

COTTONWOOD HEIGHTS

RESOLUTION NO. 2016-51

A RESOLUTION APPROVING ENTRY INTO AN INTERLOCAL AGREEMENT WITH CANYONS SCHOOL DISTRICT FOR SCHOOL RESOURCE OFFICER

WHEREAS, the Interlocal Cooperation Act, UTAH CODE ANN. §11-13-101 *et. seq.* (the “Act”), provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

WHEREAS, Canyons School District (the “*District*”) and the city of Cottonwood Heights (the “*City*”) are public agencies for purposes of the Act; and

WHEREAS, UTAH CODE ANN. §53A-11-1604 provides that the District may contract with a law enforcement agency to provide school resource officer (“*SRO*”) services at the District’s schools after review and approval of such agreement by the District’s board; and

WHEREAS, the District and the City believe that the interests and welfare of the public within their respective jurisdictions will best be served by their entry into an interlocal agreement (the “*Agreement*”) whereunder the City’s police department will provide an SRO on the terms and conditions of the Agreement to maintain safer schools, improve school climate, and support educational opportunities for students while serving at Brighton High School, as well as middle schools and elementary schools in the City; and

WHEREAS, the City’s municipal council (the “*Council*”) met in regular session on 21 June 2016 to consider, among other things, approving the City’s entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City’s entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement be, and hereby is, approved, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2016-51, shall take effect immediately upon passage.

PASSED AND APPROVED this 21st day of June 2016.

COTTONWOOD HEIGHTS CITY COUNCIL



ATTEST

By *Kelvyn H. Cullimore, Jr.*
Kelvyn H. Cullimore, Jr., Mayor

Linda W. Dunlavy
Linda W. Dunlavy, Recorder

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 21st day of June 2016.

RECORDED this 22 day of June 2016.

**SCHOOL RESOURCE OFFICER
INTERLOCAL COOPERATION AGREEMENT**

THIS SCHOOL RESOURCE OFFICER INTERLOCAL COOPERATION AGREEMENT (the "Agreement"), is made and entered into by and between the **BOARD OF EDUCATION OF CANYONS SCHOOL DISTRICT** (the "**School District**"), a political subdivision of the State of Utah, 9361 South 300 East, Sandy, Utah, 84070, and **COTTONWOOD HEIGHTS** (the "**City**"), a political subdivision of the State of Utah, 1265 E. Fort Union Blvd., Suite 250, Cottonwood Heights, Utah 84047. The School District and the City are sometimes referred to in this Agreement collectively as the "parties," or, individually, as a "party."

WITNESSETH

WHEREAS, pursuant to the provisions of the Utah Interlocal Cooperation Act (the "**Interlocal Act**"), UTAH CODE ANN. §§ 11-13-101 *et seq.*, as amended, public agencies, including political subdivisions of the State of Utah as defined therein, are authorized to enter into mutually advantageous agreements for joint or cooperative action;

WHEREAS, UTAH CODE ANN. § 53A-11-1604 provides that the School District may contract with a law enforcement agency to provide school resource officer ("SRO") services at the schools after Board review and approval of this Agreement;

WHEREAS, the School District and City, through their respective governing bodies, have voluntarily determined that the interests and welfare of the public within their respective jurisdictions will best be served by this Agreement to provide for joint and cooperative action in regards to having an SRO to maintain safe schools, improve school climate, and support educational opportunities for students while serving at Brighton High School, as well as middle schools and elementary schools in the City;

WHEREAS, the governing bodies of the School District and the City have by resolution agreed to adopt this Agreement to provide for the joint and cooperative action contained herein; and

WHEREAS, this Agreement shall replace and supersede any agreements or memoranda of understanding approved and executed previously by the School District and the City regarding SROs.

NOW, THEREFORE, be it mutually covenanted and agreed as follows, each of the parties accepting as consideration for this Agreement the mutual promises and agreements of the other:

**SECTION ONE
EFFECTIVE DATE AND DURATION**

This Interlocal Cooperation Agreement shall be effective as of Date of Signing and shall continue for a period of five (5) years, unless sooner terminated as provided herein. However, should either party encounter budgetary constraints that make the continuation of this agreement impractical, then either party may cancel this agreement upon sixty (60) days notice to the other, subject to the termination provisions set out in Section 13 below. Following the initial five-year term, this agreement shall be automatically renewed for successive one-year periods unless either party requests termination or modification of this agreement in writing at least 60 days before the end of the existing term.

SECTION TWO
ADMINISTRATIVE ENTITY

The City and the School District do not contemplate nor intend to establish a separate legal entity under their terms of this Agreement.

