

SCHOOLS SURVEILLANCE CAMERA SYSTEM
ACCESS AGREEMENT

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

CITY OF MARGATE, FLORIDA

(hereinafter referred to as "CITY"),
a municipal corporation of the State of Florida,
whose principal place of business is
Margate Public Safety Department
5790 Margate Boulevard
Margate, Florida 33063

WHEREAS, SBBC operates all public district schools located in Broward County, Florida; and

WHEREAS, CITY desires its police personnel to have access to real-time (live) video feeds and recorded video feeds from SBBC's surveillance cameras when active circumstances at a public district school or facility present an immediate need for law enforcement or fire safety personnel to respond to that school or facility to protect the health or safety of district school students, SBBC personnel or SBBC property.

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 - 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 3.05 of this Agreement, the term of this Agreement shall commence upon execution of both parties and conclude on September 30, 2022.

2.02 **Confidential and Exempt Security and Safety Plan Information.** CITY acknowledges that SBBC's video security monitor images depict the internal layout and structural elements of SBBC's buildings or other structures owned or operated by SBBC and are exempt from Section 119.07(1) and s. 24(a), Article I of the State Constitution [the provisions commonly referred to as the public records laws] pursuant to Section 119.071(3), Florida Statutes. In addition, such security video monitor images constitute information relating to the security systems for property owned or leased by a political subdivision of the State of Florida and, pursuant to Section 281.301(1), Florida Statutes, are confidential and exempt from ss. 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure. Section 119.071(3)(a)3c and (b)3a and Section 281.301(2)(c), Florida Statutes, permit SBBC to disclose such confidential and/or exempt information to CITY in furtherance of CITY police personnel official duties and responsibilities. Pursuant to Section 119.0701, Florida Statutes, CITY shall keep and maintain confidential and exempt all such information provided to them under applicable law. CITY agrees not to release such information or to disclose their contents to anyone other than an employee of CITY that requires access to such information in furtherance of their official duties, unless such information is required to be released by applicable law or order of a court of competent jurisdictions and unless SBBC is first notified by CITY of the information's intended release. Any failure by CITY to maintain the confidential and exempt nature of such information shall constitute a material breach of this Agreement.

2.02.1 **SBBC Ownership and Required Retention of Recorded Video Images.** CITY acknowledges that SBBC is a political subdivision of the State of Florida and is subject to that state's public records laws and record retention requirements. CITY further acknowledges that any and all original recordings of video security images captured through use of SBBC's video security cameras as well as any equipment within which such images are recorded are the property of SBBC. Such video images may not be removed from SBBC's property except pursuant to a subpoena, court order or search warrant in which case SBBC will be allowed to make a copy of such images to serve as SBBC's record copy for record retention requirements under applicable law.

2.03 **Access to Recorded Video Images Not Involving an Emergency.** Video images recorded through use of SBBC's security video cameras may be considered a confidential and exempt "education record" pursuant to Sections 1002.22(2) and 1002.22191, Florida Statutes; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g, and the federal regulations issued pursuant thereto. CITY police personnel shall be granted sole access to recorded video images. When CITY police personnel desire access to recorded images from SBBC's security video cameras as part of their law enforcement responsibilities not involving an emergency, as defined in 2.04.1, they shall make a request for such recorded images to SBBC's law enforcement unit [hereinafter referred to as "SIU"]. SIU will submit any such request to SBBC's Office of the General Counsel to determine any applicable procedures, restrictions or limitations that are applicable to the requested images. Such requests by CITY police personnel may require issuance of a subpoena or an order from a court of competent jurisdiction.

2.04 Viewing of Real-Time (Live) Video Feeds and Recorded Videos/Images During an Emergency. The parties acknowledge and agree that viewing of real-time (live) video feeds from SBBC security cameras by CITY police personnel during an emergency situation is not considered access to an “education record” as defined under state or federal law. The parties also acknowledge that any recorded videos/images [as contrasted to real-time (live) video feeds] may constitute an “education record” and be confidential and exempt pursuant to Sections 1002.22(2) and 1002.221(1), Florida Statutes; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g, and the federal regulations issued pursuant thereto. The parties further agree and acknowledge that CITY police personnel viewing of real-time (live) video feeds and/or recorded videos/images received from SBBC’s security video cameras will be limited to specific circumstances, described in this Agreement, which are necessary to protect the health or safety of students or individuals on or around SBBC property. SBBC will designate a person authorized to make decisions on its behalf about whether any recorded videos/images constitute an education record and whether access to real-time (live) video feeds and/or recorded videos/images will be permitted in any particular instance.

