

RECIPROCAL USE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____
2020, by and between:

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as “SBBC”),
a political subdivision of the State of Florida
having its principal place of business at
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

THE CITY OF POMPANO BEACH, FLORIDA
(hereinafter referred to as “CITY”)
a municipal corporation of the State of Florida
whose address is
100 West Atlantic Boulevard, Pompano Beach, Florida 33060

WHEREAS, partnerships instill a sense of civic pride and responsibility in students that will last far beyond their educational experience; and

WHEREAS, cities and schools may share resources to support each other’s goals and objectives; and

WHEREAS, this collaboration provides the opportunity to develop a seamless, communication infrastructure between CITY officials, CITY staff and their counterparts in the School District; and

WHEREAS, CITY, as part of its recreation program wishes to provide additional outdoor playground recreation facilities for its citizens; and

WHEREAS, SBBC, as the controlling body of the district schools of Broward County, Florida owns, operates and maintains various facilities throughout the county, including elementary, middle and high schools, vocational sites, training facilities and equipment in the CITY of Pompano Beach suitable for use by CITY in its municipal programs; and

WHEREAS, SBBC wishes to provide additional facilities for its programming; and

WHEREAS, CITY owns, operates and maintains numerous facilities suitable for use by SBBC for its educational, and training programs; and

WHEREAS, CITY and SBBC have determined that entering into numerous agreements for the use of each other’s facilities on a case-by-case basis will result in the expense of additional administrative time and resources; and

WHEREAS, CITY and SBBC believe that a formal agreement providing reciprocal use of each other's facilities will be of mutual benefit to all parties.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, 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 be for a period of five (5) years commencing on July 20, 2020.

2.02 **City Licensed Facilities.**

2.02.1 **Authorized Use of City Licensed Facilities by SBBC.** CITY owns and operates a number of parks and facilities located in the City of Pompano Beach, Florida, which are suitable for use by SBBC for its educational and training programs. The CITY agrees to allow SBBC use of CITY parks and facilities (hereinafter referred to as "City Licensed Facilities") including, but not limited to those described in **Exhibit "A"**, on such days and at such times as are mutually agreed upon by the Recreation Programs Administrator or designee.

2.02.2 **Procedure to Request Use of City Licensed Facilities.** The following procedure shall be followed whenever SBBC desires to use any City Licensed Facilities:

2.02.2.1 SBBC shall submit a Notice of Facility Use form, attached hereto and incorporated herein by reference as **Exhibit "C"**, to the Recreation Programs Administrator or designee for use of City Licensed Facilities a minimum of fifteen (15) calendar days in advance of usage. The Notice of Facility Use form must specify the dates, times and facilities desired, to be used by SBBC and any other special terms and conditions pertaining to such usage not in conflict with this Agreement. The Notice of Facility Use Form may be revised by mutual agreement of the Superintendent of Schools or designee and the Recreation Programs Administrator or designee without a formal amendment of this Agreement.

2.02.2.2 The Recreation Programs Administrator or designee shall determine if the requested use conflicts or interferes with any other usage of the City Licensed Facility within eight (8) calendar days of receipt of the request. If there is no conflict in use and human resources are available, the request will be approved and returned to SBBC. If there is a conflict and the request is denied, SBBC may appeal the denial to the City Manager. The City Manager will determine whether to uphold the denial within seven (7) calendar days of filing of the appeal, and the decision of the City Manager upon such appeal shall be final.

2.02.2.3 Said City Licensed Facilities are to be used by SBBC solely for educational and training purposes which are an integral part of the Public Education Program of Broward County and for no other purpose whatsoever without the prior written consent of the CITY.

2.02.2.4 The use of said City Licensed Facilities by SBBC shall, at all times, comply with the laws of the State of Florida, local laws and CITY's Code of Ordinances. SBBC shall require its instructors, agents, students and invitees to follow all rules and regulations promulgated by CITY.