SECTION THREE
PURPOSE

This Agreement is established for the purpose of jointly providing for two (2) SROs to serve at Brighton High School, as well as middle schools and elementary schools in the City.

SECTION FOUR
MANNER OF FINANCING

This Agreement and the matters contemplated herein shall not receive separate financing, nor shall a separate budget be required. Each party shall be responsible for its own financial obligations under this Agreement. The City shall budget and be responsible for all payments related to the employment of the SROs and Sergeant. The City shall send an invoice to the School District on an annual basis following the completion of the school year for payment of the services of the two (2) SROs as agreed to in writing between the School District and City, which total cost to the School District is thirty thousand dollars (\$30,000.00) per SRO for a total of sixty thousand dollars (\$60,000.00). The invoice shall be paid within thirty (30) days of receipt by the School District. If this Agreement is terminated during the budget year, the City and the School District agree to divide the costs associated with the payment of the services of the SROs as on a pro-rata basis depending upon the length of the year remaining.

SECTION FIVE
ADMINISTRATOR

Pursuant to the Interlocal Act, the parties agree that the City shall act as administrator responsible for this Agreement. This Agreement does not anticipate nor provide for any organizational changes in the City or the School District.

SECTION SIX
FILING OF AGREEMENT

A copy of this Agreement shall be placed on file in the Office of the City Recorder of the City and with the Business Administrator of the School District and shall remain on file for public inspection during the term of this Agreement.

SECTION SEVEN
DESCRIPTION OF ARRANGEMENT

I. Employment of SROs

- a. The SROs shall be employees of the City's Police Department (the "CHPD") and shall be subject to the administration, supervision and control of the CHPD.
- b. City will furnish any training state law requires and as is needed for the operation of this agreement.
- c. City will provide SRO with uniforms and equipment.

- d. The SRO's shall be subject to all personnel policies and practices of the CHPD except as such policies or practices may be modified by the terms and conditions of this Agreement.
- e. The CHPD, in its sole discretion, shall have the power and authority to hire, discharge, and discipline the SROs; however, the CHPD shall consult with the senior administrator/principal of the school where the SROs will serve on these issues.
- f. As employees of the CHPD, SROs will be subject to the chain of command of the CHPD.
- g. If a principal is dissatisfied with an SRO who has been assigned to that principal's school, then that principal may request that the Chief of the CHPD assign a different officer as the SRO for that school. Such a request to the Chief of the CHPD will occur after the principal has met with the SRO's Supervisor to discuss concerns and allow a reasonable amount of time for the SRO's Supervisor to remediate the issues unless the concerns are of such a nature, in the opinion of the principal, to warrant bringing them immediately to the attention of the Chief of the CHPD. The Chief of the CHPD shall make every reasonable effort to expeditiously assign a new SRO for that school. The CHPD reserves the right to remove/re-assign any SRO along with notification given to the School District.
- h. The SRO and the principal, or designee, at the school where an SRO will be working will jointly complete the SRO training described in UTAH CODE ANN. § 53A-11-1603. If training is required during the school day, the City's Police Department will make a good faith effort to cover the SRO's classes and responsibilities in the school.

II. Duties of SROs

- a. The mission of the SRO is to provide for and maintain a safe, healthy and productive learning environment, emphasizing the use of restorative approaches to address negative behavior, while acting as a positive role model for students in the School District by working in a cooperative, proactive, problem-solving manner between the CHPD and the School District while taking appropriate law enforcement action when warranted.
- b. One SRO will be assigned to Brighton High School to build relationships, enhance community-policing activities, identify problems within the schools, develop problem solving strategies with school administrators and staff, and collaboratively develop a comprehensive school safety plan with school administrators, staff, and the District's Risk Management.
- c. The high school's SRO will teach a law enforcement course each semester at the high school.
- d. One SRO will be assigned to Butler Middle School. The SROs will be assigned to the school to build relationships, enhance community-policing activities, identify problems within the schools, develop problem solving strategies with school administrators and staff, and collaboratively develop a comprehensive school safety plan with school administrators, staff, and the School District's risk management.
- e. The SROs will instruct DARE curriculum at the district's elementary schools in the City and assist in these schools as needed by the school's administration.
- f. SROs may provide additional presentations to the schools in safety and crime prevention, bullying, and may provide additional services to the School District's City schools if available.

