

**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 \_\_\_\_\_, 2019, 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 and other provisions 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

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

**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.

**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 \$10.5 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

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

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 \$7.0 million dollars. 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 January 31, 2019;
2. Completion and permitting of design – by or before August 28, 2019;
3. Start of construction, as evidenced by Notice to Proceed to the Project contractor issued by the City – by or before December 31, 2019;
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 31, 2020;
5. Substantial completion of balance of Project scope (Phase 2) – by or before November 30, 2020;
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 April 30, 2021.

### **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 January 18, 2019 (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 sixty (60) days after execution. 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 sufficiently given if personally delivered, mailed by First Class Mail, postage prepaid, electronic mail 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  
e-mail: [Walter.Harvey@dadeschools.net](mailto:Walter.Harvey@dadeschools.net)  
and [ACraft@dadeschools.net](mailto:ACraft@dadeschools.net)

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  
e-mail: [JTorrens@dadeschools.net](mailto:JTorrens@dadeschools.net)

If to the City: City Manager  
City of North Miami  
776 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161  
Fax: (305) 893-1367  
e-mail: [lspring@northmiamifl.gov](mailto:lspring@northmiamifl.gov)

With a Copy to: City Attorney  
City of North Miami

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



776 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161  
Fax: (305) 895-7029  
e-mail: [jcazeau@northmiamifl.gov](mailto:jcazeau@northmiamifl.gov)

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 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

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

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 all approvals required under the Agreement, including amending the exhibits to the Agreement, placing the City in default, and 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.

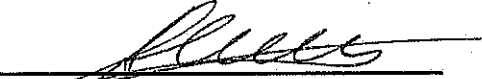
In addition, the City Manager shall also be the party designated by the City to grant or deny without limitation, placing the Board in default, and cancelling or terminating this Agreement.

- 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 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.

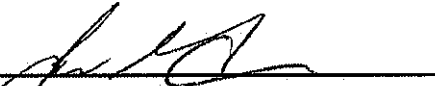
THE SCHOOL BOARD OF MIAMI-  
DADE COUNTY, FLORIDA

By:   
Name: Alberto M. Carvalho  
Title: Superintendent of Schools  
Date: 2/6/19

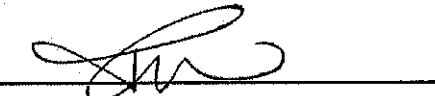
TO THE BOARD: APPROVED AS TO  
FORM AND LEGAL SUFFICIENCY:

By:   
School Board Attorney  
Date: 1/30/19

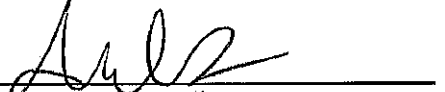
RECOMMENDED:

By:   
Name: Jaime G. Torrens  
Title: Chief Facilities Officer  
Date: 1/9/19

TO THE BOARD: APPROVED AS  
TO TREASURY MANAGEMENT  
ISSUES:

By:   
Name:  
Title: Treasurer  
Date: 1/23/19


TO THE BOARD: APPROVED AS  
TO RISK MANAGEMENT ISSUES:

By:   
Name: Munira  
Title: Risk and Budget Officer  
Date: 1/15/19


CITY OF NORTH MIAMI, FLORIDA


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

By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

DocuSigned by:  
By: Jeff P. H. Cazeau, Esq.   
Name: Jeff P. H. Cazeau, Esq.  
Title: City Attorney  
Date: 2/1/2019

ATTEST:

DocuSigned by:  
By: Michael A. Etienne, Esq.   
Name: Michael A. Etienne, Esq.  
Title: City Clerk  
Date: 2/4/2019

DocuSigned by:  
By: Larry M. Spring, Jr.   
Name: Larry M. Spring, Jr.  
Title: City Manager  
Date: 2/4/2019

