

MEMORANDUM

Agenda Item No. 11(A)(12)

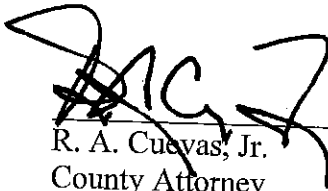
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 30, 2015

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving the Joint Use Agreement between Miami-Dade County and the School Board of Miami-Dade County, Florida for an initial term of five years to commence with the new fiscal year on October 1, 2015 and two renewal terms of five years each, all for a rent payment by the County to the School Board of \$1.00 per year; directing the County Mayor to identify funding source to pay for the County's obligations under the agreement and to include same within the Parks, Recreation and Open Spaces Department's budget for fiscal year 2015-16 and the duration of the agreement

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Dennis C. Moss.


R. A. Cuevas, Jr.
County Attorney

RAC/smm



MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 30, 2015

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 11(A)(12)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(12)
6-30-15

RESOLUTION NO. _____

RESOLUTION APPROVING THE JOINT USE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA FOR AN INITIAL TERM OF FIVE YEARS TO COMMENCE WITH THE NEW FISCAL YEAR ON OCTOBER 1, 2015 AND TWO RENEWAL TERMS OF FIVE YEARS EACH, ALL FOR A RENT PAYMENT BY THE COUNTY TO THE SCHOOL BOARD OF \$1.00 PER YEAR; DIRECTING THE COUNTY MAYOR OR DESIGNEE TO IDENTIFY FUNDING SOURCE TO PAY FOR THE COUNTY'S OBLIGATIONS UNDER THE AGREEMENT AND TO INCLUDE SAME WITHIN THE PARKS, RECREATION, AND OPEN SPACES DEPARTMENT'S BUDGET FOR FISCAL YEAR 2015-16 AND THE DURATION OF THE AGREEMENT, AND TO EXECUTE THE AGREEMENT AND EXERCISE THE PROVISIONS THEREIN, EXCEPT THE PROVISION FOR CANCELLATION FOR CONVENIENCE

WHEREAS, the School Board of Miami-Dade County, Florida (the "School Board") owns the vacant parcel of real property at Southwest 146th Street and Southwest 103rd Avenue, which is in close proximity to a residential neighborhood and two public schools—Richmond Heights Middle School and Coral Reef Senior High School; and

WHEREAS, this Board and the School Board desire to enter into the Joint Use Agreement in substantially the form attached hereto as Exhibit A, which would allow for joint use for public park purposes of the vacant real property identified as "Ferguson Park" in the Joint Use Agreement; and

WHEREAS, in exchange for the County's use of Ferguson Park for public park purposes, the County is required to pay annual rent of One Dollar (\$1.00) and provide all maintenance necessary to keep Ferguson Park in a good, safe, clean, and code-compliant condition,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby:

Section 1. Approves the Joint Use Agreement between the County and the School Board, in substantially the form attached hereto as Exhibit A, and approves the term of the Joint Use Agreement to commence on October 1, 2015.

Section 2. Directs the County Mayor or Mayor's designee to identify funding source(s) to pay for the County's obligations under the Joint Use Agreement and to include same within the Parks, Recreation and Open Spaces Department's budget for fiscal year 2015-16 and for the duration of the Joint Use Agreement.

Section 3. Authorizes the County Mayor or Mayor's designee to execute the Joint Use Agreement for and on behalf of the County for an initial term of five years, commencing October 1, 2015, and two renewal terms, each of five years, all at a rental amount of One Dollar (\$1.00) per year, payable by the County to the School Board and to exercise all of the provisions of the Joint Use Agreement, except for the right of cancellation for convenience contained in Article XV of the Joint Use Agreement, which provision shall only be exercised with the prior approval of this Board.

The Sponsor of the foregoing resolution is Commissioner Dennis C. Moss. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman

Esteban L. Bovo, Jr., Vice Chairman

Bruno A. Barreiro

Jose "Pepe" Diaz

Sally A. Heyman

Dennis C. Moss

Sen. Javier D. Souto

Juan C. Zapata

Daniella Levine Cava

Audrey M. Edmonson

Barbara J. Jordan

Rebeca Sosa

Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of June, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MAG

Miguel A. Gonzalez

JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT ("Agreement"), made and entered into this ____ day of _____, 20__, between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic existing under the laws of the State of Florida (the "BOARD"), and the MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("COUNTY"). The BOARD and COUNTY are sometimes referred to in this Agreement individually as "Party" and collectively as the "Parties".

