

RESOLUTION 2023 - 12

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH SAFE HAVEN BABY BOXES; AND FOR OTHER PURPOSES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEARCY, TO-WIT:

WHEREAS, the City Council of the City of Searcy wishes to move forward purchase of Baby Box from Safe Haven Baby Boxes; and

WHEREAS, the City Council also wish to express gratitude for the charitable contribution from a certain citizen of Searcy, Arkansas to fund 100% of the purchase cost and annual service fee.

NOW, THEREFORE, be it resolved by the City Council of the City of Searcy, Arkansas, to-wit:

Section 1. That the Mayor is authorized to execute any agreements necessary to facilitate the receipt and installation of a Baby Box and to facilitate the voluntary payment from a citizen to Safe Haven Baby Box.

PASSED AND ADOPTED this 14th day of March, 2023

/s/ Mat Faulkner
Mayor of Searcy

ATTEST:

/s/ Jerry Morris
City Clerk

LEASE AND SERVICE AGREEMENT

THIS LEASE AND SERVICE AGREEMENT (“Agreement”) is made and entered into effect as of _____, 202_ by and between Safe Haven Baby Boxes, Inc., an Indiana nonprofit corporation, (“SHBB”) and the _____ (“Provider”).

RECITALS

WHEREAS, SHBB is a nonprofit educational organization that provides information and services related to child welfare, safe haven laws, initiation and implementation of newborn safety devices (“Safety Device”) (as that term is defined under Arkansas law), and awareness related to preventing child abandonment.

WHEREAS, Arkansas Code §9-34-202, *et al* (the “Safe Haven Laws”), provides certain protections to local fire departments that install a newborn safety device (the “Safety Device”);

WHEREAS, Provider desires to install a Safety Device on Provider’s premises pursuant to the Safe Haven Laws; and

WHEREAS, SHBB is agreeable to placing a Safety Device to the Provider’s premises and undertaking certain services in relation thereto;

WHEREAS, Provider has consulted its legal, financial and insurance related advisors and has confirmed that its location and operation is acceptable under the laws and regulations of its jurisdiction for the placement of a Safety Device.

NOW, THEREFORE, for and in consideration of the mutual terms and premises contained herein and for other good and valuable consideration, the parties agree as follows:

Section 1. Installation. SHBB shall provide to Provider one (1) Safety Device for installation by Provider on the premises of Provider. SHBB has the option at any time to oversee the installation of the Safety Device and advise as to installation on the appropriate placement to maximize awareness and implementation of its educational objectives as set forth in this Agreement. SHBB and Provider agree to cooperate with respect to the appropriate third-party contractors for the placement of the Safety Device and to ensure that such third-party has the appropriate skill and knowledge for constructing improvements to Provider’s facility. Provider is to pay for all installation costs and expenses for labor and/or materials. Provider is responsible for compliance with all applicable federal, state, and municipal or local laws, rules, and regulations and all laws, rules, and regulations pertaining to permitting requirements for the installation of the Safety Device. Provider agrees to abide by the policies and procedures for installation as outlined in Exhibit “A” (the “Policies and Procedures”) of this Agreement, which is hereby made a substantive part of this Agreement by reference.

Section 2. Services by SHBB. SHBB shall provide annual services related to the performance of this Agreement. Such services shall include: (1) providing educational materials to Provider and policies and procedures relating to the maintenance of the Safety Device to Provider; (2) operating a toll-free phone number for the general public to utilize in emergency situations involving abandoned children or issues related thereto; (3) educating emergency services personnel related to the use of the Safety Device; (4) providing educational information to the general public regarding the location and awareness of the Safety Device at the Provider’s facility as well as other educational resources related to child welfare advocacy and safe haven law awareness; (5) provide at minimum annual inspection and maintenance on the Safety

Device; and (6) Will exclusively repair or replace parts if/when the Safety Device is malfunctioning at expense of Provider as set forth under Section 4 of this Agreement and as otherwise provided in this Agreement (collectively the "Services").

