



776 N.E. 125 Street, North Miami, Florida 33161

Council Report

To: The Honorable Mayor and City Council

From: Larry M. Spring, Jr., City Manager

Date: October 25, 2016

RE: RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY FOR DESIGN, CONSTRUCTION, JOINT FUNDING AND JOINT USE OF RECREATIONAL FACILITIES AT CAGNI PARK; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

RECOMMENDATION

It is recommended that the Mayor and City Council hereby authorize the City Manager to execute an Interlocal Agreement with the School Board of Miami-Dade County for the design, construction, joint funding and joint use of recreational facilities at Cagni Park.

BACKGROUND

On October 25, 2006, the city of North Miami and the School Board of Miami-Dade County entered into an Amended and Restated Interlocal Agreement which incorporated and addressed the design, construction and joint funding of educational facilities, including open space and recreational facilities. The City and the Board wish to enter into a new Interlocal Agreement which sets forth certain changes and modifications to the conceptual plan and have further agreed to co-fund the Project.

ATTACHMENT(s)

Resolution
Exhibit "A" - Interlocal Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY FOR DESIGN, CONSTRUCTION, JOINT FUNDING AND JOINT USE OF RECREATIONAL FACILITIES AT CAGNI PARK; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, Section 163.01, Florida Statutes, the “Florida Interlocal Cooperation Act of 1969”, authorizes public agencies to enter into interlocal agreements for mutual benefit and to provide facilities to service the needs of local communities; and

WHEREAS, Section 166.021, Florida Statutes, authorizes the City of North Miami (“City”) to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City and the School Board of Miami-Dade County (“Board”) entered into that certain Amended and Restated Interlocal Agreement dated October 25, 2006 (“Interlocal Agreement” or “ILA”), incorporated herein by reference, which addressed the design, construction and joint funding of educational facilities, including open space/recreational facilities (“Recreational Facilities”); and

WHEREAS, the City and the Board wish to enter into a new Interlocal Agreement (attached as Exhibit “A”) which sets forth certain changes and modifications to the conceptual plan included in the Interlocal Agreement for the Recreational Facilities located adjacent to and immediately east of Arch Creek Elementary School and North Miami Middle School (“Schools”); and

WHEREAS, through a collaborative process, the City and the Board have reached consensus on a revised Recreational Facilities plan (“Project”); and

WHEREAS, the City and the Board have further agreed to co-fund the Project and in addition have agreed on the process through which the Project is to be delivered.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Authority to Execute Interlocal Agreement. The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to execute an Interlocal Agreement in substantially the same form as Exhibit "A" with the School Board of Miami-Dade County for the design, construction, joint funding and joint use of recreational facilities at Cagni Park.

Section 2. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this ____ day of _____, 2016.

DR. SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Smith Joseph, D.O., Pharm. D.

_____ (Yes) _____ (No)

Vice Mayor Alix Desulme
Councilman Scott Galvin
Councilwoman Carol Keys, Esq.
Councilman Philippe Bien-Aime

_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)

**INTERLOCAL AGREEMENT
FOR DESIGN, CONSTRUCTION AND JOINT FUNDING OF RECREATIONAL
FACILITIES
BY AND BETWEEN
THE CITY OF NORTH MIAMI, FLORIDA
AND
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**

THIS INTERLOCAL AGREEMENT FOR DESIGN, CONSTRUCTION AND JOINT FUNDING OF RECREATIONAL FACILITIES (the “**Agreement**”) is entered into as of the ____ day of ____, 2016, by and between the **CITY OF NORTH MIAMI, FLORIDA**, a Florida municipal corporation, its successors and assigns (hereinafter referred to as the “**City**”) and **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a public body corporate and politic existing under the laws of the State of Florida, its successors and assigns (hereinafter referred to as the “**Board**” or “**District**”). The City and Board are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

WHEREAS, Section 163.01, Florida Statutes, the “Florida Interlocal Cooperation Act of 1969”, authorizes public agencies to enter into interlocal agreements for mutual benefit and to provide facilities to service the needs of local communities; and

