



## CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Drew Nelson - City Administrator	September 20, 2022

### **ITEM**

Resolution 2022-45 – Approving an Intergovernmental Agreement between the City of Salida and the Salida School District

### **BACKGROUND**

Since 2017, the City of Salida and the Salida School District have been operating under an Intergovernmental Agreement (IGA) to provide for a School Resource Officer (SRO) at schools within the District. In 2019, this IGA was amended to provide for a second SRO within the District as well as to strengthen bonds for the program. During the Covid-19 pandemic, staffing was reduced, and costs were borne solely by the City, in order to cover anticipated revenue decreases for the District. In addition, one SRO employed by the City left the organization, and other went on an extended leave, affecting SRO programming and scheduling. Finally, with the September 2021 law enforcement incident at Salida High School, it became clear to City and District staff that revisiting the IGA to update it to reflect current state law, more accurately describe roles and responsibilities, clarify emergency operations procedures, and reflect the values of both organizations on educating our youth in a safe, productive environment.

Attached to this memo is Resolution 2022-45 and its accompanying IGA, prepared and reviewed by the City Attorney in conjunction with the District's legal counsel. It reflects changes to include best practices around hiring SROs, outlines performance review criteria for both the District and the Salida Police Department, better identifies the duties assigned to the SRO (including classroom instruction and presentations), and other similar topics. In discussions with the District, City staff is hopeful that this avoids any confusion that could arise around issues of school discipline versus issues of acts that may rise to the level of criminal activity. Finally, this clarifies the City's responsibility around funding for the position based on current practices as opposed to the prior IGA, which included funding from the District. It should be noted that this IGA would not preclude the parties from agreeing on a different funding model in the future.

### **FISCAL NOTE**

None.

### **STAFF RECOMMENDATION**

Staff recommends that the City Council approve Resolution 2022-45 to approve a new Intergovernmental Agreement with the Salida School District for purposes of providing a School Resource Officer.

### **SUGGESTED MOTION**

A City Councilperson should state, "I move to approve Resolution 2022-45, approving an Intergovernmental Agreement between the City of Salida and the Salida School District", followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO**  
**RESOLUTION 2022-45**  
**(Series of 2022)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO,  
APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF  
SALIDA AND SALIDA SCHOOL DISTRICT R-32-J**

**WHEREAS**, the City of Salida and the Salida School District have jointly developed a School Resource Officer Program to provide a school-based approach to the development of a positive relationship between students and the police and the prevention of delinquency, alcohol and substance abuse and other youth-related problems; and

**WHEREAS**, intergovernmental agreements to provide functions or services including the sharing of cost of such services or functions, by political subdivisions of the State of Colorado are specifically authorized by C.R.S. 29-1-203; and

**WHEREAS**, such programs are recognized as being effective in the development of a positive relationship between law enforcement, faculty and young people, and in the prevention of delinquency; and

**WHEREAS**, the Salida City Council finds and determines that the best interest of the City will be served by entering into an Intergovernmental Agreement ("IGA") with the Salida School District and authorizing the Mayor or City Administrator to execute he same on behalf of the City.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALIDA COLORADO, THAT:**

1. The Salida City Council incorporates the foregoing recitals as its conclusions, facts, determinations, and findings.
2. The Salida City Council approves the terms of the IGA with the Salida School District, attached as **Exhibit A** and authorizes the Mayor or City Administrator to execute the IGA on behalf of the City.

RESOLVED, APPROVED, AND ADOPTED this 20<sup>th</sup> day of September, 2022.

CITY OF SALIDA, COLORADO

By

\_\_\_\_\_  
**Dan Shore, Mayor**

[SEAL]

**ATTEST:**

\_\_\_\_\_  
City Clerk/Deputy City Clerk

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF SALIDA AND THE SALIDA SCHOOL DISTRICT**

**THIS INTERGOVERNMENTAL AGREEMENT ("Agreement")** is made and entered into by and between the **CITY OF SALIDA** ("City") and the **SALIDA SCHOOL DISTRICT R-32J** ("District") hereinafter referred to as "Party", and collectively referred to as "Parties."