**EXHIBIT ONE TO 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**

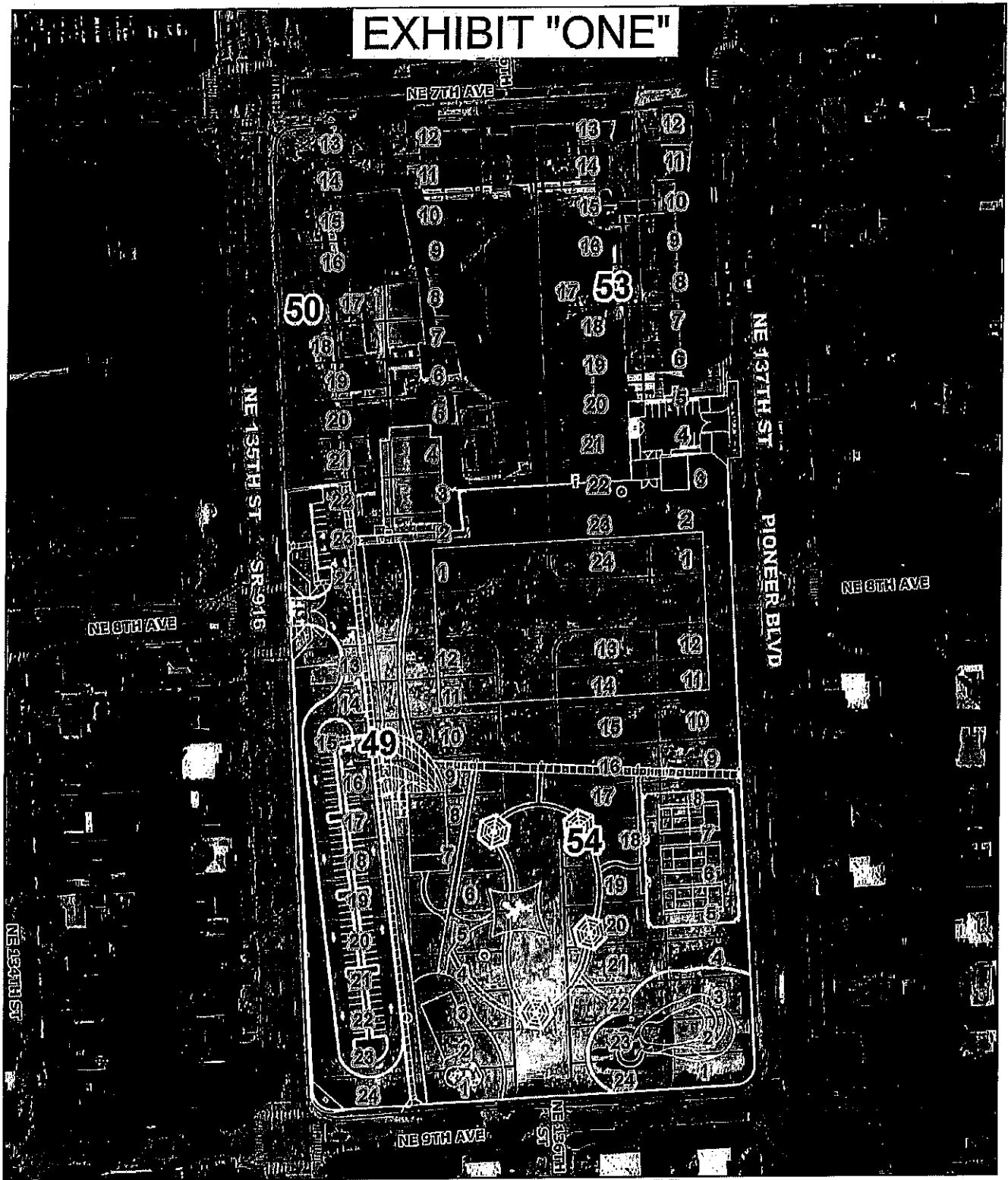
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**Site Sketch depicting the general location where the Project will be constructed on the Board-owned property (the "Site Sketch").**