WHEREAS, Section 166.021, Florida Statutes, authorizes the City to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City and Board entered into that certain Amended and Restated Interlocal Agreement dated October 25, 2006 (“**Interlocal Agreement**” or “**ILA**”), incorporated herein by reference, which addressed the design, construction and joint funding of educational facilities, including open space/recreational facilities (the “**Recreational Facilities**”); and

WHEREAS, the City and Board wish to enter into this Agreement setting forth certain changes and modifications to the conceptual plan included in the Interlocal Agreement for the Recreational Facilities located adjacent to and immediately east of Arch Creek Elementary School and North Miami Middle School (the “**Schools**”); and

WHEREAS, through a collaborative process, the City and Board have reached consensus on a revised Recreational Facilities plan (the “**Project**”); and

WHEREAS, the City and Board have further agreed to co-fund the Project and, in addition, have agreed on the process through which the Project is to be delivered.

Agreement by and between the City of North Miami, Florida and
The School Board of Miami-Dade County, FL

NOW THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree to implement the Project and accept the terms, conditions and responsibilities set forth in this Agreement.

Section 1. Recitals. The above recitals are true and correct and are incorporated herein.

Section 2. Purpose. The purpose of this Agreement is to set forth the terms, conditions and responsibilities of the Parties as it relates to implementation of the Project, as defined below. The Parties agree that the Project shall be subject to and in compliance with all applicable laws, codes, ordinances, rules and regulations, including without limitation, the Florida Building Code, the Americans with Disabilities Act and the Jessica Lunsford Act.

Section 3. Project Description. The City and Board agree to implement the Project within the area described in "**Exhibit One**" (the "**Site**"), pursuant to and in accordance with the terms, conditions and responsibilities outlined below:

A. Project Scope

The scope of the Project shall include substantially the following and be implemented substantially as depicted in the conceptual plan labeled as **Attachment "A"**:

1. Site preparation, including earth work, filling and leveling as may be required;
2. Installation of an artificial turf playfield/soccer field(s) immediately to the east of the Schools;
3. Construction of new tennis courts;
4. Construction of Handball or Racquetball Court;
5. Installation of a new playground with shade cover;
6. Construction of a new skate park;
7. Construction of new Olympic size swimming pool and splash pool;
8. Construction of park shelters;
9. Construction of a new recreational building;
10. Construction of a minimum of 80 parking spaces, including spaces for the handicapped, south of the Schools adjacent to N.E. 135 Street;
11. Installation of landscaping, fencing, signage and site lighting.

B. Co-Funding and Project Delivery Responsibilities

1. The preliminary estimate of probable construction costs for the Project is approximately \$10.1 million, including mark-ups but excluding architectural and engineering fees, testing, surveys, and any other miscellaneous fees

or services (“**Soft Costs**”). Under the previously approved conceptual plan for the Recreational Facilities depicted in the ILA, the estimate of probable construction costs (“**Hard Costs**”) was approximately \$3.5 million. As such, the Board will contribute an amount to the Project not to exceed \$3.5 million of the total Project cost (Soft and Hard costs included). The City shall be responsible for the balance of the Project costs.