Section 3. Lease and Service Term. The term of this Agreement shall be for five (5) years ("Term") and shall renew for successive five (5) year terms upon the mutual agreement of terms, fees, and conditions or unless terminated in accordance with Section 9, below or as otherwise agreed to by the parties

Section 4. Consideration. In consideration for leasing the Safety Device and providing the Services described under Sections 1 and 2 above, Provider agrees to pay SHBB an initial fee of Eleven Thousand and 00/100 Dollars (\$11,000.00), unless otherwise agreed to by the Parties under Section 3 of this Agreement. Additionally, Provider shall pay an annual fee of Three Hundred and 00/100 Dollars (\$300.00) and other associated expenses as determined from time to time by SHBB on January 1 of every year that this Agreement is in force. The foregoing fees and expenses include but are not limited to the services and expenses listed in the Services, Fees, and Expenses Schedule attached hereto as Exhibit "B".

Section 5. Obligations of Provider. In addition to any and all other obligations of the Provider set forth herein, Provider agrees to follow all policies and procedures provided by SHBB which may change from time to time without prior Notice to Provider. Such policies and procedures are included as Exhibit A to this Agreement and, by way of Provider's signature hereto, shall evidence Provider's acknowledgement and receipt thereof. Provider agrees to maintain the Safety Device in good working order, the costs of which are to be borne by Provider. Provider agrees to not change, add to, subtract from, alter, rebrand, or otherwise modify the Safety Device and accompanying signage as set forth in Exhibit A in any manner whatsoever without the prior written approval of SHBB. Provider agrees to use best efforts to prevent any third parties from adding to, subtracting from, altering, rebranding, or otherwise modifying the Safety Device and accompanying materials/signage as set forth in Exhibit A in any manner whatsoever without prior written approval by SHBB. Provider agrees to immediately notify SHBB of any modification to the Safety Device, if the alarm/security system is disconnected, or any and all damages, unapproved modifications, unproved repairs and/or malfunctions of/to the Safety Device. Provider agrees to accept complete liability for any and all unapproved modifications to the Safety Device and any and all unapproved modifications to accompanying parts of the Safety Device, including required signage/materials. Provider agrees to accept complete liability for modifications to the Safety Device which are the result of: its own actions, omissions, and/or failure to use best efforts to maintain the Safety Device in good working order or best efforts to prevent any modifications to the Safety Device by a third party. Provider shall refer to the Safety Device a "Safe Haven Baby Box". Further, Provider shall procure and maintain a twenty-four (24) hour alarm monitoring of the Safety Device at all times and shall confirm with SHBB that such service is acceptable. Should alarm monitoring service be disconnected for any reason, Provider shall immediately notify SHBB and shall secure the Safety Device by locking its exterior door and removing all signage and materials related to its use and functionality. SHBB may, but is not required to, inspect the Safety Device at any time, including, but not limited to: to ensure that it is in good working order, to ensure proper branding and signage is being displayed,

and to conduct tests related to its functionality and monitoring and alarm systems.

IT IS IMPERATIVE THAT ANY MALFUNCTION IDENTIFIED WITH RESPECT TO THE SAFETY DEVICE OR ANY DISCONNECTION IN THE SAFETY DEVICE MONITORING SYSTEM RESULT IN THE IMMEDIATE SECURING AND LOCKING OF THE SAFETY DEVICE SO THAT IT MAY NOT BE USED BY THE PUBLIC DURING THIS TIME PERIOD. FAILURE TO DO SO MAY RESULT IN A THREAT OF BODILY HARM OR DEATH TO AN INFANT PLACED IN THE SAFETY DEVICE DURING ANY PERIOD OF TIME IN WHICH THE SAFETY DEVICE IS MALFUNCTIONING OR NOT.

Section 6. Representations and Warranties.

- A. Representations & Warranties of Provider. Provider represents and warrants that the undersigned is a duly acting and authorized agent of Provider who is empowered to execute this Agreement with full authority of Provider. Further, Provider has undertaken a reasonable investigation into the laws and regulations governing the jurisdiction with which it intends to place the Safety Device and has confirmed that such placement and administration of the Safety Device does not violate any provision of any law, ordinance, governmental regulation, court order or other similar governmental controls.
- B. Representations & Warranties of SHBB. SHBB represents and warrants that the undersigned is a duly acting and authorized agent of SHBB who is empowered to execute this Agreement with full authority of SHBB. Further, SHBB has full ownership of the Safety Device.