**WITNESSETH**

**WHEREAS**, intergovernmental agreements to provide functions or services including the sharing of cost of such services or functions, by political subdivisions of the State of Colorado are specifically authorized by C.R.S. 29-1-203; and

**WHEREAS**, there is often overlap between school discipline and law enforcement, and Colorado revised statutes provide legal guidance and framework for school resource officer ("SRO") programs and school discipline, including but not limited to the following laws:

- CRS 22-32-109.1 sets out School's authority and requirements for safe schools, and school discipline and response, including a requirement that School Board's implement proportionate disciplinary policies designed to reduce expulsions, out-of-school suspensions, and referrals to law enforcement, except such law enforcement referrals required by state or federal law.
- CRS 22-32-144 encourages Schools utilize restorative justice for interpersonal conflicts, such as bullying, verbal and physical conflicts, theft, damage to property, class disruption, personal and internet harassment, and attendance issues.
- CRS 22-32-146 governs notification to the School, obligations of the SRO to be familiar with School discipline, and SRO reporting obligations.
- CRS 22-32-147 prohibits the use of certain restraints on students in schools, and CRS 26-20-101 *et seq.* "Protection of Individuals from Restraint and Seclusion Act", and the regulations further implementing the use of restraints at 1 CCR 301-45,
- HB 22-1376, which added CRS 22-1-138 and 139 that details the reporting obligations for School discipline, and imposed additional requirements on SROs by amending CRS 24-31-312
- CRS 18-9-109(3), giving the building principal or other school administrator in charge of a building the authority to order removal of individuals who are disruptive to the educational process (though it is recognized that disruption may be inevitable if a building or any part thereof is designated as a crime scene)
- CRS 24-31-312 sets out P.O.S.T. standards for SROs including, training, hiring, and joint decision making between law enforcement and the School; and

**WHEREAS**, the City is a unit of local government and a political subdivision, and the District is a public school district and political subdivision; and

**WHEREAS**, the problems of delinquency, alcohol and substance abuse and other youth related problems which negatively affect the community and the schools can best be addressed in a proactive and preventive manner; and

**WHEREAS**, the City of Salida and the Salida School District have jointly developed a SRO Program to provide a school-based approach to the development of a positive relationship

between students and the police and the prevention of delinquency, alcohol and substance abuse and other youth related problems; and

**WHEREAS**, such programs are recognized as being effective in the development of a positive relationship between law enforcement, faculty and young people and in the prevention of delinquency.

**NOW, THEREFORE**, in consideration of the above recitals and of mutual promises, covenants, and agreements of the "parties", the City and District hereby agree as follows:

Article 5, Title 29, Colorado Revised Statutes, as amended, is incorporated herein by this reference. This statute shall control in the event of a conflict between the statute and this Intergovernmental Agreement.

1. PURPOSE STATEMENT. It is understood and agreed that this Intergovernmental Agreement is intended to facilitate cooperation between the Parties in the provision of the services provided herein, but does not establish a separate legal entity to do so, and except as set forth herein, this Intergovernmental Agreement does not authorize any Party to act for any purpose whatsoever, nor does this Intergovernmental Agreement establish any employee of any Party as an agent of any other Party for any purpose whatsoever. This Intergovernmental Agreement shall provide only for sharing of in-kind services and costs by the Parties in the achievement of a common mutual goal, said goal being the sharing of the information and resources to maximize the safety and security of the community and its children.

