

"LIVE FIRE SHOOT HOUSE"
AGREEMENT BETWEEN
THE DISTRICT BOARD OF TRUSTEES OF
EASTERN FLORIDA STATE COLLEGE, FLORIDA
AND
WAYNE IVEY, SHERIFF OF BREVARD COUNTY,
FLORIDA
AND
THE BREVARD COUNTY BOARD OF COUNTY
COMMISSIONERS OF BREVARD COUNTY,
FLORIDA

THIS AGREEMENT (this "Agreement") is made by and between THE DISTRICT BOARD OF TRUSTEES OF EASTERN FLORIDA STATE COLLEGE, FLORIDA, a body corporate, on behalf of EASTERN FLORIDA STATE COLLEGE, a Florida College System institution, 3865 North Wickham Road, Melbourne, Florida 32935 successor in interest to Brevard Community College (hereinafter referred to as "EFSC"); and WAYNE IVEY, in his official capacity as the SHERIFF of Brevard County, Florida, a County Constitutional Officer and a County Charter Officer, 700 Park Avenue, Titusville, Florida 32780 (hereinafter referred to as the "SHERIFF"); and BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, (hereinafter referred to as "COUNTY"). EFSC, SHERIFF, and COUNTY are collectively referred to in this Agreement as the "Parties" and individually referred to as a "Party."

WHEREAS, in addition to three firing ranges, in or about the year 2000, the PARTIES also jointly cooperated to purchase a movable "Live Fire Shoot House" (hereinafter SHOOT HOUSE) to enhance law enforcement firearms training by creating a 360 degree ballistically safe firearms training environment, and

WHEREAS, as part of the joint effort, the Brevard Community College provided \$20,000, the State Trust Fund provided \$10,000, and the SHERIFF, as well as various Police Departments provided matching funds; and

WHEREAS, the Parties located the movable SHOOT HOUSE adjacent to the three firing ranges on COUNTY land leased to the SHERIFF at Five Palms Farm, and BCC/EFSC has operated the facility for approximately 20 years; and

WHEREAS, the SHOOT HOUSE is currently located on an immovable concrete slab with attached pre-engineered metal building (hereinafter "PEMB") overhanging it to stabilize and protect said SHOOT HOUSE (hereinafter the slab and overhang), which slab and overhang are a fixture on the land, but the SHOOT HOUSE is movable; and

WHEREAS, in July 1, 2013, Brevard Community College became Eastern Florida State College, when it was approved by the Florida legislature and signed into law by then Governor Rick Scott; and

WHEREAS, after 20 years of use by BCC/EFSC, the SHERIFF, and the law enforcement community in general, the SHOOT HOUSE is currently in need of capital improvements, and the SHERIFF in consultation with EFSC has temporarily shut the facility down until said improvements are made; and

WHEREAS, the SHERIFF wishes to fund the capital improvements to the SHOOT HOUSE and assume the duties of EFSC for the SHOOT HOUSE, and

WHEREAS, EFSC is willing to transfer any and all of its rights and obligations regarding the SHOOT HOUSE to the SHERIFF and/or BREVARD COUNTY, including the obligation to provide access to the SHOOT HOUSE to the other law enforcement agencies upon request; and

NOW, THEREFORE, in consideration of the covenants and promises made below, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals:** The recitals set forth *above* are true and correct and are hereby incorporated into this Agreement.

2. **Definitions:**

a. **SHOOT HOUSE.** The SHOOT HOUSE is defined as the movable steel walled SHOOT HOUSE, its internal wooden walls, the stairs and overhead wooden catwalk directly over the steel walled structure, as well as all movable targets that can be placed within the structure.

b. **Slab and Overhang.** Refers to the concrete pad the SHOOT HOUSE is resting on and the PEMB constructed over the concrete pad to protect the SHOOT HOUSE.

c. The SHOOT HOUSE is an additional firing range for purposes of this agreement.

