

A base pay increase of up to an additional 4% may be given to an employee based upon the employee's years of service and a satisfactory performance review. If such an increase would result in an employee's base pay exceeding the maximum of the pay range for their position's pay grade, the employee will be paid base pay that is the maximum of the pay range for their position's pay grade. An additional base pay increase will not be given for a poor performance review. A poor performance review will require the employee and the direct supervisor to develop a performance improvement plan and should be reviewed again with-in six months in order to determine whether a salary increase should be given.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made by and between the City of Willmar ("Employer") and Willmar Supervisor Unit ("Union").

WHEREAS, the Union is the exclusive representative for certain employees of the Employer in the appropriate unit ("Bargaining Unit Employees");

WHEREAS, the Employer and Union are parties to a Labor Agreement for January 1, 2023 through December 31, 2025 ("Labor Agreement");

WHEREAS, the parties desire to clarify the maximum of the pay range for a position's pay grade for the purposes of performance pay; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements to be performed, as hereinafter set forth, Employer and Union agree as follows:

Article 1. Maximum of Pay Range for Purposes of Performance Pay

Solely for the purposes of the following sentence in Exhibit A of the Labor Agreement related to performance pay: "If such an increase would result in an employee's base pay exceeding the maximum of the pay range for their position's pay grade, the employee will be paid base pay that is the maximum of the pay range for their position's pay grade," the "maximum of the pay range for their position's pay grade" are as follows for employees:

	2023 Maximum	2024 Maximum	2025 Maximum
PW Superintendent	$99,162.37	$103,128.87	$106,222.73
WW Superintendent	$99,162.37	$103,128.87	$106,222.73
Assistant City Engineer I	$99,162.37	$103,128.87	$106,222.73
Information Systems Coordinator	$99,162.37	$103,128.87	$106,222.73
Assistant Finance Director	$99,162.37	$103,128.87	$106,222.73
Deputy Fire Chief	$105,112.09	$109,316.57	$112,596.07
Police Captain	$111,418.83	$115,875.58	$119,351.85

Article 2. Entire Understanding

This MOU constitutes the entire agreement among the parties hereto. No representations, warranties, covenants, or inducements have been made to any party concerning this MOU, other than the representations, covenants, or inducements contained and memorialized in this MOU. This MOU supersedes all prior negotiations, oral and written understandings, policies and practices with respect thereto addressing the specific subject matter addressed in this MOU.

Article 3. Waiver of Bargaining

Employer and Union each voluntarily and unqualifiedly waives the right and each agrees that while the current Labor Agreement is in full force and effect the other shall not be obligated to bargain collectively with respect to the express subjects or matters included in this MOU.

Article 4. Limitations

This MOU is intended for the sole and limited purpose specified herein. This MOU cannot be construed to be nor does it constitute or establish any admission of the Employer, precedent, past practice or otherwise place any prohibition or limitation on any management right of the Employer. The Employer expressly reserves the right to exercise all of its management rights without limitation.

Article 5. Amendment or Modification

This MOU or any of its terms may only be amended or modified by a written instrument that: (1) expressly states it is amending or modifying the MOU; and (2) is signed by or on behalf of all of the parties hereto or their successors in interest.

Article 6. Voluntary Understanding of the Parties

The parties hereto acknowledge and agree that this MOU is voluntarily entered into by all parties hereto as the result of arm's-length negotiations during which all such parties were represented.

Article 7. Effective Date

This MOU is effective the latest date affixed to the signatures below.

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the latest date affixed to the signatures below.

SUPERVISOR BARGAINING UNIT:	CITY OF WILLMAR:
______________________	______________________
	CITY ADMINISTRATOR
______________________	______________________
	MAYOR
Date: 9-21-23	Date: ____________

City of Willmar

City Council Action Request

Council Meeting Date:	September 25, 2023	**Agenda Item Number:**	8.A.
Agenda Section:	Regular Business	**Originating Department:**	Police Department
Resolution:	No	**Prepared By:**	Leslie Valiant, City Administrator
Ordinance:	No	**Presented By:**	Jim Felt, Police Chief
Item:	School Resource Officer Suspension Agreeement		

RECOMMENDED ACTION:
Approve the school resource officers suspension agreement

OVERVIEW:

BUDGETARY/FISCAL ISSUES:

ALTERNATIVES TO CONSIDER:

ATTACHMENTS:
1. SRO contract suspension agreement
2. 23-24 District Calendar
3. 2023.09.20 Supplemental AG Opinion

SUSPENSION OF SCHOOL RESOURCES OFFICERS AGREEMENT
BETWEEN THE CITY OF WILLMAR AND INDEPENDENT SCHOOL DISTRICT NO. 347

This Agreement is made effective and entered into on September ___, 2023, by and between the City of Willmar, a municipal corporation under the laws of the State of Minnesota (the "CITY") and the Independent School District No. 347 (the "District"). This Agreement represents the mutual understanding of the undersigned parties regarding the suspension of the service contract as it relates to the City providing School Resource Officers to serve the District and its students.

WHEREAS, the City entered into a contract for services on June 13, 2022, ("Contract") with the District to provide 3.75 School Resource Officers through the end of the 2023/2024 school year, and;

WHEREAS, the City and its Chief of Police have expressed concerns regarding the implementation of recently enacted statutory changes regarding the conduct of school resource officers, and other law enforcement officers contracted with school districts, and;

WHEREAS, ambiguity in the language of these statutes has left the City and its Chief of Police with uncertainty about liability, and questions related to how its Officers and the Department are to fully comply with these changes, and;

WHEREAS, law enforcement and school leaders across the State of Minnesota have publicly called for further guidance from the Minnesota Officials to clarify the effects and implementation of these recently enacted statutory changes, and;

WHEREAS, on September 5, 2023, the City Council voted to terminate the Contract and written notice to the District of the termination vote was sent on September 20, 2023; and

WHEREAS, on September 11, 2023, the District passed a resolution conditionally approving a suspension of the Contract if the City funded 3.75 officers to be assigned to the District's schools through December 5, 2023; and

WHEREAS, the Parties wish to suspend the Contract while continuing their positive working relationship and desire to eventually resume a contractual relationship to provide school resource officers to the District, while affording the City the opportunity to gain clarity regarding these statutory changes and adjust operations as necessary while the Contract is suspended as more specifically provided below.

NOW THEREFORE, the Parties, acting through their below signed representatives, agree as follows:

1. **Mutual Suspension of Contract**: As of the effective date of this agreement, the Contract and the Parties' obligations thereunder are hereby suspended effective as of September 11, 2023.

2. **Timeframe and Resumption:** This suspension is to remain in effect until December 19, 2023, or such other date as may be mutually agreed upon in a written agreement signed by the City's Chief of Police and the District's Superintendent (the "period of suspension").

3. **Performance Obligations Suspended**: During the period of suspension, neither the City, nor the District, will be required to perform their respective obligations of the Contract. The City will not designate or provide dedicated school resource officers to the District. The District will not pay the City. Notwithstanding the foregoing, the City will assign 3.75 officers to

fulfill law enforcement duties in the District's schools at the City's expense with the permission of and in cooperation with the District during the period of suspension. These officers so assigned to the District's schools shall be performing their duties at the sole direction and control of the City of Willmar Police Department.

4. **Agency Relationship Suspended**: During the period of suspension, the City, its previously-designated School Resource Officers, and its officers assigned to fulfill law enforcement duties in the District's schools shall not be considered agents of the District, nor shall they be considered officers contracted with the School District, so long as the suspension remains in effect.

5. **Calls for Service:** During the period of suspension, in addition to the City's assignment of officers to fulfill law enforcement duties in the District's schools, the City and its Police Officers will respond to calls for service from the District in the same matter it would to any other call for service from the community.

6. **District Payments.** Pursuant to the Contract, the District paid the City $116,336.03 on July 12, 2023. Due to the suspension of the Contract, the City will provide the District with a refund in the amount of $116,336.03, to be paid within thirty (30) days of the final parties' signature on this agreement.

7. **Data Privacy.** The City understands and agrees that during the period of suspension, its officers will not be considered a "school official" as that term is used in the Family Educational Rights and Privacy Act ("FERPA"), 34 C.F.R. § 99.31(a)(1)(i)(B). The District and its employees will not share educational records or educational data with the City or its officers unless there is an applicable exception permitting such disclosure pursuant to state or federal law.

8. **Access to District Equipment and Technology Suspended**. During the period of suspension, the City, its previously-designated School Resource Officers, and its officers assigned to fulfill law enforcement duties in the District's schools shall not have access to any District owned equipment and technology resources, nor shall they continue to possess or access any previously assigned equipment and technology resources from the School District.