- g. The SRO will report to the Professional Standards Sergeant. The Professional Standards Sergeant will oversee the SRO Program. The SROs and Professional Standards Sergeant will meet regularly to identify and problem solve issues at the schools. The Professional Standards Sergeant will report to the Investigations Division Lieutenant, who will report to the Chief of CHPD.
- h. CHPD and SROs will work closely with the School District to improve the social and behavioral skills of students in order to maximize their ability to achieve academically and become successful, contributing citizens. Issues to be addressed include substance abuse, violence reduction, social skills and other areas of district and community concern.
- i. CHPD and the School District understand that the SRO may use any measures to secure school property as followed through established protocols of the CHPD in the event of an emergency situation that requires the activation of emergency response procedures.
- j. The SRO will be visible, active law enforcement figure dealing with the school's law enforcement matters, including an offense that is a minor violation of the law but would not violate the law if the offense was committed by an adult. As to school policy violations, the SRO will take the student to the principal's office for discipline to be taken by the school officials.
- k. The SRO will differentiate between disciplinary issues and crime problems and respond appropriately, de-escalating school-based incidents whenever possible.
- l. The SRO will be involved in school discipline when it pertains to preventing a disruption that would, if ignored, place students, faculty, or staff at risk of harm, so the SRO will resolve the problem to preserve the safe school climate. In all other cases, disciplining students is a School District responsibility, and the SRO will work in collaboration with school administration for students who violate school policies or the code of conduct for discipline to be taken by school officials.
- m. SROs shall initiate positive interaction with students in the classroom and general areas of the school building to promote the profession of police officers and be a positive role model, while increasing the visibility and accessibility of police to the school community.
- n. The SRO will share information with the school's administrator about persons and conditions pertaining to campus safety concerns to the extent allowed by law and CHPD policy.
- a. When appropriate, SROs may assist with resolving law enforcement issues that affect the School District and the broader community.
- b. The SRO shall notify school administration upon removing a student from campus.
- c. The SRO shall notify a parent as soon as possible when students are ticketed or arrested.
- d. If a student arrest is warranted, the SRO shall use the least disruptive and the least obtrusive manner reasonably available to conduct the arrest of the student. The SRO will be accompanied by a school principal or vice principal when arresting a student unless exigent circumstances require otherwise for the safety of the student, SRO, and/or others.
- e. The SRO shall question students in a manner and a time when it has the least impact on the student's schooling so long as the delay in questioning does not interfere with the effectiveness of an investigation, the

disappearance or unavailability of a criminal suspect, or risk public safety or significant damage to property.

- f. The SRO shall become familiar with School District's student discipline policies.

III. Duties of School District Administrators

- a. Provide the CHPD a School District "point of contact" to facilitate communication.
- b. Provide an office/storage or workspace for SRO materials and personal effects.
- c. Provide students, classroom, equipment and supplies for classes taught by SRO.
- d. Differentiate between disciplinary issues and crime problems and respond appropriately.
- e. Facilitate SRO-initiated investigations and actions.
- f. Provide ongoing feedback to the CHPD designee for evaluation purposes.
- g. Notify SROS responding to a school-based infraction if any student involved possesses disabilities and/or an Individualized Education Plan ("IEP") and who therefore may require special treatment or accommodations.
 - i. The School District acknowledges that SROs are required by policy and procedures to attend mandatory trainings and/or meetings.

IV. Respect for Student's Rights

- a. An SRO may conduct or participate in a search of a student's person, possessions, or locker only where there is probable cause to believe that the search will turn up evidence that the child has committed or is committing a criminal offense.
 - i. It is recommended that in addition to having probable cause, an SRO should follow Utah State Law and CHPD policy and procedures when conducting searches of persons and property, which may require a search warrant.
 - ii. The SRO shall inform school administrators prior to conducting a probable cause search where practicable.
 - iii. The SRO shall not ask school officials to search a student's person, possessions, or locker in an effort to circumvent their protections.
- b. A school official may conduct a search of a student's person, possessions, or locker where there is a reasonable suspicion to believe that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school, and the search is justified in scope given such suspicion.
 - i. Absent a real and immediate threat to student, teacher, SRO or public safety, a school official shall not ask an SRO to be present or participate in such a search.
- c. An SRO may question a student about criminal conduct that could expose the child to court-involvement or arrest.
 - i. If the child is 14 years and older, the child will be informed of his or her Miranda rights before questioning.
 - ii. If the child is under the age of 14, the child will be informed of his or her Miranda rights only in the presence of the child's parent or guardian before questioning.
 - iii. The SRO shall inform school administrators prior to questioning the student on school grounds where practical.