2. The City shall be responsible for the design, construction and successful completion and close-out of the Project, based on the Project Schedule outlined herein, as may be further amended by mutual agreement of the Parties. The City shall select the construction delivery method in consultation with the Board and select the Project architect, contractor and any other professional consultants, in accordance with all applicable procurement laws, regulations and procedures. The Board shall be invited but not required to participate in the selection process(es).
3. The City shall be in sole privity with the Project architect, contractor and consultants and shall be solely responsible for administering those contracts and related activities, including site plan reviews, permitting and inspections. The Board shall assign a Project Manager to liaise with the City, and the City shall likewise assign a Project Manager to liaise with the Board. The Board, through its designee, shall review construction documents at 50% and 90% of completion, and permit documents at 100% of completion, for conformance with the Project scope, and other applicable terms and conditions of this Agreement and in accordance with a mutually agreed upon Project Schedule to be provided by the City no later than thirty (30) calendar days from commissioning of the Project architect by the City. After commencement of any construction by the City affecting the Site, the City shall thereafter diligently and continuously prosecute the work to completion in a good and workmanlike manner in accordance with the approved plans and all applicable laws, free and clear of all construction, mechanic’s or other similar liens, whether statutory or equitable, pursuant to Chapter 713 of the Florida Statutes or otherwise.
4. Subject to the provisions of Section 4 of this Agreement, upon approval of the Agreement by the Parties and within ten (10) calendar days of the Effective Date, the Parties shall execute a separate Escrow Agreement, attached hereto as “**Exhibit Two**”, establishing an escrow account to be held by a mutually acceptable third party as Escrow Agent, and a mutually acceptable process for authorizing disbursement of the funds (“**Escrow Account**”). Subsequently, and within twenty (20) calendar days of the establishment of the Escrow Account, the Board shall deposit into the Escrow Account its contribution in the amount of \$3.5 million. Concurrent with the Board’s deposit of its contribution, the City shall deposit into the

Escrow Account a contribution in the amount of \$2.0 million dollars. The balance of the City's contribution will be deposited into the Escrow Account within 60 calendar days of the City's initial contribution. The Board's total contribution shall be a not-to-exceed amount of \$3.5 million, and the City's total contribution shall be \$7.0 million dollars. In the event excess funds are available upon close-out and completion of the Project, said excess funds shall be shared by the Parties, with the Board to receive 33% of same.

5. Project implementation shall conform at all times to governing safety criteria and standards, and shall neither unreasonably disrupt or interfere with the Board's operations at the Schools. The City and its contractors shall take all necessary safety precautions during the work, secure all construction areas by appropriate construction fencing, and coordinate on an ongoing basis with the assigned District Project Manager to ensure the safety of the Board's students, staff, visitors, invitees and the public.
6. The City shall cause any contractor doing work on the Site or elsewhere on the Schools to be pre-qualified by the Board, in accordance with School District and Board Policies, and to indemnify, defend and hold harmless the Board, its employees and representatives from any and all liability, damages and claims of any nature whatsoever. In addition, prior to its issuance of the notice of commencement, the City shall require the City's contractor(s) to provide the following minimum levels of insurance coverage: (1) Commercial General Liability Insurance in an amount not less than \$1 Million combined single limit per occurrence for bodily injury and property damage, (2) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the operations of the City's contractor(s), in an amount not less than \$1 million combined single limit per occurrence for bodily injury and property damage, (3) Workers' Compensation Insurance for all employees of the City's contractor(s) as required by Florida Statutes, and (4) Property Insurance. "The School Board of Miami-Dade County, Florida and its members, officers and employees" shall be an additional insured on all liability coverages except Workers' Compensation Insurance.
7. Upon completion of the Project, as evidenced by issuance of a final certificate of completion by the City and close-out of the Project including punchlist, in the preparation of which the Board will participate, and resolution of any financial obligations by the City related to the work, all permanent improvements or facilities installed or constructed by the City within the Site pursuant to this Agreement shall become the property of the City for the term specified in a Joint Use Agreement ("**JUA**"), as further described in Section 6(R). Said improvements or facilities shall be available for joint use by the Parties, pursuant to the JUA between the Parties. Title

to and ownership of all improvements constructed on the Site shall automatically vest in the Board at the termination, cancellation or expiration of the JUA. Although title to the improvements shall automatically vest in the Board at the termination, cancellation or expiration of the JUA, at the request of the Board, the City shall execute an instrument to convey title to the improvements to the Board.

The Board shall be a Third Party Beneficiary in any and all contracts by and between the City and provider relating to the Project. A full set of “as built” drawings, along with applicable Warranty information, shall be provided to the Board upon Project completion, at no cost to the Board.