2. PROVISION AND SELECTION OF SROs.

a. The City shall provide through the Salida Police Department ("Department") one (1) SRO during the term of this Agreement. The City shall be the employer of the SRO and shall be responsible for notifying the SRO of his/her rights and obligations if any under the Family Medical Leave Act ("FMLA") and any similar state or federal laws, as applicable, and for providing each SRO with the applicable FMLA leave, sick leave, and other leave if and as mandated by applicable law.

b. SROs will be selected by means of a joint selection committee, comprised of three (3) representatives from the District who will be appointed by the District Superintendent of Schools and three (3) appointed by the City Chief of Police. The Chief of Police will provide the joint selection committee with the names of officers available and who have been deemed by the Department to have the aptitude, desire and intrinsic abilities to function as an SRO, and the Selection Committee will make the selections from such list and notify the Chief of Police of the selections. Barring unforeseen circumstances which would render any of the joint selection committee's selections impracticable, the officers selected by the joint selection committee will be assigned to the SRO positions; provided, however, the Chief of Police shall have the final say on all SRO appointments.

3. SRO COMPENSATION AND BENEFITS. The City will provide and be solely responsible for the SRO's salary and employment benefits in accordance with the applicable salary schedules and employment practices of the City, including but not limited to: sick leave (including FMLA leave as applicable), holiday leave, compensatory time, retirement compensation, disability

salary continuation, worker's compensation, unemployment compensation, life insurance and medical/dental insurance.

4. SRO FUNCTIONS AND DUTIES. Each SRO shall perform the following functions and duties:

a. Subject to Sections 8 and 9 below, be present on location in his/her assigned building and/or exterior grounds from 7:45 a.m. through 4:15 p.m., Monday through Thursday when school is in session.

b. Wear the identifiable City police uniform at all times while on duty as an SRO, as determined by the Department.

c. Conduct regular periodic patrols of the assigned building, parking areas, grounds and related facilities.

d. Attend (in police uniform) extra-curricular activities, such as athletic events and concerts, as requested.

e. Participate in school meetings with students, parents, and staff as requested.

f. Serve on "threat assessment" teams as requested and assist with monitoring and intervention with students who may constitute a threat of harm within the school setting or at school sponsored activities.

g. Provide traffic control in connection with school functions and activities when necessary for the safety and protection of students and the general public.

h. Provide classroom, assembly and meeting presentations as requested, using available educational resources, in the areas of alcohol and substance abuse, law related education, criminal justice orientation, delinquency prevention, community responsibility for students, parents and other groups associated with the schools.

i. Provide physical intervention in safety emergencies involving staff and/or students.

j. Become familiar with District policies, regulations, guidelines and codes of conduct. The SRO will abide by all relevant District policies except to the extent it would create a conflict with the SRO's responsibilities as a law enforcement officer.

5. SCHOOL DISCIPLINE.

a. While the SRO will not have primary responsibility to enforce the District's discipline policies and regulations, the SRO will intervene when available to prevent a disruption that would, if ignored, place students, faculty and staff at risk of harm, subject to the following conditions:

i. When the SRO intervenes in a situation that the SRO does not deem to be a criminal incident, the SRO will take the student(s) involved to the principal's office for discipline to be administered by school officials.

ii. Subject to subsection b. above, the SRO will follow and utilize the District's discipline policies and regulations when responding to school based disciplinary matters, and such matters shall be handled consistent with School's legal obligations in C.R.S. § 22-32-109.1 to implement proportionate disciplinary policies designed to reduce expulsions, out-of-school

suspensions, and referrals to law enforcement, except as such law enforcement referrals are required by state or federal law.

b. Neither the SRO nor the Department will file criminal or juvenile charges against a student for violations of the District's discipline policies and regulations, or for any conduct constituting grounds for suspension or expulsion under section 22-33-106, C.R.S. (set forth in Exhibit A, attached hereto) unless the District requests in writing that such charges be filed, except that Department procedure will be followed if a victim or victim's parent presses charges, and, regardless whether anyone presses charges, the following conduct shall not require a request by the District prior to filing criminal or juvenile charges:

i. Conduct that that would constitute unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.,

ii. Conduct that would constitute a crime of violence, as defined in section 18-1.3-406, C.R.S., if committed by an adult, including but not limited to the commission of an act that would be assault pursuant to part 2 of article 3 of title 18, C.R.S., other than the commission of an act that would be third degree assault under section 18-3-204, C.R.S., if committed by an adult,

iii. The sale of a drug or controlled substance as defined in section 18-18-102 (5), C.R.S.,

iv. The commission of an act that, if committed by an adult, would be robbery pursuant to part 3 of article 4 of title 18, C.R.S.,

v. The commission of an act that, if committed by an adult, would be first or second degree arson pursuant to section 18-4-102 or section 18-4-103, C.R.S.

