

MEMORANDUM OF AGREEMENT
BETWEEN THE
HERNANDO COUNTY SHERIFF'S OFFICE and
THE HERNANDO COUNTY SCHOOL BOARD
To Establish a School Guardian Program and Training

THIS MEMORANDUM OF AGREEMENT (the "MOA") is entered into by and between Al Nienhuis, the Sheriff of Hernando County representing the Hernando County Sheriff's Office, of the State of Florida, with an administrative office at 18900 Cortez Boulevard, Brooksville, Florida 34601, hereinafter referred to as **SHERIFF**, acting through its Sheriff's Office, and the Hernando County School District, with a principal place of business at 919 N Broad Street Brooksville, Florida, 34601, hereinafter referred to as **SCHOOL BOARD**, and parties collectively referred to as **THE PARTIES**.

This Memorandum of Agreement, entered into between the **SHERIFF** and the **SCHOOL BOARD** is to establish procedures for compliance with §1006.12(3), *Fla. Stat.* and §30.15(6), *Fla. Stat.*, as each relates to safe school officers, is effective as of the date of the last signatory below.

WHEREAS, the Florida Legislature in Senate Bill 7026 (2018) established the Aaron Feis Guardian Program (the "Guardian Program") to aid in the prevention or abatement of active assailant incidents on school premises; and

WHEREAS, the Florida Legislature in Senate Bill 7030 (2019) amended Florida State Statute 30.15 (k), regarding the Guardian Program compelling Sheriffs of the State of Florida to establish a Guardian Program after the local school board voted by a majority to implement a Guardian Program; and

WHEREAS, the **SCHOOL BOARD** has voted by a majority to implement a Guardian Program; and

WHEREAS, the Florida Legislature in Senate Bill 7026 (2018) amended §1006.07, *Fla. Stat.*, to require each district school superintendent to designate a school safety specialist who is responsible for all school safety and security personnel, policies and procedures in the school district; and

WHEREAS, the Hernando County School Superintendent has designated the Director of Safe Schools as the liaison between the District and public safety agencies regarding any disaster, emergency, manmade emergency, natural emergency, and technological emergency as defined by §252.34, *Fla. Stat.*; and

WHEREAS, THE PARTIES agree that statutory duties of the School Safety Specialist are of critical importance to providing the highest level of safety and security to the students, and facilities of the School District; and

WHEREAS, THE PARTIES agree that cooperation between **THE PARTIES** regarding the coordination and management of disasters, emergencies, manmade emergencies, natural emergencies, and technological emergencies as defined by §252.34, *Fla. Stat.* is paramount to the safety of the citizens of both Hernando County, Florida, and the State of Florida; and

WHEREAS, THE PARTIES desire to enter into this MOA to establish the duties and responsibilities of each Party regarding the Guardian Program and the interaction between **THE PARTIES** regarding the District's Safe School Specialist.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Incorporation of Recitals.** The forgoing recitals (WHEREAS CLAUSES) are true and correct and are incorporated herein by reference.
2. **Term.** The term of this Agreement shall commence at 12:01 AM on the 27th day of October 2021 and end at midnight on the 30th day of June 2024, and shall automatically renew for an additional one year period unless sooner terminated by the Parties as set forth below.
3. **Purpose.** The purpose of this Agreement is for the Sheriff to provide specified comprehensive firearm safety and proficiency training services and equipment to employees of the School Board, and otherwise seek funding for the school guardian program by submitting an application to the Florida Department of Education Office of Grants.
4. **Guardian Program.**

A. Sheriff Responsibilities.

- i. Pursuant to §30.15(1)(k) 2, *Fla. Stat.* the Sheriff shall consult with the Florida Department of Law Enforcement on programmatic guiding principles, practices, and resources, and shall certify as school guardians, without the power of arrest, school employees, as specified in §1006.12(3) who:
 1. Have a written recommendation for the position of guardian from the School Board based on acceptable fingerprint and drug screening results.