SHBB REPRESENTS THAT THE SAFETY DEVICE IS NOT A MEDICAL DEVICE AND HAS CONFIRMED SUCH WITH THE FOOD AND DRUG ADMINISTRATION. SHBB REPRESENTS THAT THE SAFETY DEVICE IS NOT INTENDED AS A CONSUMER PRODUCT AND THUS IS NOT REGISTERED WITH THE CONSUMER PRODUCT SAFETY COMMISSION. SHBB FURTHER REPRESENTS THAT THE SAFETY DEVICE IS NOT REGISTERED WITH THE FEDERAL TRADE COMMISSION AND/OR THE FEDERAL COMMUNICATIONS COMMISSION. SHBB REPRESENTS THAT THE SAFETY DEVICE IS NOT TESTED BY NATIONALLY RECOGNIZED TESTING LABORATORIES PROGRAM.

Section 7. Insurance. SHBB agrees Provider shall be named as an additional insured on its general liability insurance policy. Provider agrees to execute/sign any and all documents/forms necessary to be named as an additional insured on SHBB's general liability insurance policy. Provider agrees that to the extent it can, SHBB shall be named as an additional insured to any insurance policy or self-insured retention fund it has on the location where the Safety Device described herein shall be

installed/operated. Provider agrees its insurance policy limits and/or self-insured retention fund limits for the firehouse where the Safety Device described herein shall be installed/operated shall be exhausted first prior to making any claim on SHBB's general liability insurance policy.

Section 8. Indemnification. Provider agrees to defend and indemnify, protect and hold harmless SHBB, its officers, directors, employees, volunteers, independent contractors, agents and all other persons and related entities thereof against any loss, claim at law or equity, cause of action, expenses, damages or any other liability (collectively, "Claim") arising in relation to and to the extent of Provider's gross negligence or willful or wanton misconduct, whether acts or omissions, in the installment, placement, removal, use, and maintenance of the Safety Device in, on, or about Provider's facility or premises.

Section 9. Termination. Provider may terminate this Agreement upon sixty (60) days prior written notice from Provider to SHBB. SHBB may terminate this Agreement for any reason specified under Section 10, below. At the point of termination of this Agreement, Provider shall secure and lock the Safety Device and remove all signage provided by SHBB. Provider shall place new visible signage denoting that the Safety Device is not functional and that any person desiring to utilize the Safety Device should instead contact emergency services. If Provider removes the Safety Device, then it shall make arrangements with SHBB for its conveyance or retrieval to SHBB. SHBB shall not be obligated to remove the Safety Device; however, at any time after this Agreement has terminated, SHBB may, at its sole discretion, notify Provider that it intends to remove and recover the Safety Device. Under such circumstances, Provider agrees to cooperate with SHBB in the retrieval of the Safety Device, the expenses of which shall be borne by SHBB, so long as expenses do not exceed \$500 and unless the termination of this Agreement was under Section 10, below, in which case the costs hereunder shall be borne by Provider.

Section 10. Remedies.

A. Option to Cure. Any uncured breach of this Agreement by Provider shall give SHBB the option of immediately terminating this Agreement and retrieving the Safety Device from Provider's facility at Provider's own cost and expense. If Provider is notified by SHBB that the Safety Device is not properly functional or lacks monitoring required by this Agreement, then SHBB may order the Safety Device secured and locked until further inspection. Provider shall have thirty (30) days to cure any lack of monitoring or improper functioning of the Safety Device, such time may be extended by any delay attributable to SHBB. If Provider does not cure any lack of monitoring or improper functioning of the Safety Device within the initial thirty (30) day period upon SHBB's review and report, Provider may have an additional thirty (30) days to cure any breach. If Provider fails to cure any breach of this Agreement after two attempts to cure as set forth above, SHBB may terminate this Agreement if it concludes in its sole discretion that Provider has not upheld its obligations under this Agreement. Any breach of this Agreement by Provider which has not been cured by Provider within thirty (30) days after notice received from SHBB shall give SHBB the option of terminating this Agreement and retrieving the Safety Device from Provider's facility at Provider's own cost and expense.