6. APPLICABLE PERSONNEL POLICIES. That it is understood and agreed to by the Parties that, as an employee of the City, the SRO shall be subject to all personnel policies and practices of the City and follow chain of command as set forth in the Department's Policies and Procedures manual.

7. CONFLICTING PROCEDURES. That it is understood and agreed to by the Parties that this IGA shall supersede and take precedence over any conflicting Department operating procedures or protocols. The City may adopt and implement any operating procedures and protocols which do not conflict with this IGA; provided that copies any such procedures or protocols which address circumstances under which police officers may be required to act and to coordinate with school officials shall be provided to the District, as soon as practicable after adoption or revision thereof.

8. LOCATIONS OF ASSIGNMENT. That it is understood and agreed to by both Parties that the Department will assign the SRO's to the Salida School District, to include the High School, Middle School and Elementary School. The time spent by the SRO in each school shall be divided to reflect the needs of all the schools, as determined by the Department and District.

9. SRO WORK SCHEDULE. That it is understood and agreed to by both Parties, the SRO will work a schedule, consistent with the City of Salida policies and procedures and subject to the Fair Labor Standards Act. Except as otherwise provided in this Agreement, during times when schools are in session, the SRO will devote his/her full shift to the school calendar day, except

for required duties such as court appearances. During the school's summer vacation, spring break, holiday breaks, and other days when school is not in session, and the SRO is not involved in assigned School-related activities, the SRO will be assigned to duties in the Department. In the event of an emergency, as determined by the City, the SRO may be required to perform general law enforcement duties. The SRO shall attend in-service training conducted by the City scheduled throughout the year.

10. EQUIPMENT, UNIFORM, AND WEAPONS. The Department will provide the SRO with the following equipment:

a. Police Vehicle. Department will provide this and agrees to provide all vehicle maintenance and insurance.

b. Uniforms, Weapons, Tools needed for police work, all provided by the Department.

c. Office Needs. The District agrees to provide adequate office space, accessible by the students and a computer for the SRO job duties.

11. EDUCATIONAL RECORDS. That it is understood and agreed to by the Parties that the District shall allow the SRO to inspect and copy any public record maintained by the school including student directory information, such as yearbooks and certain pages of a student's file on Infinite Campus. However, it is understood that the SRO or Department may not inspect and/or copy any confidential records, access of which is restricted to authorized school personnel only, except as follows:

a. That it is understood and agreed to by the Parties that should information in a student's cumulative record be needed in an emergency to protect health or safety of the student or other individuals, school officials may disclose to the SRO the information needed to respond to the emergency situation based on the seriousness of the threat to the student's health and safety; the need of the information to meet the emergency situation and the extent to which time is of the essence.

b. The Parties may agree that the SRO will, among other duties, perform institutional services or functions for which the District would otherwise use employees, such as participation on threat assessment teams and consulting and intervening in certain school discipline situations. If the Parties so agree, the SRO shall be designated as a "school official" as authorized by 34 CFR § 99.31(a)(1)(B). While providing such services as a "school official" the SRO shall be under the direct control of the District with respect to the use and maintenance of education records disclosed to the SRO in the course of providing such services, and shall be subject to the requirements of 34 CFR § 99.33(a) governing the use and redisclosure of personally identifiable information from education records. Without limiting the foregoing and except as otherwise provided in this Agreement, the SRO shall not disclose any personally identifiable information to any other party without the prior consent of the parent or eligible student, and may use such personally identifiable information only for the purposes for which the disclosure was made, and shall otherwise comply with all applicable Federal and State laws governing confidentiality of records and information, including without limitation the Family Educational Rights and Privacy Act (FERPA), the Colorado Open Records Act (CORA) and any and all other laws pertaining to the protection of information regarding students and/or their families, and shall safeguard any personally identifiable information that is protected under FERPA or CORA, that the SRO has use of or has in the SRO's possession while performing services as a "school official" under this IGA.