WITNESSETH

WHEREAS, the BOARD and COUNTY are mutually interested in and concerned with providing and making available recreational programs, activities and facilities for the use and benefit of both the students of Miami-Dade County Public Schools (the "District") and the residents of the COUNTY; and

WHEREAS, the BOARD owns and has under its jurisdiction a certain vacant parcel of real property, located in Miami-Dade County, Florida, at SW 146 Street and SW 103 Avenue (hereinafter referred to as the "Site"), adjacent to Coral Reef Senior High School (hereinafter referred to as the "School"); and

WHEREAS, the BOARD and COUNTY are desirous of entering into this Agreement to provide for the joint use of the Site by both Parties for recreational and/or educational purposes, under terms and conditions outlined in this Agreement; and

WHEREAS, Miami-Dade County by the adoption of Resolution No. _____, at its meeting of _____, 20__, approved this Agreement; and

WHEREAS, The School Board of Miami-Dade County, Florida has authorized this Agreement in accordance with Board Action No. 115,925, at its meeting of September 5, 2012.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), restrictions and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the BOARD and COUNTY agree as follows:

I.

RECITALS

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

II.

PREMISES TO BE JOINTLY USED

Effective with the Commencement Date of this Agreement (as defined in Article III below), the Parties agree to jointly use the Site, situated in Miami-Dade County, Florida, adjacent to the School, and consisting of approximately seven acres, as more particularly described in Exhibit "A" attached hereto and made a part hereof.

III.

TERM

This Agreement shall be effective upon the date on which the last of the Parties initials or executes this Agreement (the "Effective Date"), which shall also be the date that the COUNTY may initiate Due Diligence activities on the Site, as detailed in Article XXXV of this Agreement. The term of this Agreement shall be for a period of five (5) years, commencing upon the COUNTY'S acceptance of the Site, as detailed in Article V (the "Commencement Date").

IV.

CONSIDERATION

The COUNTY shall pay the BOARD as consideration for use and occupancy of the Site throughout the term of this Agreement, and any renewal thereof, the sum of one dollar (\$1.00) per year in advance beginning on the Commencement Date, and on the anniversary date of the Commencement Date each year thereafter.

V.

USE OF SITE

The Site shall be used solely by the COUNTY for the operation of recreational programs and for no other purpose. The COUNTY covenants and agrees to accept the Site in its "as-is", "where-is" condition and basis with all faults as of the Commencement Date of this Agreement, subject to all easements, covenants or other encumbrances of record. The BOARD makes no representations or warranties of any type or nature whatsoever, either expressed or implied, as to the usefulness, physical condition or appropriateness of the Site for the COUNTY'S operations or any specific use. The COUNTY, by executing this Agreement, acknowledges that it has the right, but not the obligation, to conduct due diligence activities related to the Site, as detailed in Article XXXV of this Agreement, and agrees and acknowledges that the BOARD has made no representations whatsoever regarding the Site. The COUNTY represents that it is relying and will continue to rely solely on its own investigations of the Site in its decision to occupy or use it, and the COUNTY further acknowledges and agrees that the BOARD shall not

indemnify the COUNTY in any way with respect to condition of the Site. The provisions of this paragraph shall survive the expiration or the early termination or cancellation of this Agreement.

In the event a determination is made by the COUNTY that the Site is viable for recreational purposes, the COUNTY shall so notify the BOARD in writing, and this Agreement shall commence as of the date of said notification, and the notice of acceptance shall become a part of this Agreement by reference.

In the event a determination is made by the COUNTY that the Site is not viable for recreational purposes, the COUNTY shall so notify the BOARD in writing, and this Agreement shall terminate as of the date of said notification, and be of no further force and effect.

Effective with the Commencement Date, the BOARD shall have full control, custody, right and use of the Site Monday through Friday from 3:00 p.m. to 5:30 p.m. during the period of January 1st to April 30th. ("BOARD'S Period of Use"). The COUNTY shall have full control, custody, right and use of the Site at all other times throughout the term of this Agreement (COUNTY'S Period of Use"). However, should the BOARD require use of the Site for a special event or function or any other reason during the COUNTY'S Period of Use, the BOARD shall request said use through the COUNTY'S designated representative, with a minimum of seventy-two (72) hours advance notice. Approval of said requests shall not be unreasonably withheld, provided such use does not conflict with the COUNTY'S operations or previous obligations.

Notwithstanding the above, the BOARD reserves the right, in its sole discretion, to use the Site on a regular and ongoing basis for recreational or educational purposes during regular school hours on regular school days as established through the BOARD'S approved school calendar ("BOARD'S Future Period of Use"). In such event, the BOARD shall provide the COUNTY with written notice, a minimum of thirty (30) days prior to the effective date of such use, of the BOARD'S intent to commence using the Site. Thereafter, the Parties, through their designated representatives, shall meet prior to the start of each regular school year, as established through the BOARD'S approved school calendar, or as soon thereafter as possible, to establish a mutually agreeable and reasonable schedule for use of the Site by the Parties. Such schedule of use and the exact areas of use may be modified from time to time throughout the school year by mutual agreement of the Parties, or their designees.