2.02.3 Maintenance of City Licensed Facilities. CITY shall provide and maintain the parking lot, parking lot lighting, and ingress and egress at all City Licensed Facilities. The CITY shall have the continuing duty to maintain City Licensed Facilities and equipment in a safe condition and to ensure that any unsafe condition or defect in or upon City Licensed Facilities is remedied and/or repaired within a reasonable time of actual or constructive notice of such condition. If in the course of its maintenance and operation, the CITY becomes aware of any dangerous or unsafe condition in or upon City Licensed Facilities or equipment, CITY shall immediately correct the dangerous condition or prevent the use of City Licensed Facilities or equipment by other persons so as not to endanger the life or safety of persons at the Licensed Facilities or equipment. If in the course of SBBC's use and occupancy of City Licensed Facilities or equipment, SBBC becomes aware of any dangerous condition in or upon City Licensed Facilities or equipment, SBBC shall, immediately, notify the CITY Manager or Recreation Programs Administrator or designee of such dangerous or unsafe condition and cease SBBC'S use of City Licensed Facilities or equipment which is unsafe until such time as CITY corrects or remedies the condition. The CITY shall have final determination as to what is deemed "unsafe". If SBBC does not notify the CITY of such dangerous conditions, and CITY is not otherwise aware nor should it have been aware of same, CITY shall not be liable to SBBC, its employees, agents or invitees for loss, personal injury or damage. This paragraph shall not create any rights for any third party to sue the CITY or SBBC, and there shall be no third-party beneficiary.

2.02.4 CITY Access to City Licensed Facilities. CITY and its officers, agents and employees engaged in the operation maintenance or repair of the City Licensed Facilities reserve the right, at any time, to enter upon and have free access to any and all parts of the City Licensed Facilities. CITY shall have the right to observe all operations of SBBC at City Licensed Facilities in regard to ensuring that said facilities are not subjected to risk of loss. City reserves the right to preclude or interrupt any act or use of equipment by SBBC within the reasonable judgment of the CITY Manager or Recreation Programs Administrator or designee of the affected City Licensed Facilities, if it is necessary in the interest of public safety to protect person or property from exposure to risk of injury, death, damage or loss. City shall have the right to inspect any and all parts of City Licensed Facilities and make or cause to be made necessary repairs thereto, to enforce all necessary and proper rules for the management and operation of the premises and to enforce the license obligations hereunder.

2.02.5 SBBC Property on City Licensed Facilities. CITY assumes no responsibility whatsoever for any property placed on its premises by SBBC, its agents, employees, representatives, independent contractors or invitees.

2.02.6 Restrictions on Items Brought onto City Licensed Facilities. SBBC agrees not to bring onto City Licensed Facilities, any material, substances, equipment or objects that are likely to endanger the life or to cause bodily injury to any person or damage to the City Licensed Facilities or which are likely to constitute a hazard to property thereon. CITY shall have the right to refuse to allow any such materials, substances, equipment or objects to be brought onto the City Licensed Facilities and the right to require their immediate removal from the property.

2.02.7 Construction of Improvements. SBBC shall not construct any improvements upon any of Licensed Facilities during the term of this Agreement without prior written consent of CITY. Any improvement constructed upon City Licensed Facilities without prior written approval of the CITY shall be removed or relocated by SBBC within ten (10) days of written demand by CITY. SBBC is authorized to place items of movable personal property onto the City Licensed Facilities for use therein without prior written approval of CITY. If SBBC fails to remove items of moveable personal property upon termination of this Agreement, CITY may remove, and store said items and SBBC shall reimburse CITY for the costs of relocating and storing the items.

2.02.8 Vacation of City Licensed Facilities. Upon vacation of City Licensed Facilities after each use and occupancy, SBBC shall leave said facilities in a condition equal to that at the commencement of that day's usage, ordinary use and wear thereof excepted, and shall remove from the premises all items of movable personal property brought onto the City Licensed Facilities by SBBC.