3. **Term and Termination:** This Agreement shall be effective and commencing upon the date the last party signs, and shall last in perpetuity, unless canceled or otherwise terminated earlier by COUNTY or SHERIFF as provided herein:

a. Upon breach of the provisions of this Agreement which is not corrected by the Party in breach within fifteen (15) days after receipt of written notice of such breach from the complaining/concerned Party.

b. Upon either the SHERIFF or the COUNTY providing not less than thirty (30) days' advance written notice to the other Party of such

Party's decision to terminate this Agreement.

- c. Upon termination of the land lease agreement entered by and between SHERIFF and COUNTY for the land described as "approximately 52 acres of land located in Parcels 251 and 253, East of I-95, in Section 1, Township 25S, Range 35E" as approved by the COUNTY on July 21, 2015.

4. EFSC Responsibilities: EFSC agrees, through its President or designee, to the following, of which (a) through (c) may not be terminated:

- a. By signing this agreement, EFSC cedes any ownership of or occupational rights to the movable physical structure known as the SHOOT HOUSE to the SHERIFF.
- b. By signing this agreement, EFSC cedes any ownership of or other rights it may have to the slab and PEMB surrounding the SHOOT HOUSE to Brevard County.
- c. By signing this agreement, EFSC relinquishes all day-to-day operations and oversight of the SHOOT HOUSE to the SHERIFF as lessee.
- d. To ensure that any and all employees, agents, officers, representatives or students of EFSC using the SHOOT HOUSE will follow the general rules, regulations, policies, and procedures of the SHOOT HOUSE as established by the SHERIFF.
- e. That, except to the extent in conflict with the rules, regulations, policies, and procedures of the SHERIFF pertaining to the operation of the SHOOT HOUSE, EFSC employees, agents, officers, representatives or students assigned to the SHOOT HOUSE shall be under exclusive supervision of EFSC and that all evaluating, scheduling, and directing of the use of said employees, agents, officers, representatives or students shall be the sole responsibility of EFSC in coordination with the SHERIFF or designee. In the event a conflict with the rules, regulations, policies, and procedures of the SHERIFF pertaining to the operation of the SHOOT HOUSE arises, EFSC operations of the SHOOT HOUSE shall cease and desist until the concern is resolved.
- f. That EFSC shall be solely responsible for payment, evaluation, termination, and training of any and all EFSC personnel or representatives using the SHOOT HOUSE.
- g. That EFSC shall provide the SHERIFF with a copy of all schematics

and documentation regarding the initial construction of the "SHOOT HOUSE."

- h. That EFSC and its representatives signing this Agreement represent and warrant that they have the authority to legally bind EFSC to the terms of this Agreement and acknowledge that the COUNTY and SHERIFF are relying on this representation and warranty in agreeing to the terms of this Agreement.
- i. **Indemnity:** EFSC agrees to defend, hold harmless, and save the SHERIFF, his officers, appointees, agents, attorneys and employees; and the COUNTY, its employees, attorneys and agents of the Brevard County Board of County Commissioners, from any claim, action, lawsuit, loss, damage, cost, charge, judgments, liabilities, or expense of any kind whatsoever arising out of any act, action, neglect, omission and/or failure to act by EFSC prior to transfer of ownership or occupation of "SHOOT HOUSE," and the firing range under its control, including, but not limited to, any claims, amounts or injuries covered under the Workers' Compensation laws, except as a third party claim outside Workers' Compensation, resulting or arising from EFSC's obligations and duties under this or prior Agreements, except that EFSC shall not be liable for any injury or damage caused by or resulting from the sole negligence of the COUNTY or SHERIFF and employees, agents and contractors of the COUNTY or SHERIFF. Nothing herein is intended to or shall be construed to waive any rights the Parties may have under the laws of Florida, included but not limited to, the provisions of Section 768.28, of the Florida Statutes.