The use of the Site for carnivals, fairs, exhibits, mechanical rides, midways, or the same or similar kinds of activities is expressly prohibited. The sale or consumption of alcoholic beverages on the Site is expressly prohibited. Neither Party shall commit nor permit any

violations of applicable laws, rules and regulations of the BOARD, COUNTY, State, or Federal government upon the Site.

The COUNTY agrees that the Site shall not be used for storage of construction or maintenance materials, or for the storage or long-term parking of vehicles, and it shall secure and lock all perimeter and parking lot gates at the completion of its daily period of use, and shall remove all unauthorized vehicles stationed thereon. The COUNTY shall remove said vehicles using all lawful means, and may post signs to facilitate same, after securing approval from the BOARD or designee.

The COUNTY, in addition to its own utilization of the Site, shall have the option of contracting with not-for-profit parties to use the Site to provide COUNTY-sponsored recreational services and programs to the general public during the COUNTY'S Period of Use. In that event, the COUNTY shall be responsible during such use for all maintenance, clean-up, risk management and supervision of the Site and other terms and conditions set forth in this Agreement, the same as if the COUNTY itself were utilizing the Site. Further, the COUNTY shall require such entities or groups to provide liability insurance, naming both the COUNTY and the BOARD as additional insureds, in accordance with the rules and regulations established from time to time by the BOARD for use of the Site. The COUNTY shall obtain a certificate of insurance evidencing same and shall provide a copy thereof to the BOARD prior to such entity's use of the Site.

The Parties agree that portions of the Site shall be closed from time to time to reduce the impact on the turf or to complete turf or other maintenance activities. During periods of joint use, the Parties agree that the method, scope and scheduling of any such closure shall be as mutually agreed to by the BOARD and COUNTY, or their respective designees, with the Parties to work cooperatively in this regard.

The COUNTY shall provide proper supervision of the Site during the COUNTY'S Period of Use, and maintain the Site safe and secure during the COUNTY'S Period of Use.

VI.

IMPROVEMENTS TO THE SITE BY THE COUNTY

The COUNTY may construct recreational improvements on the Site (hereinafter referred to as the "Work"), all at the COUNTY'S sole cost and expense, subject to the prior written approval of the BOARD or its designee. The COUNTY agrees that no construction, major repairs, alterations or improvements on the Site may be undertaken unless the plans are first

submitted to and approved by the BOARD, or designee, which the BOARD may approve or disapprove at its sole authority and discretion. Plans must be signed and sealed by a duly licensed design professional and be of sufficient detail to secure any and all permits necessary to commence the Work. The plans shall be prepared in accordance with all applicable laws, rules, regulations, statutes and codes, including, without limitation, the BOARD'S design criteria, specifications and safety codes, the State Requirements for Educational Facilities and the Florida Building Code, in effect at the time the plans are submitted to the BOARD. All work shall be performed in a good and workmanlike manner by contractors who are licensed, insured and fully bonded, and the COUNTY shall provide evidence of same to the BOARD prior to commencement of any Work. The COUNTY'S contractors must be pre-qualified by the BOARD before commencing the work or any construction activities on the Site. The BOARD'S Building department shall be the entity responsible for reviewing and approving all construction documents, issuing permits for construction and providing final acceptance of the Work. The Work shall commence only after issuance of proper permits, in conformance with the requirements of the BOARD'S Building department or other appropriate jurisdictional governmental entity, and shall at all times be in compliance with all applicable laws, rules and regulations, including, without limitation, the Florida Building Code, the Americans with Disabilities Act, the Jessica Lunsford Act, the State Regulations for Educational Facilities, and the District criteria and standards, as the same may be amended from time to time. All permits shall be properly closed by the COUNTY upon completion of the Work, and evidence of same, satisfactory to the BOARD, shall be provided. All work shall be limited to those areas designated in the plans.

The COUNTY shall cause any contractors doing work on the Site to indemnify, defend and hold harmless the BOARD, its employees and representatives from any and all liability, damages and claims. In addition, the COUNTY shall require its contractors to provide proof of insurance coverage in the types and amounts of coverage as may be reasonably required by the BOARD, including but not limited to Commercial General Liability Insurance, Automobile Liability Insurance, Worker's Compensation Insurance and Property Coverage, or as may be amended from time to time, and naming The School Board of Miami-Dade County, Florida, its members, officers and employees, as additional insured on the Commercial General Liability Insurance.