2.04.1 Emergency Circumstances Authorizing Real-Time (Live) and Recorded Video Access. CITY police personnel shall be permitted to view, through remote access, real-time (live) video feeds during emergency circumstances as described in this Agreement. In addition, CITY police personnel shall be permitted to view, play back, fast forward and fast back images and videos recorded on SBBC security cameras during time periods prior to CITY police personnel receiving information that an emergency circumstance exists when such recorded images/videos are not education records and their viewing is necessary to assist CITY police personnel in making a law enforcement response to the emergency circumstance. Emergency circumstances shall include:

- a) When SBBC administration has declared an elevated threat level at a district school or facility;
- b) When CITY police personnel has received information that a life-threatening incident exists on or immediately near the grounds of a district school or facility;
- c) When CITY police personnel or another law enforcement agency having jurisdiction or participating under an applicable mutual aid agreement is notified of a life-threatening incident occurring on or immediately near SBBC grounds of a district school or facility that requires a law enforcement response;
- d) When CITY police personnel or another fire safety agency having jurisdiction or participating under an applicable mutual aid agreement is notified of a life-threatening incident occurring on or immediately near SBBC grounds of a district school or facility that requires a fire safety response;
- e) When CITY police personnel determines it is necessary in order to protect the health or safety of district school student(s), SBBC personnel, or other individuals on or immediately near the grounds of a district school or facility;
- f) When CITY police personnel determines it is necessary in order to protect SBBC grounds of a district school or facility;
- g) For routine maintenance solely to verify operability and functionality of cameras and recording devices including the confirmation of the locations of designated cameras at a particular district school or facility; or

h) For training of appropriate CITY police personnel.

2.04.2 **General Surveillance Prohibited.** CITY police personnel acknowledge that the limited access granted to them under this Agreement to SBBC's security video cameras and images/videos captured using such equipment does not authorize them to conduct general surveillance of SBBC grounds of a district school or facility unrelated to a specific law enforcement purpose as specified in Section 2.04.1 of this Agreement.

2.04.3 **SBBC Access to Remote Viewing Site:** CITY police personnel shall permit SBBC's designated personnel access to the remote location at which they will be afforded real-time access to SBBC's security cameras and images/video recordings. Such access shall only be conducted during the CITY 's normal business hours and shall be permitted within two (2) business days of SBBC's request for access, in accordance with the policies and procedures of the City Police Department.

2.04.4 **Limited Authority to Capture Video Screen Shots and Recorded Video Images.** CITY police personnel acknowledge that the video access authorized by this Agreement is expressly restricted to viewing real-time (live) video access and recorded images/video recordings as authorized in Section 2.04.1 of this Agreement. They further acknowledge that they shall make no recordings of real-time (live) video images or of images/videos recording using SBBC's security cameras except as expressly authorized within this Agreement. Notwithstanding Section 2.04.1 of this Agreement, CITY police personnel are permitted to make screen shots, record video, and tag video capturing the images of persons or locations of interest that appear through the real-time (live) video access feeds or images/videos recorded from such feeds to the extent necessary to assist law enforcement personnel to respond to any of the emergency circumstances specified in Section 2.04.1 of this Agreement. However CITY police personnel acknowledge that they may not make any screen shots or video recordings from the cameras when those video feeds are accessed for training purposes or routine maintenance. CITY police personnel agree that any of their personnel who makes any use of SBBC's security video feeds other than as permitted by this Agreement shall be subject to discipline in accordance with CITY police personnel policies and procedures.