5. SHERIFF'S Responsibilities: The SHERIFF agrees to the following:

- a. SHERIFF is the owner of tangible property, the "SHOOT HOUSE," while COUNTY is the owner of slab and PEMB protecting the SHOOT HOUSE at Five Palms Farm, which is leased to SHERIFF.
- b. By this agreement, SHERIFF agrees and acknowledges that SHERIFF, as lessee, will maintain the slab and PEMB as part of its obligations as lessee of COUNTY.
- c. SHERIFF shall be responsible for funding the design, materials, equipment, and supplies that are to be used in the capital improvements of the SHOOT HOUSE pursuant to this Agreement, and SHERIFF shall provide the necessary personnel to conduct the work.
- d. SHERIFF shall fund and provide as part of this Agreement the

following repairs to the SHOOT HOUSE:

- Manufacture or contract for manufacturing new steel braces to replace the existing steel bracing in the SHOOT HOUSE.
 - Replace or contract the replacement of the interior wood structure within the SHOOT HOUSE.
 - Replace or contract the replacement of the stairway.
 - Replace or contract the replacement of the cat walk sections in need of repair.
 - Secure or contract the securing of the SHOOT HOUSE to the existing concrete slab.
- e. That the SHERIFF shall maintain the day-to-day operations to include scheduling of the use of the SHOOT HOUSE, giving priority of scheduling to EFSC and its students where practicable. As scheduling permits, SHERIFF may make the SHOOT HOUSE available to other law enforcement agencies.
- f. That the SHERIFF shall comply with all applicable Local, State, and Federal laws governing the capital improvements to the structure(s), including but not limited to, section 790.333, Florida Statutes.
- g. If required by the Florida Building Code, all planned improvements to the SHOOT HOUSE shall be provided to COUNTY for review and approval prior to construction. Engineered drawings and construction plans shall be provided to COUNTY to allow adequate review. COUNTY staff shall review the plans for compliance and provide a response within 30 days. This approval process shall not take the place of the site plan and building permit procedures provided by Brevard County code or any other code or regulation applicable to the property.
- h. The SHERIFF shall provide COUNTY and EFSC with SHERIFF's regulations, policies, and procedures of the SHOOT HOUSE as established by the SHERIFF.
- i. As lessee of the land and owner of the movable SHOOT HOUSE, SHERIFF assumes any and all liability arising out of and during its use of the SHOOT HOUSE, and its management of the SHOOT HOUSE when other agencies are using said SHOOT HOUSE. The Parties agree that SHERIFF will require all personnel utilizing the facility to sign an assumption of risk, as well as an indemnify and hold harmless that indemnifies both the SHERIFF and COUNTY from any

and all claims or losses that may proximately result from training activities conducted at the site. The required forms are at **Exhibit A**.

- j. As lessee of the SHOOT HOUSE, SHERIFF is responsible to develop and enforce safety protocol for the use of said SHOOT HOUSE to ensure the safety of all participants.
- k. As lessee of the SHOOT HOUSE, SHERIFF will not use lead bullets in the SHOOT HOUSE range, but only frangible ammunition that is used and captured within the wall cavities for proper environmental disposal. The Parties agree that SHERIFF is responsible to enforce adequate environmental management practices to avoid or reduce degradation of the environment or harm to human health, to include periodic mitigation procedures. In creating its environmental management practices, the SHERIFF will consult the environmental management practices from the Department of Environmental Protection's best management practices for Environmental Stewardship of Florida's Shooting Ranges (see section 790.333, Florida Statutes). Such practices shall include, but are not limited to, control and containment of projectiles, prevention of the migration of projectiles and their constituents to ground and surface water, periodic removal and recycling of projectiles, and documentation of actions taken.
- l. The SHERIFF will routinely test all firing ranges for lead, and mitigate lead as required by law. Periodically, the SHERIFF will have all firing ranges inspected by the Florida Department of Law Enforcement to ensure it meets the standards of a firing range.
- m. The SHERIFF, at its own expense, shall keep in force and at all times maintain during the term of this Contract:
 - (a) General Liability Insurance: General Liability Insurance issued by responsible insurance companies and in a form acceptable to the County, with combined single limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury and Property Damage per occurrence. Additionally, the SHERIFF will obtain a policy insuring the firing ranges and the SHOOT HOUSE, with each individually annotated on the policy.
 - (b) Worker's Compensation Coverage: Sheriff shall provide full and complete workers' compensation coverage, as required by State of Florida law.
 - (c) Insurance Certificate: The SHERIFF shall provide the COUNTY with Certificates of Insurance on all policies of insurance and renewals thereof in a form(s) acceptable to the County. Said liability policies shall provide that the County be an additional insured. The COUNTY shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at