2.03 SBBC Licensed Facilities.

2.03.1 Authorized Use of SBBC Licensed Facilities by CITY. SBBC owns, operates and maintains various schools and facilities (hereinafter referred to as "SBBC Licensed Facilities") throughout the county, including elementary, middle, high and technical schools sites and training facilities located in and around the CITY of Pompano Beach that may be suitable for use by residents of the CITY of Pompano Beach and the CITY may desire to place its programs, special functions, training programs, such as Pompano Beach Police and/or Fire Department's implementing security training geared toward preparation for school related incidents and community meetings at these sites. SBBC agrees to allow CITY use of SBBC schools and facilities in the CITY of Pompano Beach, including, but not necessarily limited to those described in **Exhibit "B"**, on such days and at such times as are mutually agreed upon by the Superintendent or designee and the Recreation Programs Administrator or designee.

2.03.2 Procedure to Request Use of SBBC Licensed Facilities. The following procedure shall be followed whenever the CITY desires to use any SBBC Licensed Facilities:

2.03.2.1 CITY shall submit a Notice of Facility Use form, attached hereto and incorporated herein by reference as **Exhibit "C"** to the Superintendent or designee for use of SBBC Licensed Facilities a minimum of fifteen (15) calendar days in advance of usage (including training programs by the Pompano Beach Police and/or Fire-Rescue Department). The Notice of Facility Use form must specify the dates, times and facilities to be used by the CITY or its residents and any other special terms and conditions pertaining to such usage not in conflict with this Agreement. The Notice of Facility Use Form may be revised by mutual agreement of

the Superintendent of Schools or designee and the Recreation Programs Administrator or designee without a formal amendment of this Agreement.

2.03.2.2 The Superintendent or designee shall determine if the requested use conflicts or interferes with the regular or extracurricular school program, or with any other prescheduled use of SBBC Licensed Facilities by other parties within eight (8) calendar days of receipt of the request. If there is no conflict in use and human resources are available, the request will be approved and returned to the CITY. If there is a conflict and the request is not approved, the CITY may appeal the denial to SBBC's Director, Service Quality or designee. The Director, Service Quality or designee will determine whether to uphold the denial within seven (7) calendar days of filing of the appeal, and the decision of the Director, Service Quality or designee upon such appeal shall be final.

2.03.2.3 The use of SBBC Licensed Facilities by the CITY shall, at all times be in compliance with the applicable laws of the State of Florida and SBBC policies.

2.03.3 Maintenance of SBBC Licensed Facilities. SBBC shall provide and maintain the parking lot, parking lot lighting and ingress and egress at all SBBC Licensed Facilities. SBBC shall have the continuing duty to maintain SBBC Licensed Facilities and equipment in a safe condition and to ensure that any unsafe condition or defect in or upon SBBC Licensed Facilities and equipment is remedied and/or repaired within a reasonable time of actual or constructive notice of such condition. If in the course of its maintenance and operation, SBBC becomes aware of any dangerous or unsafe condition in or upon SBBC Licensed Facilities or equipment, SBBC shall immediately correct the dangerous condition or prevent the use of the facilities or equipment by other persons so as not to endanger the life or safety of persons at the facility. If in the course of CITY's use and occupancy of SBBC Licensed Facilities or equipment, CITY becomes aware of any dangerous condition in or upon SBBC Licensed Facilities or equipment, CITY shall, as soon as reasonably possible, notify the principal of SBBC Licensed Facilities being utilized, of such dangerous or unsafe condition and cease CITY's use of the facilities or equipment which are unsafe until such time as SBBC corrects or remedies the condition. SBBC shall have final determination as to what is deemed "unsafe". If the CITY does not notify SBBC of such dangerous conditions, and SBBC is not otherwise aware nor should have been aware of same, SBBC shall not be liable to CITY, its employees, agents or invitees for loss, personal injury or damage. This paragraph shall not create any rights for any third party to sue the CITY or SBBC, and there shall be no third-party beneficiary.