2. Pass a psychological evaluation administered by a psychologist licensed under chapter 490 and designated by the Department of Law Enforcement and submit the results of the evaluation to the sheriff's office. The Department of Law Enforcement is authorized to provide the sheriff's office with mental health and substance abuse data for compliance with this paragraph.
3. Successfully complete a CVSA conducted and provided by the Sheriff.
4. Hold a valid license issued under §790.06, *Fla. Stat.*
5. Complete a 144-hour training program, consisting of 12 hours of a certified nationally recognized diversity training and 132 total hours of comprehensive firearm safety and proficiency training conducted by Criminal Justice Standards and Training Commission-certified instructors, which must include:
 - a. Eighty hours of firearms instruction based on the Criminal Justice Standards and Training Commission's Law Enforcement Academy training model, which must include at least 10 percent but no more than 20 percent more rounds fired than associated with academy training. Program participants must achieve an 85 percent pass rate on the firearms training.
 - b. Sixteen hours of instruction in precision pistol.
 - c. Eight hours of discretionary shooting instruction using state-of-the-art simulator exercises.
 - d. Eight hours of instruction in active shooter or assailant scenarios.
 - e. Eight hours of instruction in defensive tactics.
 - f. Twelve hours of instruction in legal issues.
 - g. School Board provided training in the following: At least 12 hours of a certified nationally recognized diversity training program. Upon completion of required training, School Board shall forward supporting documentation of all employees who have successfully completed the training to the Sheriff.
- ii. Sheriff shall issue a school guardian certificate and letter to individuals who meet the requirements to the satisfaction of the Sheriff contained above.
- iii. Sheriff will recognize guardian certification authorized by the sheriff of contiguous counties to Hernando.

- iv. Sheriff does not request compensation from School Board for grant-covered costs of providing training and administrative services under this agreement.
- v. Sheriff shall maintain documentation of weapons and equipment inspections, as well as the training, certification, inspection, and qualification records of each School Guardian certified by the Sheriff. With copies provided to the Director of Safe Schools at least annually by May 1.
- vi. Once certified by the Sheriff pursuant to the requirements contained above, individuals may serve as a School Guardian under §1006.12(3), *Fla. Stat.* only if:
 - a. appointed by the school district superintendent or designee and maintains employment as a school guardian, and
 - b. submits to and passes an initial drug test and subsequent random drug tests in accordance with the requirements of § 112.0455, and
 - c. completes ongoing training, weapon inspection, and firearm qualification on at least an annual basis, and
 - d. Guardian certification will not be valid outside the jurisdiction of Sheriff Nienhuis, without a mutual agreement between Sheriff Nienhuis and the other Sheriff.
- vi. If a candidate's guardian certification has lapsed, at the sole discretion of the Sheriff, the candidate may be required to complete the full 144 hours of training.
- vii. Sheriff agrees to utilize existing equipment contracts to purchase firearms on behalf of School Board employees who are appointed as school guardians. The parties agree that the Sheriff owns all such firearms and equipment purchased. Sheriff, agrees to fund the purchase of firearms and equipment and the School Board authorizes the Sheriff to seek reimbursement from the Florida Department of Education for funds expended to purchase the firearms and equipment as repayment to Sheriff. Sheriff shall perform annual and periodic maintenance upon the firearms or equipment at the request of School Board. Weapons shall be stored properly by the Sheriff when not issued to a School Board employee. All firearms and equipment purchased through the DOE grant will be reclaimed in four (4) years for exclusive use of the Sheriff. New firearms and equipment will be sought using the DOE grant funding source.
- viii. In the event that an employee requires being relieved of his/her weapon and other provided equipment, Sheriff shall meet with guardian employee and Director of Safe Schools to take possession of Sheriff issued items.
- ix. Sheriff shall issue equipment including but not limited to duty gear, a bullet-

proof vest, and a firearm to each School Guardian as long as, in the sole and absolute discretion of the Sheriff, such School Guardian has successfully passed equipment inspections, qualified, and maintains qualification records which are satisfactory to the Sheriff. However, any cost of replacement or repair of lost or damaged equipment after the initial issuance by the Sheriff that is not funded by the Guardian Grant shall be the responsibility of the School Board.

