

AGREEMENT

Deputy Sheriff at Marjory Stoneman Douglas High School Portable Classrooms Area

THIS AGREEMENT is made and entered into as of this ___ day of _____, 2019, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

GREGORY TONY, AS THE SHERIFF OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SHERIFF"),
whose principal place of business is
2601 W. Broward Blvd., Fort Lauderdale, Florida 33312

WHEREAS, SBBC operates Marjory Stoneman Douglas High School (hereinafter referred to as "MSD") in Parkland, Florida; and

WHEREAS, SHERIFF provides law enforcement services for the City of Parkland, Florida; and

WHEREAS, SBBC desires that the SHERIFF provide law enforcement officers to serve as a Safe School Officer at MSD for the remainder of the current school year.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other goods and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 - SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to section 3.04 of this Agreement, this Agreement shall be effective and commence from August 14, 2019 and conclude on June 2, 2020.

2.02 **Assignment of Deputy.**

2.02.1 The SHERIFF shall assign one (1) deputy sheriff ("assigned deputy sheriff") to work at MSD during regular school hours. This deputy sheriff will be deployed in the area of the portable classrooms at MSD during the hours of 7:40 am and 2:40 pm. The ending hours will be modified on early release school days to 12:40 pm.

2.02.2 The assigned deputy sheriff shall not engage in the use of any electronic cigarettes, or tobacco products on the MSD campus. Tobacco products include, but is not limited to, any lighted or unlighted cigarettes, cigars, clove cigarettes, blunts, bidis, pipes, hookahs, chewing tobacco, snuff,

nicotine gum and any other items containing or reasonably resembling tobacco or tobacco products. FDA-approved nicotine replacement therapy products used for tobacco cessation to ease nicotine withdrawal symptoms so that the cessation client can make the behavioral changes necessary to become tobacco free is permissible.

2.03 **Employment of Deputies.** The SHERIFF shall at all times be responsible for all aspects of the employment, control and direction of law enforcement officers assigned to MSD. Nothing within this Agreement is intended to create an employment or agency relationship between SBBC and any law enforcement officer assigned by the SHERIFF to provide services. All compensations, salaries, wages, benefits and other emoluments of employment payable to the deputies shall be the sole responsibility of the SHERIFF.

2.04 **Payment for Deputies.** SBBC shall pay the SHERIFF for the services provided. As the hourly pay rate of the deputies assigned to provide such services can fluctuate, SHERIFF shall provide SBBC with an estimated cost. As services are provided, SHERIFF shall invoice SBBC on a monthly basis based on the actual costs incurred by SHERIFF. Payment for services provided shall be made by SBBC within thirty (30) calendar days of receipt of the invoice for such services.

2.05 **Indemnification.** Each party shall each be individually and separately liable and responsible for the actions of its respective officers, agents and employees in the performance of their respective obligations under this Agreement.

2.05.1 To the extent permitted by law, SBBC shall indemnify, defend and hold SHERIFF, its officials, agents, servants and employees harmless from any and all liability, actions, causes of action, suits, trespasses, damages, judgments, executions, claims and demands of any kind whatsoever, in law or in equity, which results from or arises out of the intentional or negligent acts or omissions of SBBC, its employees, agents, servants and employees, for damages, judgments, claims, costs expenses, including reasonable attorney's fees, which SHERIFF, its officials, agents, servants and employees might suffer in connection with or as a result of the intentional or negligent acts of SBBC, its employees, agents or servants. For purposes of this provision, SBBC employees shall not be deemed agents or servants of SHERIFF and SHERIFF's employees shall not be deemed agents or servants of SBBC. SBBC shall at all times be entitled to the benefits of sovereign immunity as provided in Section 768.29, Florida Statutes, and common law. Nothing contained in this Agreement shall be construed as a waiver of sovereign immunity.