2.03.4 SBBC Access to SBBC Licensed Facilities. SBBC and its officers, agents and employees engaged in the operation, maintenance or repair of SBBC Licensed Facilities reserve the right, at any time, to enter upon and have free access to any and all parts of SBBC Licensed Facilities. SBBC shall have the right to observe all operations of CITY at SBBC Licensed Facilities in order to ensure that the facilities are not subjected to risk of loss. SBBC reserves the right to preclude or interrupt any act or use of equipment by CITY within the reasonable judgment of the Superintendent or designee of SBBC Licensed Facilities, if it is necessary in the interest of public safety to protect person or property from exposure to risk of injury, death, damage or loss. SBBC shall have the right to inspect any and all parts of SBBC Licensed Facilities and make or cause to be made necessary repairs thereto, to enforce all necessary

and proper rules for the management and operation of the premises and to enforce the license obligations hereunder.

2.03.5 CITY Property on SBBC Licensed Facilities. SBBC assumes no responsibility whatsoever for any property placed on the premises by CITY, its agents, employees, representatives, independent contractors or invitees.

2.03.6 Restrictions on Items Brought onto SBBC Licensed Facilities. CITY agrees not to bring onto SBBC Licensed Facilities, any material, substances, equipment or objects that are likely to endanger the life or to cause bodily injury to any person or damage to SBBC Licensed Facilities or which are likely to constitute a hazard to property thereon. SBBC shall have the right to refuse to allow any such materials, substances, equipment or objects to be brought onto SBBC Licensed Facilities and the right to require their immediate removal from the property.

2.03.7 Construction of Improvements. CITY shall not construct any improvements upon any of SBBC Licensed Facilities during the term of this Agreement without the prior written consent of SBBC. Any improvement constructed upon SBBC Licensed Facilities without prior written approval of SBBC shall be removed or relocated by CITY within ten (10) days of written demand by SBBC. CITY is authorized to place items of personal property onto the licensed facilities for the use thereon by CITY without prior written approval of SBBC. If CITY fails to remove items of personal property upon termination of this Agreement, SBBC may remove and store said items and CITY shall reimburse SBBC for the costs of relocating and storing the items.

2.03.8 Vacation of SBBC Licensed Facilities. Upon vacation of SBBC Licensed Facilities after each use and occupancy, CITY shall leave SBBC Licensed Facilities in a condition equal to that at the commencement of that day's usage, ordinary use and wear thereof excepted, and shall remove from the premises all items of movable personal property brought onto the SBBC's Licensed Facilities by CITY.

2.03.9 Use of Fixed Kitchen Equipment at SBBC Licensed Facilities. The principal shall require the use of regular food service workers when fixed kitchen equipment on SBBC Licensed Facilities is used for the preparation of food for banquets, etc., and require the organization to pay the cost of the food service worker(s) involved according to the adopted School Food Services salary schedule, including retirement and other fringe benefits. The food service worker shall assist in the preparation serving and clean up.

2.04 Additional SBBC Licensed Facilities.

2.04.1 Identification of Additional SBBC Licensed Facilities. The CITY and SBBC agree to continue to work cooperatively to identify additional school athletic fields and educational facilities available for use by the residents of the CITY of Pompano Beach. The use of additional athletic facilities may be covered by a separate agreement.

2.04.2 Procedure to Request Use of Additional SBBC Licensed Facilities. The following procedure shall be followed whenever the CITY desires to use any additional SBBC Licensed Facilities:

2.04.2.1 The CITY may submit a Notice of Facility Use form (attached hereto and incorporated herein by reference as **Exhibit “C”**) to the Superintendent of Schools or designee (e.g. school principal) for the use or enjoyment of additional school facilities, outside the CITY limits, a minimum of thirty (30) calendar days in advance of usage.