- x. Upon certification by the Sheriff, shall pay each school guardian a one-time stipend of Five Hundred Dollars and Zero Cents (\$500.00). This stipend will be reimbursed by the Guardian grant funding, or will be reimbursed by the School Board.
- xi. Sheriff may suspend or revoke the certification of an individual previously certified as a School Guardian for good cause, which means cause that is legally sufficient. The following shall constitute good cause and be grounds for immediate suspension or revocation:
 - 1. failure to hold a valid license issued under §790.06, *Fla. Stat.*;
 - 2. failure to successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis;
 - 3. conviction for any felony or of a misdemeanor involving perjury or a false statement;
 - 4. suspension or termination as an employee of the School District;
- xii. The Sheriff, will provide training and recertification yearly, during the summer, pending Guardian Grant funding or reimbursement from the School Board.
- xiii. The Sheriff agrees to investigate any use of force claims solely involving a school Guardian. The Guardian's equipment will be collected in accordance with evidence procedures and remain there pending the outcome of any criminal or civil action.
- xiv. If a school Guardian and Deputy are involved in a use of force that causes life threatening injuries, or utilizes deadly force or any other situation at the discretion of the Sheriff, may be referred to the Florida Department of Law Enforcement for investigation pursuant to HCSO policy 4020.5
- xv. At the request of the Hernando County School Board the initial training for the Guardian Program will be held in January 2022. These Guardians will be required to requalify during the summer of 2022 so they are in compliance with certification throughout the entire school year.

B. Responsibilities of School Board.

- i. Upon sixty (60) days' prior notice to Sheriff, School Board may select candidates and provide a written referral for such employees to the Sheriff for training and certification as a School Guardian, as specified in §1006.12(3). Applicants must complete the background check prior to the start of training which will be offered annually during the summer following the initial training opportunity. Background check for Guardians includes psychological screening, drug screening and fingerprint screenings.
- ii. School Board shall supervise School Board Guardians certified by the Sheriff when performing his or her duties. The School Board shall be responsible for all aspects of employment of the School Board Guardians, including all control, direction and supervision.
- iii. At the request of the Sheriff, and randomly, require school guardians to take and pass random drug screens during their employment as a school guardian.
- iv. Shall notify the Sheriff and the Florida Department of Education Office of Safe Schools within 72 hours a school guardian who is dismissed for misconduct, is otherwise disciplined, or who discharges his or her firearm in the exercise of his or her duties, other than for training purposes.
- v. Pursuant to §30.15 (1)(k) school guardians shall have no authority to act in any law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident.
- vi. Immediately upon receipt of information or records suggesting that any school guardian is in violation of any paragraph of this agreement or state statute the Superintendent shall report all relevant information and records to the Sheriff.
- vii. Appoint the School Safety Specialist to liaison with the School Resource Officer Lieutenant. The School Safety Specialist will also coordinate with the charter schools and monitor their Guardian Program compliance.
- viii. Outside the normal educational school day, in the event of unavailability of Guardians, School Board shall submit a request in the form of an outside detail contract for assignment of a Sheriff's office deputy to substitute for a school guardian at a rate of \$30.00 per hour. This rate is set by the Sheriff

and Fraternal Order of Police Nature Coast Lodge 164 agreement and subject to change yearly.

- ix. Participate in the school guardian program if such program is established pursuant to s. 30.15, to provide additional safe-school officers at District Schools, School-Sponsored Events and on School Transportation.

C. Cost of the Guardian Program.

The Sheriff will apply for grant funding pursuant to the Coach Aaron Feis Guardian Program to fund reasonable and allowable costs of screening, training, equipping and implementing the School Guardian Program as set forth above. The Sheriff reasonably expects to receive grant funding in an amount that will cover all costs of the School Guardian Program. However, if the Sheriff does not receive grant funding sufficient to cover all costs of the School Guardian Program, the School Board agrees to reimburse the Sheriff for any resulting shortfall of allowable and reasonable expenditures with previous authorization of the Superintendent. The shortfall would be paid within thirty (30) days of presentment of an invoice detailing such shortfall, including all costs incurred in the administration of the School Guardian Program and grant funding received.

1. All other reasonable and allowable costs of the school guardian program shall be borne by the School Board employing the guardian.
2. Any reasonable and allowable costs associated with the “early” 2021 requalification not covered by the grant will be reimbursed by the Hernando County School Board, paid within thirty (30) days of presentment of an invoice detailing such shortfall.

General Provisions.