**[Consisting of 2 pages, including this title page]**

**The City acknowledges and agrees that, at such time as the construction documents for the Project are completed and approved by both Parties, and prior to commencement of any construction activities on the Site, the City shall provide a signed and sealed Sketch To Accompany A Legal Description (the "Survey") describing the Demised Premises under this Agreement, which Survey shall be attached hereto as Exhibit One in place of the Site Sketch.**

# EXHIBIT "ONE"



NOTE: LEGAL DESCRIPTION BELOW IS PRELIMINARY. FINAL LEGAL DESCRIPTION TO BE INSERTED IN THIS EXHIBIT UPON COMPLETION AND APPROVAL OF DESIGN BY THE PARTIES, INCLUDING A SURVEY CERTIFIED TO THE SCHOOL BOARD AND THE CITY

**IRONS MANOR HIGH PINE ADD SEC A  
ALL OF BLKS 49 AND 54, AND PORTIONS OF BLKS 50 AND 53  
& INTERVENING STREETS,  
AS RECORDED IN PB 23, PAGE 80**

Not to scale



**EXHIBIT TWO TO 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**

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**A duly executed Escrow Agreement 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"), shall be attached hereto prior to execution of this Agreement by the Parties.**

**[Consisting of 13 pages, including this title page]**

## ESCROW AGREEMENT

**THIS ESCROW AGREEMENT** dated this \_\_\_ day of \_\_\_\_\_, 2018 (the "Escrow Agreement"), is entered into by and among THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FL, a political subdivision of the State of Florida ("Board"), and the CITY OF NORTH MIAMI, FL, a municipal corporation of the State of Florida ("City"), collectively known as the "Parties," and individually, a "Party", and the SCHOOL BOARD ATTORNEY'S OFFICE, as escrow agent ("Escrow Agent").

### RECITALS

A. The purpose of the escrow is to ensure sufficient funding in the amount of \$10,500,000 for design and construction is readily available to the City to make progress payments on the playfield improvement project commonly referred to as the Cagni North Field Improvement Project (the "Project"), as directed herein.

B. The City agrees to place in escrow the amount of \$7,000,000 and the School Board agrees to place in escrow the amount of \$3,500,000 and the Escrow Agent agrees to hold and distribute such funds in accordance with the terms of this Escrow Agreement.

**IN CONSIDERATION** of the Sum of Ten and No/100 (\$10.00) Dollars and of the promises and agreements of the Parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties and the Escrow Agent agree as follows:

### ARTICLE 1 RECITALS

#### Section 1.1 Incorporation of recitals.

The above recitals are true and correct and are incorporated herein by reference.

### ARTICLE 2 ESCROW DEPOSIT

#### Section 2.1. Receipt of Escrow Property.

Within ten (10) days after execution hereof, each Party shall deliver to the Escrow Agent the amount listed above (the "Escrow Property") in immediately available funds, payable to: The School Board of Miami-Dade County, Florida. The funds shall be delivered by wire transfer in accordance with instructions provided by the School Board Attorney's Office and School Board Treasurer.

**Section 2.2. Disbursements to the Architect of Record.**

The Escrow Agent shall disburse the Escrow Property in accordance with the joint written instructions of the Parties, as evidenced by a payment authorization request executed by both the Board's and the City's authorized designee.

The disbursement process shall be as follows: Escrow Agent, in accordance with joint written authorizations as set forth herein, shall direct that the escrow amount, duly authorized by the Parties to be disbursed, be debited from the School Board Attorney's Escrow Account and be credited to the School Board Master Account, for the disbursement of progress payments to the City ("Progress Payments"), as may be required. Progress Payments shall then be issued by the City to the Architect of Record in accordance with a pre-established and mutually agreed upon fee schedule, after review and approval of the Progress Payment request. Disbursement of Progress Payments shall be made in accordance with the Prompt Payment Act, and with the portion of each Progress Payment allocated to each Party based on a 33.3/66.7 basis for the Board and City, respectively.