2.04.2.2 The Superintendent of Schools or designee shall determine if the requested use conflicts or interferes with any other usage of the proposed additional SBBC Licensed Facility and approve or deny the requested use within fifteen (15) calendar days of receipt of the request. If there is no conflict in use and human resources are available, the request will be approved and returned to the CITY. If there is a conflict and the request is not approved, the CITY may appeal the denial to SBBC’s Director, Service Quality or designee. The Director, Service Quality or designee will determine whether to uphold the denial within fifteen (15) calendar days of filing of the appeal, and the decision of the Director, Service Quality or designee upon such appeal shall be final. In the event of a scheduling conflict, priority will be given first to SBBC functions and second to the municipality in which the proposed school is located.

2.05 Accessibility to CITY or SBBC Licensed Facilities and Fees for the Facilities.

The CITY and SBBC (collectively, the “Parties”) agree to waive any and all rental fees. CITY/SBBC agrees to waive any and all energy fees (excluding during use for summer programs). The CITY or SBBC will reimburse the other party for any costs that CITY or SBBC incurs only as a result of the use of CITY or SBBC Licensed Facilities by the CITY or SBBC. These reimbursable costs shall be limited to custodial costs to address the operational impact of the event, energy assessment costs only during use for summer programs, personnel costs for providing access to the facility during non-operational hours, and personnel costs for school security. No personnel costs will be assessed for providing access to the facility during non-operational hours when an authorized CITY or SBBC employee and/or employee volunteer provide such access. CITY and SBBC employees and/or employee volunteers may not remain at CITY or SBBC Licensed Facilities after providing access to the facility during non-operational hours. In such cases when the CITY or SBBC is permitted unsupervised use of a CITY or SBBC Licensed Facilities, the CITY or SBBC will ensure that an agent of the CITY or SBBC is present during the event to provide appropriate supervision of all activities and that such agent remains on-site until relieved by an authorized CITY or SBBC employee and/or employee volunteer. The CITY or SBBC will clean up after every use and will return the Licensed Facilities to its clean, sanitary and free from trash and debris state prior to utilization by the CITY or SBBC. However, if the CITY or SBBC does not clean up after every use, then custodial costs will apply. If custodial costs apply, the custodial fee will be \$176.00 for a four (4) hour daily minimum, and \$44.00 each additional hour. If additional CITY or SBBC personnel are needed for CITY or SBBC event the cost will be \$44.00 per hour. Energy costs will only be assessed for CITY’s use of SBBC Licensed Facilities for their summer programs with each energy bill charged to the CITY being reduced by twenty percent (20%). Therefore, the CITY shall only pay eighty percent (80%) of the total assessed energy bill at twenty-four dollars per hour (\$24.00). The CITY will be responsible for consumable items costs for the CITY events with thirty-one (31) or more people attending a function. For 31-100 people expected at a function CITY will pay \$5.00 per day; for 101-200 people expected at a function \$10.00 per day; and \$5.00 additional per day for each additional 100 people expected, or part thereafter. Fees reflected herein may change due to cost escalation (as cited on the fee

schedule in SBBC Policy 1341 as of the effective date of this agreement and both parties will refer to SBBC Policy 1341 for fee increases) during the term of this agreement. If such happens the CITY or SBBC will communicate in writing such fee increases in a timely manner and such fees will become the effective fees and will be charged. CITY or SBBC will ensure the CITY or SBBC is provided with information regarding 24-hour emergency notification and access protocol at the time of the authorization of unsupervised access to CITY or SBBC Licensed Facilities to ensure the appropriate emergency procedures and agreed upon special terms and conditions are followed. All costs that are the responsibility of the CITY or SBBC shall be paid within 30 days of receipt of an invoice from CITY or SBBC. There will be no cost charged to the CITY by SBBC for training programs conducted by the Pompano Beach Police and/or Fire-Rescue Departments when such training is designed to enhance the CITY's response to incidents at SBBC's schools and facilitates. As cited above, if the CITY does not clean up after every use and return the Licensed Facilities to its clean, sanitary and free from trash and debris state prior to utilization by the Pompano Beach Police and/or Fire-Rescue Departments, then custodial costs will apply.