2.05.2 To the extent permitted by law, SHERIFF shall indemnify, defend and hold SBBC, its officials, agents, servants and employees harmless from any and all liability, actions, causes of action, suits, trespasses, damages, judgments, executions, claims and demands of any kind whatsoever, in law or in equity, which results from or arises out of the intentional or negligent acts or omissions of SHERIFF, its employees, agents, servants and employees, for damages, judgments, claims, costs expenses, including reasonable attorney's fees, which SBBC, its officials, agents, servants and employees might suffer in connection with or as a result of the intentional or negligent acts of SHERIFF, its employees, agents or servants. For purposes of this provision, SHERIFF's employees shall not be deemed agents or servants of SBBC and SBBC's employees shall not be deemed agents or servants of SHERIFF. SHERIFF shall at all times be entitled to the benefits of sovereign immunity as provided in Section 768.29, Florida Statutes, and common law. Nothing contained in this Agreement shall be construed as a waiver of sovereign immunity.

2.06 SBBC Disclosure of Education Records and Ownership of Education Records.

Although no student education records shall be disclosed pursuant to this Agreement, should SHERIFF come into contact with student education records during the course of contracted responsibilities, these records are confidential and protected by the Family Educational Rights and Privacy Act (FERPA) and state laws and may not be used or re-disclosed. Any use or re-disclosure may violate applicable federal and state laws. To the extent that SHERIFF receives any original education records from SBBC, such records shall remain the property of SBBC. Upon termination of this Agreement SHERIFF shall, at SBBC's request, return to SBBC or dispose of any such original education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

2.07 Confidentiality of Education Records. Notwithstanding any provision to the contrary within this Agreement, to the extent that SHERIFF receives access to "education records", as defined under state and federal law, SHERIFF shall:

2.07.1 fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2.07.2 notify SBBC immediately upon discovery of a breach of confidentiality of education records held by SHERIFF by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com, and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes, and fully cooperate with appropriate SBBC staff, including SBBC's Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

2.07.3 prepare and distribute, at SHERIFF's own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes, when SHERIFF's personnel have been determined to be the source of the breach;

2.07.4 be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law, when SHERIFF's personnel have been determined to be the source of the breach;

2.08 Public Records. With respect to any public records created, received or maintained in connection with this Agreement, each party is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to either party, all public records in that party's possession upon termination of this Agreement, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to the other party in a format that is compatible with the

other party's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

2.09 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

2.10 **Annual Appropriation.** The performance and obligations of the parties under this Agreement shall be contingent upon an annual budgetary appropriation by their respective governing bodies, and if either party's governing body does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by such party at the end of the period for which funds have been allocated. The terminating party shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to either party in the event this provision is exercised, and neither party shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

ARTICLE 3 - GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

3.03 **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 **Termination.** This Agreement may be canceled by SBBC without cause and for convenience that will proceed during the term thereof upon thirty (30) calendar days written notice to the SHERIFF of SBBC'S desire to terminate this Agreement. This Agreement may be cancelled by the SHERIFF without cause and for convenience upon thirty (30) calendar days written notice to SBBC of SHERIFF'S desire to terminate this Agreement.

3.05 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.06 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.07 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.08 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of a subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.09 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.10 **Governing Law and venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the state courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.11 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of both parties hereto and their respective successors and assigns.

3.12 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.13 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.14 **Place of Performance.** All obligations of SBBC under terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.15 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.16 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Chief Safety, Security and Emergency Preparedness
Officer
The School Board of Broward County, Florida
7720 West Oakland Park Boulevard
Sunrise, FL 33351

To SHERIFF: BROWARD SHERIFF'S OFFICE
Attn: Contract Manager
2601 W. Broward Blvd.
Ft. Lauderdale, FL 33312

BROWARD SHERIFF'S OFFICE
Office of the General Counsel
2601 W. Broward Blvd.
Ft. Lauderdale, FL 33312

3.17 **Captions.** The captions, section numbers article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

3.19 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.20 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to retirement, leave benefits or any other benefits of either party's employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. Neither party shall be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.21 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) calendar days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.04.

3.22 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse the other party, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.23 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.24 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first above written.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Heather P. Brinkworth, Chair

Robert W. Runcie, Superintendent of
Schools

Approved as to Form and Legal Content:

Office of the General Counsel

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FOR SHERIFF

**GREGORY TONY, AS SHERIFF OF BROWARD
COUNTY, FLORIDA**

By: _____
Gregory Tony, Sheriff

Approved as to form and legal sufficiency
subject to execution by the parties:

Terrence Lynch, General Counsel

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