

Agreement

by and between

University of South Florida and

The School Board of Broward County, Florida

for the

Postsecondary Pilot Program in Collaboration with Broward College

This Agreement (“Agreement”) describes a partnership between the University of South Florida Board of Trustees, a public body corporate for its University of South Florida St. Petersburg College of Education’s Division of K-16 Educational Initiatives (“USFSPCOEK-16”), and The School Board of Broward County, Florida (“SBBC”), a public corporate body operating and existing under the laws of the state of Florida.

WHEREAS, USFSPCOEK-16 administration and faculty and SBBC intend to collaborate in the development of a pilot postsecondary education program in collaboration with Broward College; and

WHEREAS, USFSPCOEK-16 awards a Project 10 subgrant to SBBC to support the pilot postsecondary program;

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

Article 1

Scope of Agreement

1.1 In receipt of Project 10 funding in the amount of Fifty Thousand Dollars and 00/100 Cents (\$50,000.00) to support a pilot postsecondary program, The School Board of Broward County agrees to adhere to each of the following:

- a. All funds must be encumbered by June 30, 2020. If it is anticipated that the funds will not be used in their entirety by this date, all unencumbered funds must be returned to the USFSPCOEK-16 project by June 1, 2020. These funds must be used to support the pilot postsecondary program as follows: to assist the District in purchasing student laptops, funding curricula, mentoring support, instructional support and other individualized support as needed for a maximum of 20 students enrolled in the program.
- b. SBBC as fiscal agent will administer this funding in accordance with all applicable federal and state statutes, regulations, program plans, and application. Quarterly reporting of activities, student outcomes and purchases are required.
- c. This available funding is one-time, non-recurring funding. Allowable expenditures under this funding include expenses directly related to the activities outlined in

Section 1 above. Generally unallowable uses for funding include candy, alcohol, banquets, decorations, greeting cards, gift cards, lobbying, personal cellular telephones, fundraising, promotional items, entertainment, food and beverages, perquisites, meals not in accordance with Section 112.061, F.S., items for personal convenience (i.e. refrigerators for office staff), and items that are not necessary and reasonable (i.e., expensive office equipment to meet personal preferences). This list is not all-inclusive and is presented for example purposes only. An expenditure of state funds must be authorized by law and the expenditure must meet the intent and spirit of the law authorizing the payment. Some of the items above may be allowable if there is statutory authority for their purchase and other rules or laws do not prohibit them. Agencies should refer to the *Reference Guide for State Expenditures* and/or their agency legal staff when determining whether specific purchases are allowable pursuant to the laws, rules, and requirements of their agreement and program.

- d. School districts as fiscal agents for these funds must:
 - i. Maintain both cost and programmatic records for five (5) years and allow USFSP SEDNET Administration Project access to the records, as requested.
 - ii. Have an adequate cost accounting system or maintain a separate bank account for these funds.
 - iii. Ensure all costs are reasonable, allowable, allocable, and documented, and repay all disallowed costs.
 - iv. Participate in monitoring as necessary to ensure that activities and/or deliverables are meeting expectations.
 - v. Agree to payment terms (e.g., frequency of payments, method of payment, and required documentation).

1.2 Failure to comply with the agreement outlined above may result in the return of funds and/or denial/limitation of future funding.

1.3 Reporting Resources: Accurate financial records will comply with Florida Department of Education (FDOE) guidelines, to include the following:

- a. FDOE "Green Book" Project Application and Amendment Procedures for Federal and State Programs: <http://www.fldoe.org/core/fileparse.php/5625/urlt/0076985-2013greenbook.pdf>
- b. FDOE "Red Book" Financial and Program Cost Accounting and Reporting for Florida Schools: <http://www.fldoe.org/fefp/redtoc.asp>

- c. Department of Financial Services Reference Guide for State Expenditures:
<http://www.fcadv.org/sites/default/files/Reference%20Guide%20For%20State%20Expenditures.pdf>

1.4. **SBBC Disclosure of Education Records.** Although no student education records shall be disclosed pursuant to this Agreement, should USFSPCOEK-16 come into contact with 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.

1.5 **SBBC Disclosure of Employee Information.**

- a. To ensure accurate delivery of the check for grant funding,
- b. SBBC will provide USFSPCOEK-16 with the following employee information: first and last name, phone number, email address, mailing address.