least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the COUNTY and licensed and authorized under the laws of the State of Florida.

(c) SHERIFF agrees and understands that the County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Sheriff's interests or liabilities, but are merely minimums. It is the Sheriff's responsibility to comply with all local, State and Federal requirements in relation to their activities on the property at Pluckebaum road.

6. COUNTY'S Responsibilities:

- a. To adopt and acknowledge upon execution of this agreement that the Lease Agreement adopted by the Board on July 21, 2015, necessarily includes the SHERIFF'S right to operate, use, occupy, and improve the SHOOT HOUSE located on the land located in Parcels 251 and 253, East of I-95, in Section 1, Township 25S, Range 35E. Brevard County recognizes SHERIFF's ownership of the movable SHOOT HOUSE and acknowledges that all day-to-day operations, liability and oversight of the SHOOT HOUSE belongs to the SHERIFF.
- b. Brevard County assigns all routine maintenance responsibilities to the concrete pad and PEMB surrounding the SHOOT HOUSE, as well as any necessary ground cleanup and contamination cleanup to the SHERIFF as lessee of the property.

7. Joint Responsibilities:

- a. That PARTIES will work together cooperatively to ensure agreement as to all modifications to the slab and PEMB.
- b. The PARTIES agree that the scope of this Agreement is strictly limited to the SHOOT HOUSE and in no way shall be interpreted as affecting or impacting any rights, privileges, ownership interests, operations, or oversight of any other physical structure(s) currently located on Brevard County property at the Brevard County SHERIFF's Office Five Palms Farms, 2955 Pluckebaum Road, Cocoa, Florida 32922.

8. Relationship: Nothing herein shall create or be construed to create an employer-employee, agency, or joint venture between the Parties.

9. Entire Agreement: The Parties agree that except as specifically stated herein, this Agreement constitutes the entire agreement between the

Parties and supersedes all agreements, representations, warranties, statements, promises, and understandings not specifically set forth in this Agreement or in the certificates or documents delivered in connection herewith. No Party has in any way relied nor shall in any way rely upon any oral or written agreements, representations, warranties, statements, promises, or understandings not specifically set forth in this Agreement or in such certificates or documents.

10. **Governing Law and Venue:** The Parties agree that this Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Florida without regard to that state's conflict of laws principles. Venue in any litigation arising out of this Agreement shall lie exclusively in the appropriate state court situated in Brevard County, Florida.
11. **Modifications:** The Parties agree that no change or modification of this Agreement shall be valid unless the same is in writing and signed by all the Parties hereto.
12. **Notice:** The Parties agree that all communications required or permitted to be given hereunder shall be in writing and shall be given to the appropriate Parties by personal delivery or sent by certified or registered mail, return receipt requested, postage prepaid. Mailed notices shall be addressed to the Parties at the addresses set forth below, but each Party may change the address by written notice in accordance with this Paragraph 12. Refusal of the mailing by any Party shall be deemed to be receipt of the writing for purposes of this Agreement.