The COUNTY covenants and agrees that it shall indemnify, hold harmless and defend the BOARD from and against any and all claims, liens, suits, actions or causes of action arising

out of or in connection with any construction costs and expenses for improvements made by the COUNTY on the Site

All improvements or facilities installed, operated and maintained by the COUNTY on the Site pursuant to this Agreement shall become the property of the BOARD, without compensation due to the COUNTY, at such time as the BOARD accepts installation of same as being final and in compliance with all appropriate regulations.

The COUNTY shall retain responsibility for Maintenance, Utilities and for Damage or Destruction, under Articles VII, IX, and XXVIII of this Agreement, as well as any required custodial services with respect to the newly constructed improvements.

VII.

MAINTENANCE

The COUNTY, at the COUNTY'S expense, shall be responsible for all maintenance, repair and upkeep of the Site, as is necessary to keep the same in a good, safe, clean and code compliant condition at all times, including, without limitation: (a) turf and field maintenance and mowing, (b) maintenance and repair of all trees, landscaping and irrigation systems, (c) maintenance and repair of fences and gates along the perimeter of or located within the Site, (d) maintenance and repair of all utilities, including, without limitation, irrigation systems, lighting and water servicing the Site, (e) maintenance and repair of all buildings and improvements, including, without limitation, recreation centers, play apparatus, shelters, walking surfaces, parking areas, restrooms, etc., and (e) general maintenance and cleaning of grounds, including trash and litter pick-up and removal generated during the COUNTY'S Period of Use.

The BOARD, at the BOARD'S expense, shall be responsible for general maintenance and cleaning of grounds, including pick-up and removal of trash and litter generated by the BOARD during the BOARD'S Period of Use, as well as during the BOARD'S Future Period of Use, should the BOARD initiate same, as provided for in Article V.

The COUNTY may apply certain herbicides and pesticides to the grounds at the Site during the COUNTY'S Period of Use, using a certified technician, after submitting specifications and environmental information to the BOARD or its designee, and securing written approval from same to utilize the product.

In compliance with the December 2004 version of the State Requirements for Educational Facilities, or its successor document, the COUNTY shall conduct annual inspections of any bleachers it has placed on the Site, to assure they are in a safe condition and free from hazard, and shall secure a certificate from a structural engineer on a biennial basis

attesting to same. A copy of the biennial certificate shall be provided to the BOARD without demand.

Notwithstanding the above, the BOARD reserves the right to promulgate and enforce reasonable rules and regulations regarding responsibility for maintenance of the Site.

VIII.

INSURANCE

The COUNTY shall, on or before the Commencement Date, provide the BOARD with confirmation of the COUNTY'S self-insurance program or, in the alternative, proof of insurance in the types and amounts of coverage as may be reasonably required by the BOARD, including but not limited to Commercial General Liability Insurance, Automobile Liability Insurance, Worker's Compensation Insurance and Property Coverage, or as may be amended from time to time, and naming The School Board of Miami-Dade County, Florida, its employees and agents, as additional insured on the Commercial General Liability Insurance. Proof of coverage shall be provided to the BOARD on an original certificate of insurance endorsed to reflect a minimum thirty (30) day advanced notice of cancellation. The certificate of insurance shall be delivered to the BOARD on or before the Commencement Date of this Agreement, and shall remain in full force and effect during the term of this Agreement, and the COUNTY shall furnish the BOARD evidence of renewals of such insurance policy no less than thirty (30) days prior to the expiration of the then current policy.

IX.

UTILITIES AND OTHER SERVICES

The COUNTY shall be responsible for payment of any and all utilities relating to the use and operation of the Site, including without limitation, electricity, water, sewer, trash collection, solid waste disposal and storm water. The COUNTY shall install separate services and/or meters in its name and shall pay for such services at its sole cost and expense.

X.

INDEMNIFICATION AND HOLD HARMLESS

The COUNTY does hereby agree to indemnify and hold harmless the BOARD, to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the COUNTY 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 COUNTY 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 COUNTY. 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 BOARD does hereby agree to indemnify and hold harmless the COUNTY, to the extent of the 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 COUNTY from any liability or claim arising out of the negligent performance or failure of performance of the COUNTY 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.

XI.

NO LIABILITY FOR PERSONAL PROPERTY

The Parties agree to insure or self-insure their interests in personal property to the extent each Party deems necessary or appropriate and hereby waive all rights to recovery for loss or damage of such property by any cause whatsoever. The Parties hereby waive all rights of subrogation under any policy or policies they may carry on property placed or moved on the Site.

XII.