1.6 **USFSPCOEK-16 Confidentiality of Education Records and Employee Information.** Notwithstanding any provision to the contrary within this Agreement, USFSPCOEK-16 shall:

- a. 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, and employee information;
- b. hold any education records and employee information in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records or employee information are to be shared provides prior written consent for their release;
- c. ensure that, at all times, all of its employees who have access to any education records or employee information during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records and employee information is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;
- d. safeguard education records and employee information through administrative, physical and technological standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements, and employee information in accordance with applicable laws;
- e. utilize the education records and employee information solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records or employee information to any third party.

Article 2
Period of the Agreement

The Agreement is effective upon signature by all parties and will remain in force up to and including June 30, 2020.

Article 3
Termination of Agreement

Either USFSPCOEK-16 or SBBC may terminate the Agreement without cause by delivering written notice to the other party at least thirty (30) days prior to the effective date of the termination. Upon early termination SBBC shall submit a final report to USFSPCOEK-16 within thirty (30) days after official notification of termination. SBBC shall return any unused funds to USFSPCOEK-16 within thirty (30) days after official notification of termination.

Article 4
Modification

This Agreement may be amended or modified by a written instrument executed by the duly authorized representatives of the parties hereto. Similarly, no agreement that affects the provisions of this Agreement shall be valid unless in writing and executed by both parties.

Article 5
Agreement Information and Notice

5.1 The name, phone number, email, and mailing address for the person to whom USFSPCOEK-16 will send SBBC's check is as follows:

Check Receiver Name: The School Board of Broward County, Florida
Attention: Aston Rowe
Phone#: 754-321-2265
Email: aston.rowe@browardschools.com
Complete mailing address, including zip code: Kathleen C. Wright (KCW), 600 SE Third Avenue, Fort Lauderdale, Florida, 33301.

5.2 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: Executive Director
The School Board of Broward County, Florida
Atlantic Technical College at Arthur Ashe Campus
1700 NW 23rd Avenue, 2nd Floor
Fort Lauderdale, Florida 33311

To USFSPCOEK-16: Dr. Jordan Knab
140 7th Avenue South SUB108
St. Petersburg, Florida 33701

With a Copy to: Bethany Kincaid, Division of Sponsored Research
4019 E. Fowler Avenue, Suite 100
Tampa, Florida 33617

Article 6 Miscellaneous

6.1 **Public Records.** Any party contracting with SBBC 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 SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC'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.

6.2 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. 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.

6.3 **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.

6.4 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC if this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

6.5 **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.

6.6 **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 matter arising out of any Agreement.

6.7 **Independent Contractor.** The parties to this Agreement shall always be acting in the capacity of independent contractors and not as officers, employees, or agents 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 SBBC retirement, leave benefits, or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not 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.

6.8 **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.

6.9 **Default.** The parties agree that, if either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party thirty (30) days' written notice to cure the default. However, if the default cannot be cured within the thirty(30) 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) 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 3.05.

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

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

6.12 **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 or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

6.13 **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.

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

6.15 **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.

6.16 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, 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 effect affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

6.17 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses, or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable, or void sections, paragraphs, sentences, clauses, or provisions had never been included herein.

6.18 **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 expresses 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.

6.19 **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.

6.20 **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 unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

6.21 **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.

6.22 **Survival**. All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, 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.

6.23 **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.

6.24 **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.

6.25 **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.

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives on the date first above written.

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FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA

By _____
Donna P. Korn, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to form and Legal Content:

Kathelyn Jacques-Adams

Digitally signed by Kathelyn Jacques-Adams, Esq. -
kathelyn.jacques-adams@gbrowardschools.com
Reason: University of South Florida Board of
Trustees - Project 10 subgrant for pilot
postsecondary program
Date: 2020.03.02 11:22:48 -05'00'

Office of the General Counsel

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FOR USFSPCOEK-16

University of South Florida Board of Trustees

Jordan T Knab, Ed.S.
Principal Investigator, K-16 Educational Initiatives
University of South Florida St. Petersburg

Keith Anderson, Director of Sponsored Research
University of South Florida

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Bryan D. Raff
Associate General Counsel - University of South Florida