2.05 **Confidentiality of Education Records.** Notwithstanding any provision to the contrary within this Agreement, to the extent that CITY police personnel receive access to "education records" as defined by applicable state and federal law, they shall:

2.05.1 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; and

2.05.2 notify SBBC immediately by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com, upon discovery of a breach of confidentiality of education records 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; and

2.05.3 prepare and distribute, at CITY'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 CITY police personnel have been determined to be the source of the breach; and

2.05.4 be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law when CITY police personnel have been determined to be the source of the breach; and

2.05.5 provide SBBC with the name and contact information of CITY police employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records when CITY police personnel have been determined to be the source of the breach; and

2.05.6 securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

2.06 **Ownership of Education Records.** To the extent that CITY police personnel receive any original education records from SBBC, SBBC shall be entitled to retain a record copy of such original education records and such original education records shall remain the property of SBBC unless such records are held as evidence. If any education record is held in evidence, CITY police personnel shall be allowed to store a digital copy of any evidence in its secured digital evidence storage program for evidence preservation purposes and SBBC shall be entitled to possess and retain a copy of such education record in fulfillment of its duties as a public agency to retain public records in compliance with applicable law. Upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

2.07 **Audit of CITY Police Personnel Access to SBBC Security Video Images.** CITY police personnel access and use of real-time (live) video feeds and recorded images/videos from SBBC security cameras is subject to audit by SBBC. CITY police personnel will provide SBBC's designated personnel with the following detailed information on a monthly basis:

2.07.1 The identity of each user authorized by CITY police personnel to log into and gain access to SBBC's security video feeds and/or recorded images/videos; and

2.07.2 The identity of each CITY police personnel user who logged into and gained access to SBBC's security video feeds and/or recorded images/videos over the past month; and

2.07.3 The emergency circumstances under Section 2.04.1 of this Agreement in each instance in which access was had to SBBC's security video feeds and/or recorded images/videos which authorized each CITY police personnel user to have such access; and

2.07.4 The location of each district school or facility at which CITY police personnel users accessed SBBC security video feeds and/or recorded images/videos; and

2.07.5 The date, time of access, and duration of access by CITY police personnel users to SBBC security video feeds and/or recorded images/videos; and

2.07.6 The names of the CITY police personnel or other law enforcement or fire safety personnel who viewed SBBC security video feeds and/or recorded images/videos.

2.08 **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 – Special Investigative Unit
The School Board of Broward County, Florida
7720 West Oakland Park Boulevard
Sunrise, Florida 33351

To CITY: Jonathan Shaw, Chief of Police
Margate Police Department
5790 Margate Boulevard
Margate, Florida 33063

With a Copy to: Janette M. Smith, City Attorney
City of Margate
5790 Margate Boulevard
Margate, Florida 33063

2.09 **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 the other party 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.

2.10 **Indemnification.** Each party shall each be individually and separately liable and responsible for the actions of its respective officers, agents and employees on the performance of their respective obligations under this Agreement. Both parties shall be entitled at all times to the benefits of sovereign immunity as provided in Section 768.28, Florida Statutes, and common law. Nothing contained in this Agreement shall be construed as a waiver of sovereign immunity.

2.11 **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.

2.12 **Annual Appropriation.** The performance and obligations of the parties under this Agreement shall be contingent upon an annual budgetary appropriation by their 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 matter arising out of any Agreement.

3.03 **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.

3.04 **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) 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 3.05.

3.05 **Termination.** This Agreement may be canceled with or without cause by either party during the term hereof upon thirty (30) calendar days written notice to the other parties of its desire to terminate this Agreement.

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

3.07 **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.

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

3.09 **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.

3.10 **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.

3.11 **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.

3.12 **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.

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 **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.

3.15 **SBBC 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.

3.16 **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.

3.17 **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 hereto have made and executed this Agreement on the date first above written.

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

FOR CITY

(Municipal Seal)

CITY OF MARGATE, FLORIDA

CITY CLERK

By _____
MAYOR

Approved as to Form:

CITY ATTORNEY

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ on behalf of the City of Margate, Florida. He/She is personally known to me or produced _____ as identification and did/did not first take an oath.

Type of Identification

My Commission Expires:

Signature – Notary Public

(SEAL)

Printed Name of Notary

Notary's Commission No