LIABILITY FOR DAMAGE OR INJURY

Subject to the limitations included within Section 768.28, Florida Statutes, the BOARD shall not be liable for any damage or injury which may be sustained by the COUNTY or any persons on or about the Site, other than damage or injury resulting from the negligent performance or failure of performance on the part of the BOARD, its agents, representatives or employees, or failure of the BOARD to perform its covenants under this Agreement. The

BOARD shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God.

Subject to the limitations included within Section 768.28, Florida Statutes, the COUNTY shall not be liable for any damage or injury which may be sustained by the BOARD or any persons on or about the Site during the BOARD'S period of use, other than damage or injury resulting from the negligent performance or failure of performance on the part of the COUNTY, its agents, representatives or employees, or failure of the COUNTY to perform its covenants under this Agreement. The COUNTY shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God.

XIII.

ASSIGNMENT AND SUBLETTING

Other than as provided for in Article V, the COUNTY shall not, at any time during the term of this Agreement, sublet in part or whole the Site, or assign, transfer, mortgage, pledge, hypothecate or otherwise dispose of its interest in this Agreement or any portion or part thereof, or allow any other individual or entity to operate or manage the Site, or permit the Site to be occupied by other persons, firms, corporations, or governmental units, without the BOARD'S prior written consent, which may be withheld at the BOARD'S sole discretion. Any unauthorized assignment, sublet or otherwise, shall constitute a default under this Agreement, and may result, at the BOARD'S sole option, in the automatic termination of this Agreement for cause, irrespective of Article XVI of this Agreement.

XIV.

OPTION TO RENEW

If not in default in performance of the obligations set forth in this Agreement, the COUNTY shall have the right and option to renew this Agreement, under the same terms and conditions set forth herein, for two (2) additional terms of five (5) years each from the expiration of the original term or any renewal thereof, with the mutual agreement of the BOARD, and provided the COUNTY gives written notice to the BOARD at least sixty (60) days prior to the expiration of the then current term. Approval of such renewal requests shall not be unreasonably withheld.

XV.

CANCELLATION

In addition to the provisions of Articles XVI and XXVIII, the BOARD and COUNTY shall have the right to cancel this Agreement without cause or penalty, by giving the other Party written notice at least one (1) year prior to the effective date of said cancellation.

XVI.

DEFAULT

The BOARD shall notify the COUNTY in writing regarding COUNTY'S failure to perform or to comply with the terms and condition of this Agreement. If the COUNTY fails to cure the default within thirty (30) days after receiving written notice or does not provide the BOARD with a written response indicating the status of the COUNTY's curing of the default and providing a mutually agreeable schedule to cure all defaults, said approval not to be unreasonably withheld, within thirty (30) days after receiving written notice, the BOARD shall have the right to immediately terminate this Agreement, without penalty, upon ten (10) days additional written notice to the COUNTY.

The COUNTY shall notify the BOARD in writing regarding the BOARD'S failure to perform or to comply with the terms and conditions of this Agreement. If the BOARD fails to cure the default within thirty (30) days after receiving written notice or does not provide the COUNTY with a written response indicating the status of the BOARD'S curing of the default and providing a mutually agreeable schedule to cure all defaults, said approval not to be unreasonably withheld, within thirty (30) days after receiving written notice, the COUNTY shall have the right to immediately terminate this Agreement, without penalty, upon ten (10) days additional written notice to the BOARD.

XVII.

PEACEFUL POSSESSION

Subject to the terms, conditions and covenants of this Agreement, the Parties agree that each Party shall and may peaceably have, hold and enjoy the Site, without hindrance or interference by the other Party.

XVIII.

RIGHT OF ENTRY

Other than in the event of an emergency and subject to the provisions of Article XXX, after first providing reasonable notice to the COUNTY, the BOARD, or any of its agents, representatives or employees, shall have the right to enter the Site to examine same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort or preservation of the Site, provided such activities do not unreasonably interfere with the COUNTY'S use of the Site.

XIX.

TAXES AND REGULATORY COMPLIANCE

The COUNTY shall be responsible for payment of any taxes, fees or other assessments,

including but not limited to sales tax, which may be imposed on the Site as a result of the use and occupancy of the Site by the COUNTY. If at any time during the term of this Agreement, there is a requirement by any jurisdictional entity for infrastructure improvements or other regulatory compliance due to the COUNTY'S use or occupancy of the Site, the COUNTY acknowledges and agrees that it shall be responsible for compliance with all applicable requirements, at the COUNTY'S sole cost and expense.

XX.