8. The Board does hereby agree to indemnify and hold harmless the City, to the extent of the monetary limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the Board shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the Board arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the Board. However, nothing herein shall be deemed to indemnify the City from any liability or claim arising out of the negligent performance or failure of performance of the City or as a result of the negligence of any unrelated third party.

The City does hereby agree to indemnify and hold harmless the Board, to the extent of the monetary limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the City shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the City arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the City. However, nothing herein shall be deemed to indemnify the Board from any liability or claim arising out of the negligent performance or failure of performance of the Board or as a result of the negligence of any unrelated third party.

The provisions of this Article shall survive the expiration or early termination or cancellation of this Agreement. Nothing in this Agreement is intended to operate as a waiver of either Party's sovereign immunity.

C. Project Schedule

The Project start date (the “**Start Date**”) shall be the business day after the Parties deposit their respective funding contributions into the Escrow Account. A mutually agreed upon Project Schedule shall be provided by the City no later than thirty (30) calendar days from commissioning of the Project architect by the City. The City shall copy the Board’s Project manager on all correspondence related to Project milestone events (e.g. Notice To Proceed). The Project’s major milestones shall be as follows, unless further extended by mutual agreement of the Parties:

1. Selection of Project architect (including any required Project consultants) by the City – by or before **December 31, 2015**;
2. Completion and permitting of design – by or before **September 30, 2016**;
3. Start of construction, as evidenced by Notice to Proceed to the Project contractor issued by the City – by or before **December 31, 2016**;
4. Completion of playfields, playfield fencing and off-street parking (Phase 1) to the immediate east and south of the Schools, respectively – by or before **March 30, 2017**;
5. Substantial completion of balance of Project scope (Phase 2) – by or before **November 30, 2017**;
6. Final Project completion (Phase 1 and phase 2), including punch list items’ completion and close-out, as evidenced by issuance of a Certificate of Completion by the City – by or before **March 30, 2018**.

D. Project Budget

Prior to the Effective Date, as hereinafter defined, the City shall provide to the Board a complete budget for the Project (“**Project Budget**”), detailing all applicable Soft Costs and Hard Costs, which Project Budget shall be attached hereto and incorporated herein as “**Exhibit Three**”.

Section 4. Effective Date, Commencement Date and Termination of Agreement.

The effective date of this Agreement shall be the date this Agreement is fully executed by the Parties, but in no event later than _____, 20__ (the “**Effective Date**”). The Parties covenant and agree that, as a condition

precedent to the commencement of this Agreement, the Parties shall each deposit their respective monetary contribution for the Project (i.e. the Board shall deposit an amount not-to-exceed \$3.5 million, and the City shall deposit \$7 million) into the Escrow Account, as specified in Section 3(B)4, and the date of full deposit of these funds by both Parties into the Escrow Account shall be established as the “**Commencement Date**”. The Parties further covenant and agree that such deposit of their respective contributions into the Escrow Account shall be completed by no later than _____, 20___. The Parties acknowledge and agree that failure to deposit their respective contributions into the Escrow Account by this date shall automatically serve to cancel or terminate this Agreement by operation of law, and this Agreement shall be of no further force and effect, unless extended by mutual agreement of the Parties.

Other than as specified elsewhere in this Agreement, or for those provisions intended to survive the termination of the Agreement, this Agreement shall terminate upon the latest of the following events to occur: 1) Commencement of the JUA, as defined in that agreement; 2) completion of the Project, as herein defined; or 3) full disbursement of the Escrow Funds from the Escrow Account and reconciliation of the Escrow Agreement.

Section 5. Extra Services and Costs. In the event of Project cost overruns, the City acknowledges and agrees that the Board’s contribution is capped at and shall not exceed \$3.5 million (Soft and Hard costs, combined) and that the City alone shall be solely responsible for said cost overruns.