As to EFSC:

Eastern Florida State College
Attention: Office of the President
3865 N. Wickham Rd.
Melbourne, FL 32935

With a copy to:
Eastern Florida State College
Attention: General Counsel
3865 N. Wickham Rd.
Melbourne, FL 32935

As to the COUNTY:

Brevard County Manager's Office
Attention: County Manager Frank Abbate
2725 Judge Fran Jamieson Way, Bldg. C
Viera, FL 32940

With a copy to:

County Attorney
2725 Judge Fran Jamieson Way, Bldg. C
Viera, FL 32940

As to the SHERIFF:

Wayne Ivey, SHERIFF
Brevard County SHERIFF's Office
700 Park Avenue
Titusville, Florida 32780

With a copy to:

Laura Moody
Chief Legal Counsel
Brevard County SHERIFF's Office
340 Gus Hipp Blvd.
Rockledge, FL 32955

- 13. No Third Party Rights:** This Agreement is for the benefit of the PARTIES. No other person is intended to be a beneficiary under this Agreement. No employee of the PARTIES shall derive any property right in his/her employment not otherwise enjoyed by such employee, by virtue of this Agreement.
- 14. Authority:** The Parties acknowledge that, by the signing of this Agreement, they have the right, power, legal capacity, and authority to enter into, and perform their respective obligations under this Agreement, and no approvals or consents of any persons other than the Parties are necessary in connection with this Agreement.
- 15. Assignment:** The Parties shall not assign nor transfer their respective obligations under this Agreement, but this Agreement shall continue in full force and effect notwithstanding the election or appointment of a SHERIFF who succeeds the SHERIFF in office; a Board of County Commissioners that succeeds the current Board; or a Board of Trustees that succeeds the current Board. This Agreement shall be binding on the Parties' respective successors.
- 16. Severability:** To the extent that any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deleted from this Agreement, and the validity and enforceability of the remainder of such provision, if any, and of this Agreement shall be unaffected.

17. **Counterparts:** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
18. **Confidentiality:** The Parties acknowledge that many of their communications and documentation pertaining to this Agreement may contain sensitive security information that is confidential and exempt from public records disclosure requirements in accordance with Section 281.301, Florida Statutes, and Section 119.071(3), Florida Statutes. Each Party acknowledges and agrees that it will comply with all aspects of Florida law relative to this Agreement, including, but not limited to, the provisions of Chapters 119 and 281, Florida Statutes, pertaining to security systems / features, personnel schedules, duties, assignments, security personnel numbers, plans, records and meetings that may be exempt from public access or disclosure.
19. **Filing of Copy of this Agreement:** In accordance with the provisions of Section 163.01(11), Florida Statutes, the SHERIFF shall file an original of this fully executed Agreement with the Clerk of the Circuit Court in and for Brevard County, Florida.
20. **Public Records:**

IF PARTIES HAVE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119 AND 281, FLORIDA STATUTES, TO THEIR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS MOU, THEY SHALL CONTACT THE SHERIFF'S CUSTODIAN OF RECORDS (CURRENTLY SUPERVISOR CORRINE MANLEY) AT 321-264-5214, RECORDS@BCSO.US, BREVARD COUNTY SHERIFF'S OFFICE, ATTENTION: RECORDS, 700 PARK AVENUE, TITUSVILLE, FLORIDA 32780; EFSC'S CUSTODIAN OF RECORDS AT 321-433-7070 PUBLIC.RECORDS@EASTERNFLORIDA.EDU, EASTERN FLORIDA STATE COLLEGE OFFICE OF HUMAN RESOURCES, COCOA CAMPUS, BLDG. 2, RM. 103, 1519 CLEARLAKE RD, COCOA, FL 32922; OR BREVARD COUNTY'S PUBLIC RECORDS REQUEST COORDINATOR AT (321) 633-2071, OR BY EMAILING YOUR REQUEST TO [PUBLICRECORDSREQUEST @ BREVARDFL.GOV](mailto:PUBLICRECORDSREQUEST@BREVARDFL.GOV).

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