**Section 2.3. Disbursements to the Builder.**

The Escrow Agent shall disburse the Escrow Property in accordance with the joint written instructions of the Parties, as evidenced by a payment authorization request executed by both the Board's and the City's authorized designee.

The disbursement process shall be as follows: Escrow Agent, in accordance with joint written authorizations as set forth herein, shall direct that the escrow amount, duly authorized by the Parties to be disbursed, be debited from the School Board Attorney's Escrow Account and be credited to the School Board Master Account, for the disbursement of progress payments to the City ("Progress Payments"), as may be required. Progress Payments shall then be issued by the City to the Builder in accordance with a pre-established and mutually agreed upon scope and schedule of values, after review and approval of the Progress Payment by the A/E of record and Parties for payments to the Builder. Disbursement of Progress Payments shall be made in accordance with the Prompt Payment Act, and with the portion of each Progress Payment allocated to each Party based on a 33.3/66.7 basis for the Board and City, respectively.

**Section 2.4. Tax Reporting.**

Along with the delivery of the sums to be placed in escrow, the Parties shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and such other forms and documents that the Escrow Agent may request. The Parties understand that if such tax reporting documentation is not provided and certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the investment of the Escrow Property.

**Section 2.5. Termination.**

This Escrow Agreement shall terminate on June 30, 2020, unless otherwise mutually extended by the Parties, at which time the Escrow Agent is authorized and directed to disburse the Escrow Property in accordance with Section 2.2 and this Escrow Agreement shall be of no further force and effect except that the provisions of Sections 4.1, 4.4 and 5.4 hereof shall survive termination.

**ARTICLE 3  
DUTIES OF THE ESCROW AGENT**

**Section 3.1. Scope of Responsibility.**

Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. The Escrow Agent will not be responsible or liable for the failure of any Party to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the Parties, and the Escrow Agent has no duties or obligations with respect thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement.

**Section 3.2. Attorneys and Agents.**

The Escrow Agent shall be entitled to rely on and shall not be liable for any action taken in accordance with the advice of counsel or other professionals retained or consulted by the Escrow Agent. The Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians, and/or nominees.

**Section 3.3. Reliance.**

The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the direction or consent of the Parties or their respective agents, representatives, successors, or assigns. The Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or persons' authority. Concurrent with the execution of this Escrow Agreement, the Parties shall deliver to the Escrow Agent authorized signers' forms in the form of Exhibit A-1 and Exhibit A-2 to this Escrow Agreement.

**Section 3.4. Right Not Duty Undertaken.**

The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

**Section 3.5. No Financial Obligation.**

No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement.

**ARTICLE 4  
PROVISIONS CONCERNING THE ESCROW AGENT**

**Section 4.1. Limitation of Liability.**

THE ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES, SUBJECT TO AND WITHIN THE LIMITATIONS OF SECTION 768.28, F.S., WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

**Section 4.2. Resignation or Removal.**

The Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and expenses to which it is entitled through the date of termination. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Property and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

**Section 4.3. Compensation.**

The Escrow Agent shall not receive compensation for its services as Escrow Agent, as mutually agreed to by the Parties.

**Section 4.4. Disagreements.**

If any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent may, at its option, retain the Escrow Property until the Escrow Agent (i) receives a final non-appealable order of a court of competent jurisdiction or a final non-appealable arbitration decision directing delivery of the Escrow Property, (ii) receives a written agreement executed by each of the parties involved in such disagreement or dispute directing delivery of the Escrow Property, in which event the Escrow Agent shall be authorized to disburse the Escrow Property in accordance with such final court order, arbitration decision, or agreement, or (iii) files an interpleader action in any court of competent jurisdiction, and upon the filing thereof, the Escrow Agent shall be relieved of all liability as to the Escrow Property and shall be entitled to recover attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. The Escrow Agent shall be entitled to act on any such agreement, court order, or arbitration decision without further question, inquiry, or consent.