- iv. The SRO shall not ask a school official to question a student in an effort to circumvent these protections.
- v. Other conversations between SROs and student will be on the premise of building relationships to help develop a healthy learning environment and promote pro-social behaviors.
- d. If an exigent circumstance or immediate threat exists, a school official or SRO may question a student about criminal conduct or conduct a search of a student's person and possessions.
- e. Strip searches of children by either school officials or SROs are prohibited.
- f. An SRO shall not use physical force or restraints on a child, including handcuffs, Tasers, mace, or other physical or chemical restraints unless a student's actions pose a threat or they are subject to arrest.

V. Access to Education Records

- a. School officials shall allow SROs to inspect and copy any public records, including directory information, maintained by the school to the extent allowed by law.
- b. If some information in a student's record is needed in an emergency to protect the health or safety of the student or other individuals, or a well-founded belief exists that there is a risk of significant damage to property, school officials shall disclose to the SROs that information that is needed to respond to the emergency situation based on (i) the seriousness of the threat to the health or safety of an individual; (ii) the need of the information to meet the emergency situation; and (iii) the extent to which time is of the essence.
- c. If an SRO needs confidential student record information, but no emergency situation exists, the information may be disclosed only as allowed by law.

VI. Law Enforcement Units

- a. At the commencement of the 2015-2016 school year, the School District will designate the School District's risk management as the School District's law enforcement unit and SROs as the school's law enforcement unit as provided under FERPA (Family Education Rights Privacy Act), pursuant to 20 U.S.C. § 1232g(a)(4)(ii) and 34 C.F.R. 99.8. Parents shall be notified annually of these designations. All school security equipment shall be the responsibility of the School District's law enforcement unit. All school security records, including but not limited to, school security campus videotapes or school bus videotapes, are created and maintained by the School District's law enforcement unit. These records are not deemed to be student records or educational records (20 U.S.C. § 1232g(a)(4)(ii)). In addition, records created by the School's Law Enforcement Unit are not deemed to be student records or educational records (20 U.S.C. § 1232g(a)(4)(ii)). If the School District's law enforcement unit or school's law enforcement unit provides these records to the school's officials for student disciplinary purposes, the records maintained by the school officials may become student records or educational records.

SECTION EIGHT
NOTICE OF DEFAULT; CORRECTIVE ACTION

The failure of either party to comply with each and every term and condition of this Agreement shall constitute a breach of this Agreement. Either party shall have thirty (30) days after receipt of written notice from the non-breaching party to correct the conditions specified in

the notice, or if the corrections cannot be made within the thirty (30) day period, within a reasonable time thereafter, provided the defaulting party diligently pursues the required corrections to completion, if corrective action is commenced within ten (10) days after receipt of the notice.

SECTION NINE **RIGHTS AND REMEDIES**

In the event of any breach hereunder and after the lapse of the cure period provided in Section 8 above, the non-breaching party shall have all the rights and remedies available under the laws of the State of Utah in effect. The rights and remedies of the parties hereto shall not be mutually exclusive, but shall be cumulative in all respects. The respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise. In addition, in the event the School District breaches this Agreement and fails to make corrections as set forth in Section 8 above, the City may terminate this Agreement and may cease providing SRO services to Brighton High School and the School District's middle schools and elementary schools located within the City.

SECTION TEN **GOVERNING LAW, JURISDICTION, AND VENUE**

This Agreement will be interpreted, construed and enforced according to the substantive laws of the state of Utah, without giving effect to any choice or conflict of law provision or rule (whether of the state of Utah or any other jurisdiction). The parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Utah and the courts of the United States of America located in the State of Utah for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby.

SECTION ELEVEN **COSTS OF ENFORCEMENT**

In the event of any lawsuit, arbitration or other proceeding or dispute concerning this Agreement, the prevailing party will be entitled to recover its costs from the non-prevailing party (including, but not limited to, courts fees and expert witness costs, but not including attorneys' fees associated with the enforcement of this Agreement), whether such sums are expended with or without suit and regardless of the forum. For purposes of the foregoing sentence (a) "prevailing party" means (i) in the case of the party initiating the enforcement of rights or remedies, that it recovered substantially all of its claims, and (ii) in the case of the party defending against such enforcement, that it successfully defended substantially all of the claims made against it; and (b) if no party is a "prevailing party" within the meaning of the foregoing, then no party will be entitled to recover its costs and expenses from the other party.

SECTION TWELVE **NOTICE**

Any written notice which must or may be given relating to this Agreement shall be sufficient if mailed postage prepaid, registered or certified mail, in the United States mail addressed to a party at the address given above. In the case of the School District, notice shall be mailed to the attention of the Business Administrator at the above address. In the case of the City, notice shall be mailed to the attention of the City Manager and City Attorney at the above address. Either party may notify the other to designate a different address for mailing.