Section 6. Miscellaneous:

A. Unavoidable Delay. In the event that the City is unable to meet the milestones for completion of its obligations under this Agreement due to any circumstance beyond the control of the City, including without limitation, the occurrence of a force majeure event, then the time for such performance shall be extended for such reasonable period of time as may be required by such circumstance or the occurrence of such event. The City shall be responsible for any additional costs arising out of the delay, and affecting its respective obligations under this Agreement. The term “**force majeure**” shall include without limitation labor strikes (whether lawful or not), fire, hurricanes, adverse weather conditions, unavoidable casualties, inability to obtain labor or materials, Acts of God, vandalism, terrorism, civil unrest, moratoriums and the like.

B. Notices. All notices, request, consents, and other communications under this Agreement (“**Notices**”) shall be in writing and shall be personally

delivered, mailed by First Class Mail, postage prepaid, or sent by overnight delivery service, to the Parties as follows:

If to the School Board: Superintendent
Miami-Dade County Public Schools
1450 N.E. Second Avenue, Room 912
Miami, Florida 33132
Fax: (305) 995-1488

With Copies to: School Board Attorney
The School Board of Miami-Dade
County
1450 N.E. Second Avenue, Room 400
Miami, Florida 33132
Fax: (305) 995-1412

Miami-Dade County Public Schools
Office of School Facilities
Attn.: Mr. Jaime G. Torrens
1450 N.E. Second Avenue, Room 923
Miami, Florida 33132
Fax: (305) 995-4760

If to the City: City Manager
City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161
Fax: (305) 893-1367

With a Copy to: City Attorney
City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161
Fax: (305) 895-7029

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire

Agreement by and between the City of North Miami, Florida and
The School Board of Miami-Dade County, FL

on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the Board and counsel for the City may deliver Notice on behalf of the Board and the City, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the Parties.

- C. Default.** An event of default shall be deemed to have occurred by either Party to this Agreement if such Party fails to observe or perform any covenant, condition or agreement of this Agreement, or breaches a representation contained herein, and such failure or breach continues for a period of thirty (30) days after written notice specifying such default and requesting that it be remedied is sent to the defaulting Party by the non-defaulting Party; provided, however, that if the default is curable but cannot be cured within thirty (30) days, then the defaulting Party shall have such additional time as is reasonably needed to cure such default so long as the defaulting Party promptly commences and diligently pursues the cure of such default to completion. If an event of default shall have occurred and shall continue, the non-defaulting Party shall be entitled to all remedies available at law or in equity which may include, but not limited to, the right to damages and/or specific performance.
- D. Enforcement of Agreement.** In the event that either Party is required to enforce this Agreement by court proceedings or otherwise, then the Parties agree that each Party shall be responsible for all fees and costs incurred by such Party, including all attorneys' fees and costs (of trial, alternative dispute resolutions, or appellate proceedings).
- E. Entire Agreement.** As it pertains to the Project, this Agreement and the Interlocal Agreement embody the entire agreement of the Parties relating to the subject matter hereof, and supersede all prior written and/or oral understandings or agreements with respect thereto. In the event of a conflict between provisions of this Agreement and the Interlocal Agreement, this Agreement shall control. All remaining non-conflicting provisions set forth in the Interlocal Agreement shall continue in full force and effect unless otherwise amended by both Parties by mutual consent.
- F. Amendments.** Amendments to the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both Parties.

- G. Joint Preparation.** This Agreement has been negotiated fully between the Parties as an arms-length transaction. Both Parties participated fully in the preparation of the Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both Parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against any Party.
- H. Assignment.** This Agreement may not be assigned, in whole or in part, by any Party without prior written consent of the other Party, which may be granted or withheld in its sole discretion.
- I. Third Party Beneficiaries.** This Agreement is solely for the benefit of the Board and the City, and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Board and the City any right, remedy, or claims under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Board and the City, and their respective representatives, successors, and assigns. The Board shall be a Third Party Beneficiary in any and all contracts by and between the City and its contractors, subcontractors and providers relating to the Project.
- J. Joint Defense.** In the event that the validity of this Agreement is challenged by a third party or parties unrelated to the Parties through legal proceedings or otherwise, the Parties hereto agree to cooperate with each other in defense of this Agreement, with each such Party to bear its own attorney's fees and costs associated with such defense.
- K. Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part of this Agreement not held to be invalid or unenforceable.
- L. Time is of the Essence.** The Parties acknowledge that time is of the essence in the performance of all obligations required hereunder, and all "**days**" referenced herein shall be deemed "**calendar days**" unless otherwise specifically set forth.
- M. Controlling Laws.** This Agreement and the provisions contained herein shall be construed, interpreted, and controlled according to the laws of the State