I concur with this Suspension of School Resource Officers Agreement, signed:

CITY OF WILLMAR	INDEPENDENT SCHOOL DISTRICT NO. 347.
______________________________	______________________________
Name and Title (Printed)	**Name and Title (Printed)**
______________________________	______________________________
Signature	**Signature**
______________________________	______________________________
Date	**Date**

2023-2024 DISTRICT CALENDAR

AUGUST 2023

S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

SEPTEMBER 2023

S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

OCTOBER 2023

S	M	T	W	Th	F	S
1	2	3	4	5	6	7
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

NOVEMBER 2023

S	M	T	W	Th	F	S
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DECEMBER 2023

S	M	T	W	Th	F	S
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24	25	26	27	28	29	30
31						

JANUARY 2024

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28	29	30	31			

FEBRUARY 2024

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25	26	27	28	29		

MARCH 2024

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24	25	26	27	28	29	30
31						

APRIL 2024

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28	29	30				

MAY 2024

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JUNE 2024

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JULY 2024

S	M	T	W	Th	F	S
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

KEY DATES

Aug. 21 & 25 _____New Teacher Induction
Aug. 22 - 24 _____Standard Based Learning Teacher Workshop Days
Aug. 28 - 31 _____Teacher Workshop (PreK-12)
Sept. 4 __________NO SCHOOL - Labor Day (Holiday)
Sept. 5 __________First Day of School (6-12)
Sept. 7 __________First Day of School (K-5)
Oct. 18 __________Parent/Teacher Conferences (K-8); NO SCHOOL for K-8 students only
Oct. 19-20 _______NO SCHOOL - Fall Break
Nov. 3 ___________End of Term 1
Nov. 15 __________Professional Development; 2 - hour late start for students
Nov. 22__________NO SCHOOL - Teacher Conference Comp Day
Nov. 23 - 24 _____NO SCHOOL - Thanksgiving Break
Dec. 6 ___________Professional Development; 2-hour late start for students
Dec. 25 - Jan. 1 __NO SCHOOL - Winter Break
Jan. 2 ___________School Resumes
Jan. 15 __________PreK-12 Teacher In-Service; NO SCHOOL for students
Jan. 19 __________End of Term 2
Jan. 31 __________Professional Development; 2 hour late start for students
Feb. 16 __________Parent/Teacher Conferences (K-12); NO SCHOOL for students
Feb. 19 __________NO SCHOOL - Standards Based Learning Teacher Workshop Day
Mar. 22 __________End of Term 3
Mar. 25 - 29 _____NO SCHOOL - Spring Break
Apr. 1 ___________School Resumes
Apr. 10 __________NO SCHOOL - Teacher Conference Comp Day
May 3 ___________Professional Development; 2-hour early dismissal for students
May 27 __________NO SCHOOL - Memorial Day (Holiday)
May 30 __________Last Day for Seniors
May 31 __________End of Term 4
June 2___________WHS Commencement
June 3___________Standards Based Learning Teacher Workshop Day
June 4___________PreK-12 Teacher Work Day

NOTE: Inclement weather days will be e-learning days and in June (if additional days are needed).

NO SCHOOL

Late Start/Early Dismissal

SCHOOL PUPILS: DISCIPLINE: Laws of Minnesota 2023 ch. 55, art. 2, § 36 and art. 12, § 4 do not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death or to carry out lawful duties as set forth in Minnesota Statutes section 609.06, subd. 1(1). Minn. Stat. §§ 121A.58; 121A.582. Op. Atty. Gen. 169f (August 22, 2023) supplemented.

169f

The Office of
Minnesota Attorney General Keith Ellison
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September 20, 2023

Willie L. Jett, II
Commissioner
Minnesota Department of Education
400 NE Stinson Boulevard
Minneapolis, Minnesota 55413

Re: Recent Amendments to Student Discipline Laws

Dear Commissioner Jett:

Thank you for your letter of August 18, 2023, which seeks clarity regarding recent amendments to student discipline laws, Minnesota Statutes sections 121A.58 and 121A.582. *See* Act of May 24, 2023, ch. 55, art. 2, § 36; art. 12, § 4 (hereinafter, the Amendment). Pursuant to Minnesota Statutes section 8.07, I issued an opinion on August 22, 2023, with binding guidance on the issue you raised. Since that date I have met with many stakeholders, including the Minnesota Chiefs of Police Association, Minnesota Sheriffs' Association, Minnesota Police and Peace Officers Association, individual police chiefs, legislators, city elected officials, and county attorneys, who brought forward valid questions about the application of the new law. As a result, I supplement that opinion today. By operation of section 8.07, this opinion is "decisive until the question involved shall be decided otherwise by a court," and therefore it may be relied upon.[1]

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[1] Minnesota Statutes section 8.07 provides that "on all school matters" attorney general opinions like this one are "decisive." The Minnesota Supreme Court has confirmed the opinions are "binding" until overruled by courts. *Eelkema v. Bd. of Ed. of Duluth*, 11 N.W.2d 76, 78 (Minn. 1943). "School matters" have been construed broadly, including the interpretation of how general statutes apply in an education context. *E.g.*, *Village of Blaine v. Indep. Sch. Dist. No. 12*, 138 N.W.2d 32, 39-40 (Minn. 1965) (noting attorney general opinion had properly construed statute regarding municipal utilities in applying it to school district); *Mattson v. Flynn*, 13 N.W.2d 11, 16 (Minn. 1944) (noting reliance on attorney general opinion interpreting statutory language regarding teacher retirement funds); *Eelkema*, 11 N.W.2d at 78 (adopting attorney general analysis and noting that attorney general opinion regarding "tenure act"'s application to superintendent had been binding until any contrary court opinion was issued); *Lindquist v. Abbott*, 265 N.W. 54, 55 (Minn. 1936) (noting attorney general opinion regarding whether school district could enter into year-long contract with attorney was "followed ever since" it was issued).

BACKGROUND

Relevant to your inquiry, the Amendment revises Minnesota Statutes section 121A.58 to include a definition of "prone restraint" and to specify that school employees and agents generally: (1) "shall not use prone restraint" on pupils; and (2) "shall not inflict any form of physical holding that restricts or impairs a pupil's ability to breathe; restricts or impairs a pupil's ability to communicate distress; places pressure or weight on a pupil's head, throat, neck, chest, lungs, sternum, diaphragm, back or abdomen; or results in straddling a pupil's torso" (i.e., compressive restraint techniques). *Id*. at art. 2, § 36.

The Amendment also revises Minnesota Statutes section 121A.582 to provide that: (1) teachers and principals may use reasonable force "to correct or restrain a student to prevent imminent bodily harm or death to the student or another"; and (2) other school employees, agents[2], and bus drivers may use reasonable force "to restrain a student to prevent bodily harm or death to the student or another." *Id.* at art. 12, § 4.

QUESTION PRESENTED

You have expressed uncertainty regarding whether the Amendment categorically prohibits prone restraint and compressive restraint techniques in all scenarios. In particular, you ask: "whether the new language in Minnesota Statutes, section 121A.58, subdivision 3 and its reference to Minnesota Statutes, section 121A.582, acts as an exception to the general prohibition on prone restraints and other types of physical holds, thereby allowing the use of these practices when doing so would 'prevent imminent bodily harm or death to the student or to another.'"

SUMMARY OF CONCLUSIONS

The Amendment does not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death.[3] It also does not limit the types of reasonable force that may be used by public officers to carry out their lawful duties, as described in Minnesota Statutes section 609.06, subdivision 1(1). The test for reasonable force remains unchanged, and is highly fact-specific.

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[2] Neither the relevant statutes nor the Amendment defines "agents" of the school district. In the absence of a definition provided by the Legislature, Minnesota courts would likely apply "its ordinary legal meaning, which is one who has the authority to act on another's behalf." *Hogan v. Brass*, 957 N.W.2d 106, 109 (Minn. Ct. App. 2021) (using that definition of "agent" to interpret chapter 317 of Minnesota law). Whether an individual has authority to act on behalf of the school district depends on facts specifics to each circumstance.

[3] Teachers and principals may use these restraints only when a threat of bodily harm or death is *imminent*. *See* Act of May 24, 2023, ch. 55, art. 2, § 36. However, the word "imminent" is not included in subdivision 1(b), which relates to a broader set of individuals, including school employees, bus drivers, and other "agent(s) of the district."