SURRENDER OF PREMISES

Except as otherwise provided in this Agreement, the COUNTY agrees, at the expiration, termination or cancellation of this Agreement or any extension thereof, to promptly and peacefully surrender and deliver possession of the Site to the BOARD in good order and repair and in as good or better condition as existed on the Commencement Date of this Agreement, ordinary wear and tear, or damage by fire, windstorm or other Acts of God, excepted. The COUNTY shall be required to promptly remove all of the COUNTY'S personal property and other items belonging to the COUNTY from the Site. In addition, upon the expiration, cancellation or termination of this Agreement, the COUNTY agrees, at the BOARD'S sole option, to remove any improvements or facilities constructed by the COUNTY on the Site and to restore such area to the same or better condition as existed before the Commencement Date of this Agreement. In the event the BOARD elects to retain said improvements constructed by the COUNTY, the COUNTY agrees to convey title to the improvements to the BOARD, without compensation due to the COUNTY. The COUNTY shall promptly return all keys and other items belonging to the BOARD and shall coordinate with the BOARD to ensure a proper and timely surrender of the Site. Any of the COUNTY'S personal property not removed within ten (10) days after expiration, termination or cancellation of this Agreement shall be considered abandoned.

XXI.

AMENDMENTS

The BOARD and the COUNTY, by mutual agreement, shall have the right, but not the obligation, to amend this Agreement. Such amendments shall be effective only when signed by the BOARD and the COUNTY and shall be incorporated as part of this Agreement.

XXII.

NON-DISCRIMINATION

The Parties agree that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, national origin, mental or physical handicap, or as otherwise provided by law, in the use of the Site. It is expressly understood that upon a

determination by a court of competent jurisdiction that discrimination in the use of the Site by a Party hereto has occurred, such event shall be treated as a Default hereunder.

XXIII.

LEGAL FEES AND COURT COSTS

In the event of any 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.

XXIV.

CONSTRUCTION OF AGREEMENT

This Agreement shall be construed and enforced according to the laws of the State of Florida and the venue for any disputes shall be Miami-Dade County, Florida.

XXV.

SEVERABILITY

In the event any paragraph, clause or sentence of this Agreement or any future amendment thereto is declared invalid by a court of competent jurisdiction, such paragraph, clause or sentence shall be stricken from the subject Agreement and the balance of the Agreement shall not be affected by any deletion, provided to do so would not render interpretation of the Agreement provisions ambiguous or a nullity.

XXVI.

WAIVER

No waiver of any provision shall be deemed to have been made unless such waiver is in writing and signed by the BOARD or the COUNTY. The failure of any Party to insist upon strict performance of any of the covenants, provisions or conditions of this Agreement shall not be construed as waiving or relinquishing any such covenants, provisions or conditions, but the same shall continue and remain in full force and effect.

XXVII.

NOTICE AND GENERAL CONDITIONS

A. All notices or communications under this Agreement by either Party to the other shall be sufficiently given or delivered if dispatched by (1) certified U.S. mail, postage pre-paid, return receipt requested, (2) hand delivery, (3) Federal Express or other comparable overnight mail service, (4) telephone facsimile transmission with transmission receipt, or (5) electronic mail to the following addresses, or as the same may be changed in writing from time to time:

In the case of notice or communication to BOARD:

The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
School Board Administration Building
1450 N.E. Second Avenue, Room 912
Miami, Florida 33132
Fax: 305-995-1488

With a copy to:

Miami-Dade County Public Schools
Planning, Design and Sustainability
Attention: Eco-Sustainability Officer
1450 N.E. Second Avenue, Room 525
Miami, Florida 33132
Fax: 305-995-4760
E-mail: arijo@dadeschools.net

With a copy to:

The School Board of Miami-Dade County, Florida
School Board Attorney's Office
1450 NE 2nd Avenue, #400
Miami, FL 33132
Attn: School Board Attorney
Fax: 305-995-1412
E-mail: Walter.Harvey@dadeschools.net

In the case of notice or communication to the COUNTY:

Office of the Mayor
Stephen P. Clark Center
111 NW 1st Street
Miami, FL 33128

B. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the Parties to this Agreement.

C. For purposes of this Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the BOARD to grant or deny any and all approvals required under this Agreement, including, without limitation, establishing use schedules, modifying the areas or periods of use, placing the COUNTY in default, and reviewing and approving all matters relating to the COUNTY'S construction of improvements on the Site, if any. The Superintendent of Schools or his/her designee shall also be the party designated by the BOARD to grant or deny any approvals required by this Agreement for the renewal, cancellation and/or termination of this Agreement as provided herein.

D. 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 PM (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. "Day" as used in this Agreement shall be defined as calendar day, unless otherwise provided. Counsel for the BOARD and counsel for the COUNTY may deliver Notice on behalf of the BOARD and the COUNTY, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties of any change in name or address to which Notices shall be sent by providing the same pursuant to this provision.

XXVIII.