of Florida. Venue for any dispute shall be in a court of competent jurisdiction in Miami-Dade County, Florida.

- N. Authorization.** The execution of this Agreement has been duly authorized by the Board and City. The Board and the City have complied with all requirements of law in connection with the execution and delivery of this Agreement and the performance of their respective obligations hereunder. The Board and the City have full power and authority to comply with the terms and provisions of this instrument.
- O. Heading for Convenience Only.** The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provision of this Agreement.
- P. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute but one and the same instrument. Signature and acknowledgments pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.
- Q. Jury Trial Waiver.** The Parties waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other for any matter whatsoever arising out of or in any way connected with this Agreement.
- R. Joint Use Agreement.** In accordance with the provisions of Section 3(B)7, the Project shall be made available for future use by both Parties, and the Parties shall enter into a Joint Use Agreement subsequent to the Effective Date of this Agreement but prior to the completion of the work, which JUA shall set forth in more detail the terms and conditions of the joint use of the Site. The base term of the JUA shall be no less than twenty years, and include mutually acceptable terms and conditions including but not limited to renewals, periods of use and maintenance responsibilities.
- S. Authority of the Superintendent.** For purposes of this Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the Board to review and approve all matters relating to the City's construction of the Project.

In addition, the Superintendent of Schools shall also be the party designated by the Board to grant or deny without limitation, placing the City in default, and renewing, extending, cancelling or terminating this Agreement.

For purposes of this Agreement, the City Manager or his/her designee shall be the party designated by the City to review and approve all matters relating to the City's construction of the Project.

In addition, the City Manager shall also be the party designated by the City to grant or deny without limitation, placing the Board in default, and renewing, extending, cancelling or terminating this Agreement.

- T. Legal fees and Court Costs.** In the event of any dispute or litigation between the Parties under this Agreement, each Party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. The provisions of this paragraph shall survive the expiration or early termination or cancellation of this Agreement.

[Execution Pages(s) Follow]

IN WITNESS WHEREOF, the Parties have caused this Interlocal Agreement to be executed in their names by their duly authorized officers and the corporate seals to be affixed all as of the day and year first above written.

**THE SCHOOL BOARD OF MIAMI-
DADE COUNTY, FLORIDA**

**TO THE SCHOOL BOARD:
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

By: _____
Name: Alberto M. Carvalho
Title: Superintendent of Schools

By: _____
School Board Attorney

RECOMMENDED:

By: _____
Name: Jaime G. Torrens
Title: Chief Facilities Officer

By: _____
Name: Leonardo Fernandez
Title: Treasurer

CITY OF NORTH MIAMI, FLORIDA

**TO THE CITY:
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

By: _____

Name:

Title:

By: _____

Jeff P. H. Cazeau

City Attorney

ATTEST:

By: _____

Name: Michael A. Etienne

Title: City Clerk

By: _____

Name: Larry S. Spring

Title: City Manager

EXHIBIT ONE
[the "SITE"]

Legal Description of the Board-owned Site
where the Project work shall
take place

EXHIBIT TWO
ESCROW AGREEMENT

EXHIBIT THREE
PROJECT BUDGET

ATTACHMENT "A"
CONCEPTUAL PLAN FOR RECREATIONAL FACILITIES

Agreement by and between the City of North Miami, Florida and
The School Board of Miami-Dade County, FL