ANALYSIS

Three things support these conclusions. First, the Amendment adds a new sentence to Minnesota Statutes section 121A.58, subdivision 3: "Nothing in this section or section 125A.0941 precludes the use of reasonable force under section 121A.582." *Id.* at art. 2, § 36.[4] By this language, the Legislature expressed its clear intent to not limit the use of reasonable force when faced with the threat of bodily harm or death. *See, e.g., Houck v. Houck*, 979 N.W.2d 907, 911 (Minn. Ct. App. 2022) (interpreting a "nothing in this section" provision as unambiguous and "susceptible to only one reasonable interpretation").

Second, Minnesota Statutes section 121A.582 states that: "Any right or defense under this section is supplementary to those specified in section 121A.58[.]" Minn. Stat. § 121A.582, subd. 4. This further evinces the Legislature's view that the use of reasonable force authorized in Minnesota Statutes section 121A.582 is separate and distinct from the conduct prohibited by Minnesota Statutes section 121A.58. *See, e.g., Christensen v. State Dep't of Conservation, Game and Fish*, 175 N.W.2d 433, 434 (Minn. 1970) (noting that provisions of an act that are supplementary to each other are construed together so as not to defeat rights); *Merriam Webster's Collegiate Dictionary* (11th ed.) (defining "supplementary" to mean "additional").

Similarly, because chapter 609 is referenced in section 121A.58, subdivision 3, as well as in section 121A.582, subdivisions 3 and 4, the restrictions on prone and compressive restraints do not apply under the circumstances enumerated in section 609.06, subdivision 1(1). Therefore, all peace officers, including those who are "school resource officers" or otherwise agents of a school district, may use force as reasonably necessary to carry out official duties, including, but not limited to, making arrests and enforcing orders of the court. *See* Minn. Stat. § 609.06.

Third, and relatedly, even without those clear indications of intent from the Legislature, the usual canons of statutory construction support the same result. Section 121A.582 specifically governs responses to threats of violence, and therefore controls over the more general statute about acceptable punishments. *See* Minn. Stat. § 645.26, subd. 1 (stating that when a conflict exists between two statutory provisions, the specific provision "shall prevail and shall be construed as an exception to the general provision"); *accord Connexus Energy v. Commissioner of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015). Furthermore, had the Legislature intended to exclude prone restraint and compressive restraint techniques from the reasonable force permitted under Minnesota Statutes section 121A.582, it would have clearly said so. *See In re E.M.B.*, 987 N.W.2d 597, 601 (Minn. Ct. App. 2023) (reiterating that courts cannot add words or meaning to a statute that the Legislature intentionally or inadvertently omitted).

Accordingly, the Legislature did not change the types of reasonable force that school staff and agents are authorized to use in responding to a situation involving a threat of bodily harm or death. Of course, what force is "reasonable" is not defined in law and is determined on a case-by-

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[4] Minnesota Statutes sections 125A.0941-.0942 restrict the actions that may be taken toward students with disabilities. It explicitly allows the use of reasonable force under section 121A.582. Minn. Stat. § 125A.0942, subd. 6(b).

case basis. *See Moses v. Minneapolis Pub. Schs.*, No. C4-98-1073, 1998 WL 846546, at *3 (Minn. Ct. App. Dec. 8, 1998) ("[T]he question of whether the school employees' acts were a reasonable use of force is a fact issue to be answered by the jury."); *cf. Bond by and through Bond v. Indep. Sch. Dist. #191*, No. A21-0688, 2022 WL 92661, at *5 (Minn. Ct. App. Jan. 10, 2022) (declining to apply official immunity where school dean used force explicitly defined as prohibited in school restraint training). In addition, the level of threat posed by a particular student or situation can change rapidly, and any assessment of what use of force is reasonable must take that into account.

In recent meetings with representatives of your staff, the Minnesota Chiefs of Police Association, the League of Minnesota Cities, the Minnesota Sheriffs' Association, and the Minnesota Police and Peace Officers Association, participants raised other important questions. Those questions demonstrate that coordinated training and guidance from trusted law enforcement leaders could be very beneficial in this area and there may be room for additional clarification from the Legislature.

Sincerely,

Keith Ellison

KEITH ELLISON
Attorney General

Cc: Jeff Potts, Executive Director
Minnesota Chiefs of Police Association
Imran Ali, counsel for MPPOA
Patricia Beety, General Counsel
League of Minnesota Cities