B. Attorneys' fees. Attorneys' fees, costs and expenses, shall be awarded to the prevailing party for any dispute relating to or arising from this Agreement.

Section 11. Ownership of Safety Device. Provider agrees and acknowledges that ownership of the Safety Device remains with SHBB and this Agreement is merely a services and lease agreement. Provider shall not sell or otherwise transfer the Safety Device during or after the term of this Agreement without the specific written consent of SHBB.

Section 12. Disclaimer and Limitation of Warranties.

SHBB IS NOT THE MANUFACTURER OF THE SAFETY DEVICE AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY, PERFORMANCE OR NON-INFRINGEMENT OF THE SAFETY DEVICE. WITH RESPECT TO SAFETY DEVICE, PROVIDER ACCEPTS IT "AS IS." THE SAFETY DEVICE SHALL BE SUBJECT TO ANY WARRANTIES PROVIDED TO PROVIDER BY THE SAFETY DEVICE MANUFACTURER AND/OR AVAILABLE BY THE SAFETY DEVICE'S COMPOSITE PARTS.

SHBB neither assumes nor authorizes any other person associated or related by legal right, corporate entity, governmental entity, or any other entity associated or related by legal right to assume for it, or any other liability in connection with the lease of the Safety Device. There are no warranties which extend beyond the terms of this Agreement, unless otherwise stated or provided for herein or by law via preemption. These warranties shall not apply to the Safety Device or improvements, restoration, repair, remodel, modifications, and/or any other construction work on the Safety Device, related to the Safety Device, or any other part thereof which has been subject to accident, negligence, alteration, abuse or misuse. SHBB makes no warranty whatsoever with respect to accessories or parts not supplied by it.

Section 13. Miscellaneous.

A. Notice. Notice is effective when made in writing and sent to the parties' addresses or by email. Notice will be considered given as of the date of mailing.

SHBB Notice shall be given to:

Safe Haven Baby Boxes
Attn: Monica Kelsey
P.O. Box 185
Woodburn, IN 46797

Provider Notice shall be given to:

B. Assignability. This Agreement is binding and benefits the successors and assignees of the Provider, which includes any entity with which

the Provider may merge or consolidate, or to which it may transfer substantially all of its assets or equity interests. Provider shall not transfer or assign this Agreement, however, without the specific written consent of SHBB, which consent shall not be unreasonably withheld.

- C. Governing Law/Jurisdiction. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of Indiana and Indiana courts. Each party waives, to the fullest extent it may legally and effectively do so, any objection which it may now or subsequently have to the laying of venue of any claim or dispute at law or equity arising out of or relating to this Agreement or the transactions contemplated by it in any Indiana court. Each party waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each party agrees and acknowledges that any term not defined herein shall be construed to have its everyday, contextual meaning as defined in the latest editions of the Merriam Webster Dictionary, and if a legal term, Black's Law Dictionary; and should any term, condition, or provision of this Agreement be deemed vague, ambiguous, or confusing, it shall not be construed in favor of either party.
- D. Integration. This Agreement along with the attached exhibits is the final written expression of the parties' agreement with respect to such terms included and may not be contradicted by evidence of any prior agreement.
- E. No Oral Modification. No change, modification, extension, termination, or waiver of this Agreement, or any of the provisions contained, will be valid unless made in writing and signed by duly authorized representatives of the parties.
- F. Waivers. No waiver of any of the provisions of this Agreement shall be valid and enforceable unless such waiver is in writing and signed by the Parties to be charged, and, unless otherwise stated, no such waiver shall constitute a waiver of any other provision or a continuing waiver.
- G. Severability. In the event that one or more of the provisions of this Agreement shall become invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained shall not be affected as a whole.
- H. Time of the Essence. The Parties expressly recognize that in the performance of their respective obligations under this Agreement and that each Party is relying on timely performance by the other

Party and will schedule operations and incur obligations to third parties in reliance upon timely performances by the other Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and be effective on the date first above written.

“SHBB”

By: _____
Monica Kelsey, Founder / CEO
Safe Haven Baby Boxes, Inc.

“PROVIDER”

By: _____

Its: _____