c. In addition to and without limiting or changing the designation of the SRO as a "school official" if so designated for certain purposes under subparagraph b. above, the SRO shall be and hereby is designated as part of the District's "law enforcement unit" pursuant to 34 CFR § 99.8 that is officially authorized or designated by that agency or institution to (i) enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or (ii) maintain the physical security and safety of the agency or institution. It is acknowledged that records created and maintained by the SRO for a law enforcement purposes are not subject to FERPA.

**12. CRIMINAL JUSTICE RECORDS.** The Department and the SRO shall share student criminal justice records with the appropriate District representatives under the following conditions:

- a. When the District Superintendent or a Principal or Principal's designee of a District school requests the law enforcement records of a student who will be enrolled in his/her school.
- b. When information about a student rises to the level of public safety concern.
- c. When information about a student is required to fulfill the district's legal obligations.
- d. When information about a student is required by law to be disclosed to the District.

A request for confidential student law-enforcement records must be made in writing with an explanation of their use. Any confidential student law-enforcement records that are released to the District may not be shared with any other person or agency and are to be used only for the necessary District activities identified in the request.

**13. INSURANCE AND INDEMNIFICATION.**

a. The Department shall purchase and maintain a general comprehensive police liability insurance policy with sufficient coverage for any acts or omissions that occur or claims that are made during the term of the Agreement.

b. Each Party (the "Indemnifying Party") agrees, to the extent permitted by law, to defend, indemnify and hold the other Party (the "Indemnified Party"), its respective directors, elected officials, officers, employees and agents harmless from all third party claims, actions, proceedings, losses, damages, liabilities or expenses (including, but not limited to, reasonable attorneys' fees and witness costs) arising from or in connection with any (a) actual or asserted breach by the Indemnifying Party of any of its obligations under this IGA, or (b) actual or asserted violations of any applicable law or regulation by the Indemnifying Party or any of its directors, elected officials, officers, employees and agents, or (c) any actual or asserted act, omission, or negligence of the Indemnifying Party or its directors, elected officials, officers, employees and agents; provided, however, that the foregoing cross-indemnification agreement shall be limited by and subject to the following:

(i) Each Party retains all the rights, defenses and limitations upon liability available to such Party pursuant to the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., and nothing herein shall be construed to waive or limit any such rights or defenses; and



(ii) Neither Party shall be required to defend, indemnify or hold harmless the other Party for any actual or asserted act, omission, violation, breach, or negligence of such other Party or its directors, elected officials, officers, employees and agents.

14. EVALUATIONS. Each SRO's effectiveness in the program will be evaluated by the District Superintendent at the end of each school term. The Principal of each building in which a particular SRO serves will provide input into the evaluation. A copy of the evaluations will be provided to the Department supervisor. The Department will use the District's evaluations to assist in an annual department performance review. The evaluation report may include a recommendation to the Chief of Police that the SRO not be assigned to that school the following year. The Chief will seriously consider the evaluation and the input of the Superintendent when assigning an SRO to a building and will make a good faith effort to address any concerns raised.

15. TERMINATION FOR CAUSE. Notwithstanding the prerogatives of the Chief of Police concerning the assignment of an SRO to a particular building, the District may terminate the services of any SRO at any time, without prior notice, for cause. "For cause" shall mean (1) the meaning given such phrase in any policies, rules, regulations or laws applicable to the performance and behavior of teachers in the District, (2) conduct which in the District's judgment constitutes misconduct; immoral behavior; falsification of records; dishonesty, criminal conviction; violation of any policies, rules, regulations or laws applicable to public schools in the State of Colorado; failure of any drug test; or mental incapacity. The District shall immediately notify the Chief of Police in writing of any such termination by the District and include in such notification a statement of the circumstances constituting cause. In the event that any SRO is removed for cause the City of Salida shall, if requested by the District, provide the District with a mutually agreeable replacement SRO as soon as practicable.

