

KNOX BOX AGREEMENT

THIS AGREEMENT is made and entered unto as of this _____ day of _____, 2020 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 “AGENCY”),
a municipal corporation whose principal place of business is
5790 Margate Boulevard
Margate, Florida 33063

WHEREAS, SBBC desires to make facility keys available to law enforcement and fire safety officials having jurisdiction over the locations of SBBC facilities; and

WHEREAS, having prompt access to such facility keys may become necessary in order for Agency to properly and timely perform its duties at an SBBC location if SBBC personnel are not present or cannot safely accompany the Agency’s personnel when responding to an emergency or exigent circumstances.

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 its execution by all parties and shall conclude on June 30, 2030.

2.02 **Ownership and Control of SBBC Facility Knox Boxes.** SBBC’s Chief Fire Official or eligible designee is the Authority Having Jurisdiction (“AHJ”) pursuant to Section 1037.371 and the National Fire Protection Association code with the exclusive authority to make

decisions regarding the installation of, access to and usage of any Knox Boxes upon SBBC property. At its sole cost and expense, SBBC has installed or will install Knox Boxes (“SBBC Knox Box”) containing five (5) sets of facility keys (“SBBC Facility Keys”) with tin tags clearly labeled 1 through 5 affixed to each set at the SBBC facilities specified on Attachment “A” in order to make SBBC Facility Keys available to Agency’s personnel when responding to emergencies or other exigent circumstances at such SBBC facilities. SBBC shall issue the number of SBBC Knox Box keys requested by Agency at no charge to Agency. SBBC Knox Boxes, the keys thereto, and the SBBC Facility Keys within such SBBC Knox Boxes shall remain the property of SBBC.

2.03 **Agency Access to SBBC Facility Knox Boxes.** The SBBC Facility Knox Box shall only be accessed by Knox Box keys issued by SBBC or Knox Box keys that are already in possession of Agency as of the date this Agreement is entered into. SBBC shall issue the number of Knox Box keys requested by Agency. The Agency agrees that SBBC Facility Keys stored within an SBBC Knox Box shall only be accessed and removed by Agency personnel under the following circumstances:

- a) when the Agency’s law enforcement personnel are responding to a situation in which a potentially imminent threat exists to persons or property at the SBBC facility;
- b) when the Agency’s fire/safety personnel are responding to a fire alarm or medical emergency; or
- c) when circumstances at the site will not allow SBBC personnel at the SBBC facility to timely or safely accompany Agency’s personnel when performing their official duties.

Prior to departing the SBBC facility, the Agency’s personnel shall return to the SBBC Knox Box any and all SBBC Facility Keys that have been removed by Agency’s personnel. The Agency acknowledges that only SBBC authorized personnel and the Agency will have SBBC Knox Box keys for any school within Agency’s jurisdiction. Agency personnel will promptly return any and all SBBC Facility Keys to their SBBC Knox Box upon completion by Agency personnel of their duties at the SBBC facility.

In the event that SBBC personnel access an SBBC Knox Box and remove any SBBC Facility Keys, SBBC agrees that such SBBC personnel will promptly return any and all SBBC Facility Keys to that SBBC Knox Box upon completion by SBBC personnel of their duties at the SBBC facility that required removal and use of such SBBC Facility Keys.

2.04 **Reporting Knox Box Access.** In the event that either Party has a need to remove SBBC Facility Keys from an SBBC Knox Box for a non-emergency event that Party agrees to call and report such access via telephone at 754-321-3500 and via email at SSEPDSOC@browardschools.com before accessing the SBBC Knox Box. In the event that either Party accesses an SBBC Knox Box for an emergency event, that Party agrees to call and report such access via telephone at 754-321-3500 and via email at SSEPDSOC@browardschools.com as soon as reasonably possible following any instance in which it was necessary for that Party’s personnel to access SBBC Facility Keys stored in the SBBC Knox Box.

2.05 **Audit of SBBC Facility Keys.** Following any access and removal of SBBC Facility Keys from an SBBC Knox Box by either Party, the facility's SBBC Knox Box will be promptly inspected and audited by a designee of SBBC and a designee of Agency (collectively "Audit Personnel") who shall conduct an inventory of the SBBC Facility Keys in the SBBC Knox Box.

2.06 **Agency Replacement of Unreturned Keys.** In the event that the Audit Personnel determine that any SBBC Facility Keys were not returned to an SBBC Knox Box after their use, such Audit Personnel will make a reasonable inquiry to determine which Party last accessed the SBBC Knox Box. The Audit Personnel shall notify the Party that last accessed the SBBC Knox Box and request the return of the missing SBBC Facility Keys within seventy-two (72) hours of such notification so they are available for a subsequent emergency or exigent circumstance. If that Party fails to timely return any such missing SBBC Facility Keys after such notification, the Party that failed to return the SBBC Facility Keys shall be responsible for all actual costs relating to re-keying any locks for which such keys will unlock. If that Agency fails to return the missing SBBC Facility Keys to the SBBC Knox Box, SBBC shall invoice the Agency for the actual cost of re-keying. If the Agency disputes any submitted invoice, it must do so in writing within five (5) business days of its receipt after which representatives of SBBC and the Agency will confer within five (5) business days in an attempt to amicably resolve any disputed cost.

2.07 **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 changes 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 Fire Official
The School Board of Broward County, Florida
4200A NW 10th Avenue
Oakland Park, Florida 33309

To Agency: Cale Curtis, City Manager
5790 Margate Boulevard
Margate, Florida 33063

With a Copy to: Jonathan Shaw, Chief of Police
Margate Police Department
5790 Margate Boulevard
Margate, Florida 33063

2.08 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence, or its agents' 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. 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.

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

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 of 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 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.

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

thirty (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar day period and the defaulting Party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting Party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting Party upon thirty (30) calendar days' notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any Party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.05 **Termination**. This Agreement may be canceled with or without cause by any 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, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **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.

3.08 **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.

3.09 **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.

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

3.11 **Assignment**. Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any Party without the prior written consent of the other Party. There

shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.12 **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 affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.13 **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.

3.14 **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.

3.15 **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.

3.16 **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.

3.17 **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.

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

3.19 **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.

3.20 **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.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Donna P. Korn, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

FOR AGENCY

(Municipal Seal)

CITY OF MARGATE, FLORIDA

By: _____
MAYOR

CITY CLERK

DATE

CITY MANAGER

Approved as to Form:

CITY ATTORNEY

DATE

**The Following Notarization is Required for Every Agreement Without Regard to
Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses**

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of
_____, 20____ by _____ of

_____, on behalf of the agency.
Name of Agency

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.

Attachment A to Knox Box Agreement

A. Elementary School

1. Atlantic West
2. Liberty
3. Margate

B. Middle School

1. Margate