2.06 **Additional Services at CITY or SBBC Licensed Facilities.** The cost for additional services, i.e., security, law enforcement, personnel, etc., for events at CITY or SBBC Licensed Facilities shall be mutually agreed upon by the parties prior to the scheduled events. Such agreement shall be reduced to writing in the respective Facility Use Form, with services and costs mutually agreed upon by the Superintendent or designee and the Recreation Programs Administrator or designee.

2.07 **Insurance.** Upon execution of this Reciprocal Use Agreement, each party shall submit to the other, copies of its certificate(s) of insurance or self-insurance evidencing the required coverage.

2.08 **Required Insurance Coverages.** Each party acknowledges without waiving its right of sovereign immunity as provided by Section 768.28 Florida Statutes, that each party is self-insured for general liability under Florida Statutes with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary wavier limits that may change and be set forth by the legislature.

2.08.1 Each party shall keep in effect during the full term of the Agreement, self-insurance under a Risk Management Program in accordance with Section 768.28 Florida Statutes, for General and Automobile Liability.

2.08.2 Self-insured worker's Compensation Insurance with Florida statutory benefits in accordance with Chapter 440, Florida Statutes, including Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

2.08.3 Fire Legal Liability damage to Rented Premises with limits of \$500,000 per occurrence/aggregate as a condition for the reduced limit of insurance. The CITY is not permitted to utilize stoves, ovens, microwave ovens, hotplates or any devices which have the potential to cause a fire on SBBC Property. SBBC grants permission for the CITY's vendor to utilize catering warmers during the summer program. The CITY's vendor will be required to name "The School Board of Broward County, Florida, its officers, employees and agents" as additional

insured with respect to liability on behalf of the vendor. The general liability policy will be primary of all other valid and collectible coverage maintained by the School Board of Broward County, Florida.

2.08.4 Self-insurance and/or insurance requirements shall not relieve or limit the liability of either party, except to the extent provided by Section 768.28, Florida Statutes. Both parties reserve the right to require other insurance coverage that both parties deem mutually necessary depending upon the risk of loss and exposure to liability, subject to each party's Commission or Board approval, if necessary.

2.08.5 Violations of the terms of this section and its subparts shall constitute a material breach of the Agreement and the non-breaching party may, at its sole discretion, cancel the Agreement and all rights, title and interest shall thereupon cease and terminate.

2.08.6 Required conditions; self-insurance and/or liability policies must contain the following provisions. In addition, the following wording in section 2.08.6.1 below must be included in the Certificate of Insurance's description of operations:

2.08.6.1 City shall provide evidence of insurance in the form of a Certificate of Liability or self-insured letter and show The School Board of Broward County, Florida 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301 as the Certificate Holder.

2.08.7 No activities under this Agreement shall commence until the required proof of self-insurance and/or certificates of insurance have been received and approved by the Risk Managers of each party.

2.09 **Protection of Public Safety.** Each party specifically reserves the right, through its representatives, to eject any person(s) behaving in an objectionable manner from its own facilities or facilities of the other it may be using, and upon the exercise of this authority, each party hereby waives any right and all claims for damages against the other, as a result of the ejection, whether directly or through any of its agents or employees.

2.10 **License not Lease.** This Agreement shall not be deemed to be a lease of any facilities, the use of which is permitted hereunder, but rather a license to use and occupy the respective premises under the terms and conditions stated herein. No leasehold interest in either City Licensed Facilities or SBBC Licensed Facilities is conferred to the using party under the provisions hereof.