16. NOTICE. Notice shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party or Parties. Such notice shall be deemed to have been given when deposited for delivery by the United States Postal Service.

If to the City:                Russell Johnson, Chief of Police  
                                      Salida Police Department  
                                      448 E. 1<sup>ST</sup> St suite 274  
                                      Salida, CO 81201

If to the District:            David Blackburn, Superintendent of Schools  
                                      Salida School District R-32J  
                                      349 E. 9<sup>TH</sup> St  
                                      Salida, CO 81201

17. CLAIMS. Any claim made against a Party or a Party's employee or agent as a result of any act or omission by that Party or its employee or agent, pursuant to the terms of this Agreement or the provisions of C.R.S. 29-5-103, 29-5-104 and 29-5-108, shall follow the provisions of Article 10, Title 24, C.R.S.

18. REQUIRED EXECUTION. The Parties covenant that they will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged, and delivered such acts, instruments and transfers as may reasonably be required for the performance of their obligations hereunder.

19. INDEPENDENCE OF PARTIES. The Parties enter into this Agreement as separate independent governmental entities and shall maintain such status throughout the term hereof.

20. APPLICABLE LAW. Each term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado Law, the Rules and Ordinances of the City of Salida, and the ordinances, regulations and policies enacted by all Parties hereto.

21. NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of the Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the named Parties hereto. Nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is expressed intention of the named Parties that any person other than the named Parties receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

22. ENTIRE AGREEMENT. This Agreement embodies the entire agreement of the Parties. The Parties shall not be bound by or liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any kind of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties.

23. SUBJECT TO APPROPRIATIONS. All obligations under this Agreement are subject to the appropriation process and budgeting requirements of Colorado Law.

24. COUNTERPARTS. This Agreement may be signed in counterparts and each Agreement shall be deemed an original and all the Agreements taken as a whole shall constitute the same instrument.

25. TERM. The term of this Agreement shall begin on August 13, 2022, and shall continue through May 31, 2023 unless mutually voided by both Parties in writing, or otherwise terminated as provided in paragraph 29 below.

26. COOPERATION AND GOOD FAITH. The Parties, agents and employees agree to cooperate in good faith in fulfilling the terms of this Agreement. The Parties agree they will attempt to resolve any disputes concerning the interpretation of this Agreement and unforeseen questions and difficulties which may arise in implementing the Agreement by good faith negotiations before resorting to termination of this agreement and/or litigation.

27. TERMINATION. This Agreement may be terminated by either party by giving ninety (90) days' notice to the other Party that it has failed to substantially perform in accordance with the terms and conditions of this Agreement, or upon the failure of the governing body of either Party to budget and appropriate sufficient funds to meet such Party's obligations hereunder in any fiscal year during the term hereof. Upon termination, any funds provided by the District shall be prorated and returned to the District.

28. REVIEW. This Agreement is subject for review by both Parties after appropriate notification by the other Party to create, adjust, or otherwise terminate the agreement at the conclusion of the 2022/2023 School Year.

29. PRESERVATION OF IMMUNITY. Nothing in this Agreement shall be construed: (i) as a waiver by either party of immunity provided by common law or by statute, specifically including the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. as it may be amended from time to time; (ii) as creating an assumption of any duty or obligation with respect to any third party where no such duty previously existed; or (iii) as creating any rights enforceable by such third Parties.

EXECUTED THIS \_\_\_\_ DAY OF September, 2022

**CITY OF SALIDA**

**SALIDA SCHOOL DISTRICT R-32J**

By: \_\_\_\_\_  
Dan Shore, Mayor

By: \_\_\_\_\_  
David Blackburn, Superintendent

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Erin Kelley, City Clerk, City of Salida