DAMAGE AND DESTRUCTION

Other than damage or destruction caused by the BOARD, in the event the Site should be destroyed or so damaged by fire, windstorm or other casualty to the extent the Site is rendered untenable or unfit for the purposes intended, the COUNTY may, at the COUNTY'S sole option, either cancel this Agreement by giving written notice to the BOARD, or repair or replace the damaged/destroyed facilities, at the COUNTY'S expense. If the COUNTY opts to repair or replace the damaged/destroyed facilities, then the COUNTY shall cause the damaged/destroyed facilities to be repaired or replaced, and placed in a safe, secure and useable condition within one hundred eighty (180) days from the date of said damage or destruction, or other reasonable period of time as mutually agreed to by the Parties, which shall be determined based upon the scope and nature of the damages, costs of the necessary repairs and available funding for such repairs. Should the damaged/destroyed facilities not be repaired and rendered tenantable within the aforementioned time period, then the BOARD may, at its sole option, place the COUNTY in default.

The Parties agree that in the event of cancellation of the Agreement due to damage or destruction, the COUNTY shall surrender the Site to the BOARD in compliance with Article XX of the Agreement. Any damage or destruction sustained to the Site as a result of the BOARD'S actions shall be repaired by the BOARD at the BOARD'S sole cost and expense.

XXIX.

HAZARDOUS MATERIALS

For purposes of this Agreement, the term "Hazardous Substances" shall include, but not be limited to, flammable substances, explosives, radioactive materials, asbestos,

polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic by Environmental Law. The term "Environmental Law" shall mean any law, ordinance, rule, order, decree, judgment, regulation and guideline (present and future), of any governmental, quasi-public authority and applicable board of insurance underwriters related to environmental conditions on, under, or about the Site, or arising from the COUNTY'S use or occupancy of the Site, including, but not limited to, soil, air and ground water conditions, or governing the use, generation, storage, transportation, or disposal of Hazardous Substances in, on, at, to or from the Site. The term "Hazardous Substances Discharge" shall mean any deposit, spill, discharge, or other release of Hazardous Substance that occurs during the term, at or from the Site (unless caused solely by the BOARD), or that arises at any time from the COUNTY'S use or occupancy of the Site.

The COUNTY shall not cause or permit to occur: (a) any violation of any Environmental Law in the Site or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about the Site, or the transportation to or from the Site of any Hazardous Substance.

The COUNTY shall, at the COUNTY'S expense, comply with all applicable Environmental Laws with respect to the Site. The COUNTY shall, at the COUNTY'S own expense, make all submissions to, provide all information required by and otherwise fully comply with all requirements of any governmental authority arising under Environmental Laws with respect to the Site during the term of this Agreement. If any governmental authority requires any clean-up or clean-up measures because of any Hazardous Substances Discharge demonstrated to have been caused by the COUNTY with respect to the Site, then the COUNTY shall, at the COUNTY'S own expense, prepare and submit the required plans and all related bonds and other financial assurances and shall carry out all such clean-up plans. The COUNTY shall promptly notify the BOARD of any notices or communications received from any jurisdictional entity in relation to any environmental issues on the Site, and shall promptly provide the BOARD with all information reasonably requested by the BOARD regarding the COUNTY'S use, generation, storage, transportation or disposal of Hazardous Substances in or at the Site.

The COUNTY shall indemnify the BOARD against any Hazardous Substances Discharge demonstrated to have been caused by the COUNTY. The obligations and liability of

the COUNTY under this paragraph shall survive the expiration or termination of this Agreement.

XXX.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The Parties shall comply with all applicable laws, rules, regulations, ordinances and codes of all governmental authorities, including, without limitation, the Florida Building Code, the Americans with Disabilities Act and the Jessica Lunsford Act, as all may be further amended from time to time and to the extent required by applicable law.

XXXI.

SUBORDINATION

This Agreement is and shall be subject and subordinate to any conveyance and ground or underlying leases and the rights of the BOARD under those leases and to all financing that may now or hereafter affect the leases or the Site, and to all renewals, modifications, consolidations, replacements and extensions thereof. This provision shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, the COUNTY shall execute promptly any certificate that the BOARD may request.

XXXII.

**FLORIDA PUBLIC RECORDS LAW; AUDITS AND INSPECTIONS &
ACCESS TO RECORDS**

This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. The Parties understand the broad nature of these laws and agree to comply with Florida's Public Records Laws and laws relating to records retention.