**Section 4.5. Attachment of Escrow Property; Compliance with Legal Orders.**

In the event that any Escrow Property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Property, the Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

**Section 4.6 Force Majeure.**

The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

**ARTICLE 5  
MISCELLANEOUS**

**Section 5.1. Successors and Assigns.**

This Escrow Agreement shall be binding on and inure to the benefit of the Parties and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Parties shall be binding unless and until written notice of such assignment shall be delivered to the other Party and the Escrow Agent and shall require the prior written consent of the other Party and the Escrow Agent (such consent not to be unreasonably withheld).

**Section 5.2. Escheat.**

The Parties are aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. The Escrow Agent shall have no liability to the Parties, their respective heirs, legal representatives, successors and assigns, or any other party, should any or all of the Escrow Property escheat by operation of law.

**Section 5.3. Notices.**

All notices, requests, demands, and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by facsimile transmission with written confirmation of receipt, (iii) by overnight delivery with a reputable national overnight delivery service, or (iv) by mail or by certified mail, return receipt requested, and postage prepaid, or (v) by email. If any notice is mailed, it shall be deemed given five business days after the date such notice is deposited in the United States mail. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes. In the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by the Escrow Agent.

If to:     The School Board of Miami-Dade County, FL  
          1450 NE 2<sup>nd</sup> Avenue, Room 912  
          Miami, FL 33132  
          Attention: Superintendent of Schools

Copy to: The School Board of Miami-Dade County, FL  
          1450 NE 2<sup>nd</sup> Avenue, Room 923  
          Miami, FL 33132  
          Attention: Chief of Facilities

Copy to: The School Board of Miami-Dade County, FL  
1450 NE 2<sup>nd</sup> Avenue, Room 923  
Miami, FL 33132  
Attention: School Board Attorney's Office

If to: City of North Miami  
776 NE 125 Street  
North Miami, FL 33161  
Attention: City Manager's Office

Copy to: City of North Miami  
776 NE 125 Street  
North Miami, FL 33161  
Attention: City Attorney's Office

**Section 5.4. Governing Law, Attorney's Fees and Venue.**

This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of litigation, each party shall be responsible for its own attorney's fees and costs through all appeals. Venue shall be in Miami-Dade County, Florida.

**Section 5.5. Entire Agreement.**

This Escrow Agreement and that certain Interlocal Construction Agreement by and between The School Board of Miami-Dade County, FL and the City of North Miami, FL, dated as of \_\_\_\_, 2018, set forth the entire agreement and understanding of the parties related to the Escrow Property.

**Section 5.6. Amendment.**

This Escrow Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Parties and the Escrow Agent.

**Section 5.7. Waivers.**

The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Escrow Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.



**Section 5.8. Headings.**

Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement.

**Section 5.9. Joint Participation.**

All of the Parties to this Agreement have participated fully in the negotiation and preparation hereof and, accordingly, the Agreement shall not be more strictly construed against anyone of the Parties hereto.

**Section 6.0. Sovereign Immunity.**

None of the provisions contained in this Escrow Agreement shall be deemed as waiver of Sovereign Immunity by either the City or by the School Board.

**Section 6.1. Counterparts.**

This Escrow Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

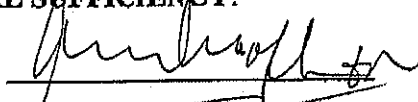
**THE SCHOOL BOARD OF MIAMI-  
DADE COUNTY, FL**

By: 

Name: Alberto M. Carvalho

Title: Superintendent of Schools

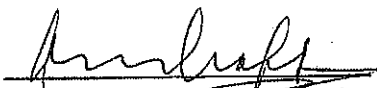
**TO THE SCHOOL BOARD:  
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

By: 

Name: Walter J. Harvey

Title: School Board Attorney

**SCHOOL BOARD ATTORNEY, as  
Escrow Agent**

By: 