SECTION THIRTEEN
TERMINATION

Either party may terminate this Agreement for any or no reason and at any time by giving the other party at least sixty (60) days prior written notice of the same.

SECTION FOURTEEN
APPROPRIATION OF FUNDS

The parties' obligations under this Agreement are expressly subject to the appropriation of funds by the City's city council and/or the School District's Board of Education. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the obligations under this Agreement, the parties may terminate this Agreement.

SECTION FIFTEEN
INDEMNIFICATION

Both parties are governmental entities under the Governmental Immunity Act of Utah (the "**Immunity Act**"), UTAH CODE ANN. §§ 63G-7-101 to -904 (2011), as amended. Consistent with the terms of the Immunity Act, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts, which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses otherwise available under the Immunity Act, nor does any party waive any limits of liability now or hereafter provided by law. Subject to the foregoing, each party agrees to save, keep, hold harmless and indemnify the other party, its officers, agents, employees and volunteers from all damages, costs or expenses in law or equity, including attorneys' fees, that may at any time arise or be set up because of damages to property, bodily injury or personal injury received by reason of or in the course of performing work or services under this Agreement that may be occasioned by any willful, negligent or wrongful acts or omissions of the party, its employees, agents, contractor, any of the contractor's employees, or any subcontractor. The terms of this section shall survive the termination of this Agreement.

SECTION SIXTEEN
GENERAL PROVISIONS

A. Severability. In the event that any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

B. Entire Agreement. This Agreement contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by the parties. All prior understandings, negotiations, or agreements are merged herein and superseded hereby.

C. Amendments. This Agreement may be modified only by a writing signed by each of the parties hereto.

D. **Covenants and Conditions.** Each provision of this Agreement performable by the City and the School District shall be deemed to be both a covenant and a condition.

E. **Not Assignable.** This Agreement is specific to the parties hereto and, therefore, neither party may assign any of its rights under this Agreement or delegate any of its duties under this Agreement.

F. **Binding Effect.** This Agreement shall bind the parties and their respective successors and assigns.

G. **Captions.** The captions to the various Sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or any part or parts of this Agreement.

H. **Time.** Time is of the essence of each term, provision, and covenant of this Agreement.

I. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

J. **Gender and Number.** The singular number includes the plural whenever the context so indicates. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, limited liability company, partnership, or other legal entity when the context so requires. The word "person" means person or persons or other entity or entities or any combination of persons and entities.

K. **Waiver or Forbearance.** No delay or omission in the exercise of any right or remedy by any party hereto shall impair such right or remedy or be construed as a waiver. Any waiver of any breach must be in writing and shall not be a waiver of any other breach concerning the same or any other provision of this Agreement.

L. **No Partnership, Joint Venture, or Third-Party Rights.** Except as specifically set forth herein, nothing in this Agreement shall be construed as creating any partnership, joint venture, or business arrangement among the parties hereto, nor any rights or benefits to third-parties.

SECTION SEVENTEEN INTERLOCAL COOPERATION ACT

The parties acknowledge that this Agreement is subject to the provisions and procedures contained in the Interlocal Cooperation Act and they agree to process, approve, manage, and archive this Agreement in accordance with the provisions of that Act. The parties do not anticipate that they will jointly acquire or hold any real or personal property under this Agreement, but in the event that they do, then it shall be divided as the parties agree, and if they can't agree, then it shall be divided according to the proportion of payment made by each party for the property at issue. No separate legal entity is created by this Agreement, however, to the extent that any administration of this Agreement becomes necessary, then the Superintendent of the School District and the Police Chief of CHPD, or their designees, shall constitute a joint board for such purpose.

IN WITNESS WHEREOF, the parties have signed and executed this SCHOOL RESOURCE OFFICER INTERLOCAL COOPERATION AGREEMENT, after resolutions duly and lawfully passed, on the dates listed below.

DATED this ____ day of _____, 2016.

COTTONWOOD HEIGHTS

By: _____
Kelvyn H. Cullimore, Mayor

ATTEST:

By: _____
Linda Dunlavy, City Recorder

**APPROVED AS TO FORM AND COMPATIBILITY
WITH THE LAWS OF THE STATE OF UTAH:**

Wm. Shane Topham, Cottonwood Heights Attorney

DATED this ____ day of _____, 2016.

**BOARD OF EDUCATION OF
CANYONS SCHOOL DISTRICT**

By: _____
Board President

ATTEST:

By: _____
Business Administrator

**APPROVED AS TO FORM AND COMPATIBILITY
WITH THE LAWS OF THE STATE OF UTAH:**

Canyons School District Legal Counsel