2.11 **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: Director, Facility Planning & Real Estate Department
School Board of Broward County, Florida
600 Southeast Third Avenue - 8th Floor
Fort Lauderdale, Florida 33301

To CITY: Recreation Programs Administrator
City of Pompano Beach
1801 N.E. 6th Street
Pompano Beach, Florida 33060

With a Copy to: City Attorney
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

2.12 **Background Screening:** CITY and SBBC agree to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to city parks and school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of city/school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by CITY or SBBC in advance of CITY or SBBC or its personnel providing any services under the conditions described in the previous sentence. CITY or SBBC shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to CITY or SBBC and its personnel. The parties agree that the failure of CITY or SBBC to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling CITY or SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, CITY or SBBC agrees to indemnify and hold harmless CITY or SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in CITY's/SBBC's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or CITY of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.13 **Indemnification.** To the extent permitted by law, CITY and SBBC each agree to indemnify, defend and hold the other, including their officers, agents and employees, harmless from and against any and all claims, damages, losses, liabilities, causes of action of any kind or nature whatsoever arising out of or because of the use and occupancy of any facilities licensed hereunder, providing that if such claim, damage, loss, liability or cause of action is due to the joint or concurrent negligence of the indemnitor and the indemnitee, their respective responsibilities

hereunder shall be in the same proportion that the negligent acts or omissions of each contributes thereto. This indemnification shall not be limited to the amount of comprehensive general liability insurance that each party is required to provide under this Agreement. Each party reserves the right to select its own counsel in any such proceeding and all costs and fees associated therewith shall be the responsibility of the indemnitor under this indemnification agreement. Compliance with the foregoing shall not relieve the indemnitor of any liability or other obligation under this Agreement. Nothing contained herein is intended nor shall be construed to waive any party's rights, immunities or limits to liability existing under the common law or Section 768.28, Florida Statutes.

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 contract.

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 CITY or the CITY's officers, employees, agents, subcontractors or assignees. No right to CITY retirement, leave benefits or any other benefits of CITY employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. CITY shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for SBBC or SBBC's officers, employees, agents, subcontractors or assignees.

3.04 **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.

3.05 **Termination.** This Agreement may be canceled with or without cause by either party during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

The CITY shall have no liability for any property left on CITY's property by any party to this Agreement after the termination of this Agreement. Any party contracting with CITY under this Agreement agrees that any of its property placed upon CITY's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon CITY's facilities after that time shall be deemed to be abandoned, title to such property shall pass to the CITY, and CITY may use or dispose of such property as CITY deems fit and appropriate.

3.06 **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) 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) days written 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.

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

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, CITY and SBBC are 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 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 the other party all public records in that party's possession upon termination of its contract 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.

3.10 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **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.

3.12 **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.

3.13 **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 to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **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.

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

3.16 **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.

3.17 **Incorporation by Reference.** Exhibits “A”, “B” and “C” attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference. In the event of any conflict or inconsistency between this Agreement and the provisions in the incorporated Exhibits, the terms of this Agreement shall supersede and prevail over the terms in the Exhibits.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **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.

3.20 **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 express 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.

3.21 **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.

3.22 **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.

3.23 **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, epidemics, pandemics, government regulations, and the issuance or extension of existing government orders of the United States, the State of Florida, or local county and municipal governing bodies, 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. In the event any of the licensed facilities, or any part thereof, shall be destroyed by fire or any other cause, or if any other casualty or any unforeseen occurrence shall render the fulfillment of this Agreement by either party impossible, then and thereupon, this Agreement shall be modified to exclude the use of the damaged licensed facility until such time as the owning party, at its discretion, returns the facility to an operable condition.

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

3.25 **Contract 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.

3.26 **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.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have each executed this Agreement for reciprocal use of facilities on the dates indicated below.

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

“CITY”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

(SEAL)

ASCELETA HAMMOND
CITY CLERK

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this _____ day of _____, 2020, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number