1. The Parties, their agents and employees agree to cooperate in good faith in fulfilling the terms of this MOA.
2. The Sheriff and School Board certify that they have qualified personnel to perform the training services enumerated herein.
3. This Agreement does not constitute a general indebtedness of either the School Board, or the Sheriff within the meaning of any constitutional, statutory, or charter provision of limitation and it is expressly agreed by the parties that neither the School Board, nor the County shall have the right to require or compel the exercise of ad valorem taxing power of either party,

or taxation of any real or personal property therein for payment of any monetary obligations due under the terms of this Agreement. It is further agreed that this Agreement and any funds called for to be paid hereunder shall not constitute a lien upon any real or personal property of School Board or Hernando County, any part thereof, and that the obligation for monetary payments called for to be made hereunder shall be deemed to exist for less than a year at any point in time and shall be entirely subject to the legislative budgetary discretion of the School and the County.

Descriptive Headings. The headings used herein are descriptive only and for the convenience of identifying provisions and are not determinative of the meaning or effect of any such provision.

Entire Agreement. This Agreement constitutes and contains the entire agreement and understanding between the Parties with respect to the subject matter herein and supersedes and replaces all prior negotiations and proposed agreements, written or oral. The Parties acknowledge that no representations, inducements, promises, or agreements have been made by or on behalf of any Party, except those covenants and agreements embodied in this written Agreement. Any amendment or modification of this Agreement, or any waiver of its terms, in order to be binding, must be written and signed by the parties hereto.

Opportunity to Consult with Counsel. The Parties acknowledge that they have had an opportunity to consult with counsel of their own choice, that they have read this Agreement, that they are fully aware of the contents of this Agreement and of its legal effect and fully understand and agree to each and every provision hereof without reservation, and that they have executed this Agreement in reliance on their own judgment and free from any coercion, duress or undue influence.

Execution and Binding on Successors and Assigns. This Agreement may be entered in counterparts (including by facsimile or other electronic imaging, any one of which shall be deemed an original and all of which collectively shall be deemed a single instrument). This Agreement shall be binding upon and inure to the benefit of the Parties and their respective officers, directors, agents, employees, administrators, trustees, executors, receivers, successors, assignees and legal representatives, whether a signatory hereto or not.

Notices. All notices, consents, demands, or other communications required or permitted to be given pursuant to this Agreement shall be in writing by e-mail and hard copy, and shall be deemed sufficiently given and received on: (i) the day on which delivered personally or via facsimile transfer during a business day to the appropriate location(s) listed below; (ii) one (1) business day after delivered to a nationally recognized overnight delivery service such as Federal Express or Airborne Express for overnight delivery to the appropriate location(s) listed below; or (iii) three (3) business days after the posting thereof by United States registered or certified first class mail, return receipt requested with postage and fees prepaid and addressed as follows:

If to School Board: John Stratton
Superintendent of Schools
919 N. Broad Street
Brooksville, Florida 34601

With a copy to: Office of Safe Schools
Director of Safe Schools
919 N. Broad Street,
Brooksville, Florida, 34601

If to Sheriff: Al Nienhuis, Sheriff
18900 Cortez Blvd.
Brooksville, Florida, 34601

With a copy to: Attention attorney
18900 Cortez Blvd.
Brooksville, FL 34601

Any party may change his, her or its address and/or the address of the copied on his, her or its behalf upon written notice to all other Parties.

No Presumption/Severability. The Parties acknowledge that they and their attorneys have participated in the preparation, negotiations and drafting of this Agreement. The terms in this Agreement shall be construed in accordance with their fair meaning and there shall be no presumption applied against any Party for having drafted or participated in the drafting of any such terms. The terms of this Agreement shall be severable such that, if any term herein is illegal, invalid, or unenforceable, such holding shall not affect the viability of any of the other provisions of the Agreement, unless the severing of such term would defeat the purpose of this Agreement.

Waiver. No delay or failure on the part of any Party hereto in exercising any right, power or privilege under this Agreement shall impair any such right, power or privilege or be construed as a waiver or acquiescence thereto; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver shall be valid against any Party, unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to any choice of law provisions. The Parties agree that the Circuit Court for the Fifth Judicial Circuit, Hernando County, Florida (hereinafter the "Court"), shall have sole and exclusive jurisdiction to enforce the terms of this Agreement, and

agree that they will present any disputes under this Agreement, including, without limitation, any claims for breach or enforcement of this Agreement, exclusively to the Court. Each of the Parties consents to the jurisdiction of the Court, acknowledges that the Court has jurisdiction over this Agreement, and that the Court shall retain jurisdiction for the purposes of implementing and enforcing the terms of this Agreement.