Name: AND R. COART


Title: Asst. School Board Atty

[CITY OF NORTH MIAMI SIGNATURE PAGE]

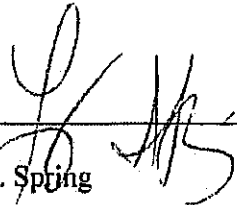
City of North Miami

Date:


ATTEST: City of North Miami, a Florida municipal Corporation,

By:  \_\_\_\_\_

Michael A. Etienne, Esq.  
City Clerk

By:  \_\_\_\_\_  
Larry M. Spring  
City Manager

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By:  \_\_\_\_\_  
For Jeff P. H. Cazeau, Esq.  
City Attorney

**EXHIBIT A-1**

**CERTIFICATE AS TO AUTHORIZED SIGNATURES  
AUTHORIZING REQUESTS FOR DISBURSEMENT  
PURSUANT TO ESCROW AGREEMENT**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FL, authorized to initiate and approve disbursements pursuant to the Escrow Agreement to which this Exhibit A-1 is attached, on behalf of THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA.


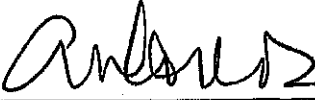
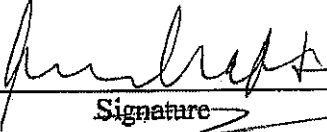

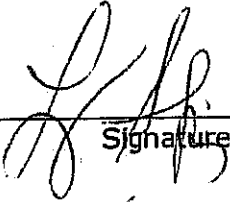
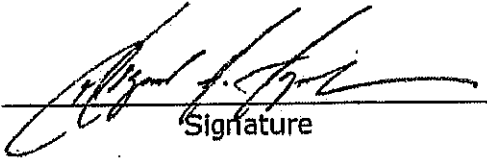
Name / Title	<u>Specimen Signature</u>
<u>JAIME G. TARNENS</u> Name	 Signature
<u>CHIEF FACILITIES OFFICER</u> Title	
<u>ANA RUIZ-CONDE</u> Name	 Signature
<u>DEP. CH. OF ESC. SUST.</u> Title	
<u>ANA R. CHART</u> Name	 Signature
<u>Asst School Board Atty</u> Title	
<u>PHONG T. VU</u> Name	 Signature
<u>Treasurer</u> Title	

EXHIBIT A-2

**CERTIFICATE AS TO AUTHORIZED SIGNATURES  
AUTHORIZING REQUESTS FOR DISBURSEMENT  
PURSUANT TO ESCROW AGREEMENT**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the CITY OF NORTH MIAMI, FL are authorized to approve disbursements pursuant to the Escrow Agreement to which this Exhibit A-2 is attached, on behalf of the City of Miami.

Name / Title	<u>Specimen Signature</u>
<u>Larry Spring</u> Name	 Signature
<u>City Manager</u> Title	
<u>Yiguel A. Augustin</u> Name	 Signature
<u>Finance Director</u> Title	
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	

**EXHIBIT THREE TO 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**

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Preliminary Project Budget with a total Project cost estimated at \$10,500,000, consisting of a not-to-exceed contribution from the Board of \$3,500,000, and \$7,000,000 from the City.

The City acknowledges and agrees that it shall provide the Board with a complete budget for the Project ("Project Budget"), detailing all applicable Soft Costs and Hard Costs, prior to commencement of any construction activities on the Site, which Project Budget shall be attached hereto as Exhibit Three.

[Consisting of \_\_\_(TBD) pages, including this title page]

**ATTACHMENT "A" TO 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**

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The scope of the Project shall be implemented substantially as depicted in the attached Site Sketch set forth in Exhibit One.

The City acknowledges and agrees that, at such time as the construction documents for the Project are completed and approved by both Parties, the City shall provide a signed and sealed set of construction documents to the Board (the "Construction Documents"), which Construction Documents shall be attached hereto by reference as Attachment "A".