Waiver of Jury Trial. In any action or proceeding arising here from, the parties hereto consent to trial without a jury in any action, proceeding or counterclaim brought by any party hereto or its successors against any other party hereto or its successors in respect of any matter arising out of or in connection with this agreement, regardless of the form of action or proceeding.

No Assignment. This MOA may not be assigned without the express written consent of the School Board, Charter Schools, and the Sheriff, which consent may be withheld for any reason or no reason.

Non-Discrimination. The Parties shall not unlawfully discriminate against any individual on the basis of his or her race, age, religion, ancestry, color, ethnicity, gender, national origin, marital status, familial status, disability, sexual orientation, genetic information, or gender identity or expression with respect to any activity occurring or under this Agreement.

Attorney Fees and Costs. In the event of a dispute under this Agreement, whether or not a lawsuit or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule or guideline, as well as non-taxable costs: including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

Indemnification. The Parties acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. The Parties agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees. The Parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

Termination. This MOA may only be terminated prior to the Agreement's expiration date by a party upon at least ninety (90) days prior written notice to the other party that the party has failed to substantially perform in accordance with the terms and conditions of this Agreement. The party in breach shall have ninety (90) days in which to cure the breach or the non-breaching party can terminate this Agreement and pursue all available legal and equitable remedies.

Insurance. The Parties warrant that they are self-insured and agree to maintain general liability insurance as required by law. The School Board shall give notice to the employing entity of any loss, damage, expense, claim, lawsuit, liability, fine or penalty (together referred to as "Claim") as soon as possible but no later than sixty (60) days of the occurrence giving rise to the Claim, or with respect to a third-party Claim, as soon as possible but not later than sixty (60) days from receipt of notice of the Claim. Likewise, the Sheriff shall give notice to the employing entity of any loss, damage, expense, claim, lawsuit, liability, fine or penalty (together referred to as "Claim") as soon as possible but no later than sixty (60) days of the occurrence giving rise to the Claim, or with respect to a third-party Claim, as soon as possible but not later than sixty (60) days from receipt of notice of the Claim.

Relationship of the Parties. The Parties hereto acknowledge that their relationship is that of independent contractors. No employee of either Party shall be deemed an employee of the other Party.

No Third-Party Beneficiaries. This Agreement and the provisions hereof are for the exclusive benefit of the Parties hereto and their affiliates and not for the benefit of any third person, nor shall this Agreement be deemed to confer or have conferred any rights, express or implied, upon any other third person.

Public Records. The Parties shall comply with Florida's public records laws, and specifically agree to:

- a. keep and maintain public records that ordinarily and necessarily would be required in accordance with the applicable records retention schedule,
- b. provide the public with access to public records at a cost that does not exceed the cost provided in Chapter 119, *Fla. Stat.*, and
- c. ensure that public records that are confidential and exempt from public records disclosure requirements are not disclosed except as authorized by laws.


Authority to Execute Agreement. 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 to this Agreement for Provision of School Guardian Training Program to the Hernando County School District have caused the same to be signed by their duly authorized representatives on the dates indicated below.


THE PARTIES REPRESENT THAT THEY HAVE THOROUGHLY DISCUSSED ALL ASPECTS OF THIS AGREEMENT WITH THEIR RESPECTIVE ATTORNEY(S), THAT THEY FULLY UNDERSTAND ALL OF ITS PROVISIONS, AND THAT THEY ARE VOLUNTARILY ENTERING INTO THIS AGREEMENT WITH THE FULL KNOWLEDGE OF ITS LEGAL SIGNIFICANCE AND WITH THE INTENT TO BE LEGALLY BOUND BY ITS TERMS.

ATTEST:

**THE SCHOOL BOARD OF
HERNANDO COUNTY, FLORIDA**



John Stratton
Superintendent, Hernando County
Date: 10/26/21



Linda Prescott
Chairman, Hernando County School Board
Date: 10/26/21

Al Nienhuis
Sheriff, Hernando County
Date: _____