The COUNTY acknowledges and accepts the authority of the BOARD to request and authorize audits, inspections, and reviews, including, but not limited to, the authority to access the COUNTY'S records, its legal representatives' and contractors' records and the obligation of the COUNTY to retain and to make those records available upon request, and in accordance with all applicable laws. The COUNTY shall keep records to show its compliance with this Agreement. In addition, the COUNTY'S contractors and subcontractors must make available, upon the BOARD'S request, any books, documents, papers and records which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

The COUNTY'S, its contractors and sub-contractors shall (a) retain all records for five (5) years after the completion of any construction work at the Site; and (b) the COUNTY shall

retain records for five (5) years after the expiration, early termination or cancellation of this Agreement.

The COUNTY shall incorporate this provision into every contract that it enters into relating to the Site.

XXXIII.

USE OF FACILITY AS A REVENUE GENERATOR

The BOARD shall at all times retain the exclusive right to be the sole authorizer and recipient of revenue generators, in compliance with the BOARD'S Policies, relating to the Site, including, without limitation, third party advertising or installation of wireless telecommunications facilities, provided such endeavors do not unreasonably interfere with the COUNTY'S rights to peaceful enjoyment of the Site.

XXXIV.

REPRESENTATIONS

The COUNTY is duly organized, validly existing, and in good standing under the laws of the State of Florida and has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the COUNTY of its obligations under this Agreement, have been duly authorized by all necessary actions of the COUNTY, and do not contravene or conflict with any rules, regulations, policies or laws governing the COUNTY, or any other agreement binding on the COUNTY. The individual(s) executing this Agreement on behalf of the COUNTY has/have full authority to do so.

The BOARD has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the BOARD of its obligations under this Agreement, have been duly authorized by all necessary action of the BOARD, and do not contravene or conflict with any rules, regulations, policies or laws governing the BOARD, or any other agreement binding on the BOARD. The individual(s) executing this Agreement on behalf of the BOARD has/have full authority to do so.

XXXV.

MISCELLANEOUS PROVISIONS

- A. RECORDATION: This Agreement may not be recorded by either Party.
- B. EMINENT DOMAIN: If any part of the Site is taken in the exercise of the power of eminent domain, this Agreement shall terminate on the date title vests in the taking authority. The COUNTY may pursue all available remedies for the taking but will have no interest in the award made to the BOARD.

- C. **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.
- D. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Agreement.
- E. **BROKERS:** The COUNTY represents that there are no brokers, salesmen or finders involved in the transaction contemplated by this Agreement. If any other claim for a brokerage fee or commission in connection with this transaction is made by any broker, salesman or finder claiming to have dealt by, through or on behalf of the COUNTY ("Indemnitor"), and in consideration of the mutual promises contained in this Agreement, Indemnitor shall indemnify, defend and hold harmless the BOARD ("Indemnitee"), and Indemnitee's officers, directors, agents and representatives, from and against any and all liabilities, damages, claims, costs, fees and expenses whatsoever with respect to said claim for brokerage. The provisions of this Paragraph shall survive the expiration or earlier termination or cancellation of this Agreement.
- F. **PROMOTION.** Other than activities undertaken to promote the COUNTY'S recreational programs at the Site, the COUNTY shall not be permitted to use the Site for promotion or advertising of any type or nature whatsoever.
- G. **COUNTERPARTS.** This Agreement may be signed in any number of counterparts, each of which constitutes the Agreement of the Parties and each of which will be treated as an original.
- H. **DUE DILIGENCE:** The COUNTY acknowledges that upon execution by the Parties of the Agreement to Conduct Due Diligence Investigations on Board-Owned Land ("Due Diligence Agreement") attached as Exhibit "B" hereto and made a part hereof, the COUNTY shall be given access to the Site, with full right to: (a) inspect the Site; (b) conduct any and all inspections, investigations and tests on the Site, including, but not limited to, soil borings and hazardous waste studies, reasonably necessary for the COUNTY to determine the viability of the Site for the COUNTY's intended use, and (c) make such other inspections and examinations with respect to the Site as its counsel, licensed engineers, or other representative may have deemed necessary ("Due Diligence Investigations"). The COUNTY also acknowledges that all Due Diligence

Investigations shall be conducted at the COUNTY'S sole cost and expense, and must be completed on or before 5:00 PM on December 31, 2015, in compliance with all terms and conditions of the Due Diligence Agreement.

XXXVI.

ENTIRE AGREEMENT

This Agreement and all Exhibits attached hereto, constitute the entire agreement between the Parties and supersede all previous negotiations, and it may be modified only by an agreement in writing signed by the BOARD and the COUNTY.

IN WITNESS WHEREOF, the BOARD and the COUNTY have caused this Agreement to be executed by their respective and duly authorized officers the day and year first written above.

COUNTY:
MIAMI-DADE COUNTY

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

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Alberto M. Carvalho
Superintendent of Schools
Date: _____

ATTEST:

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

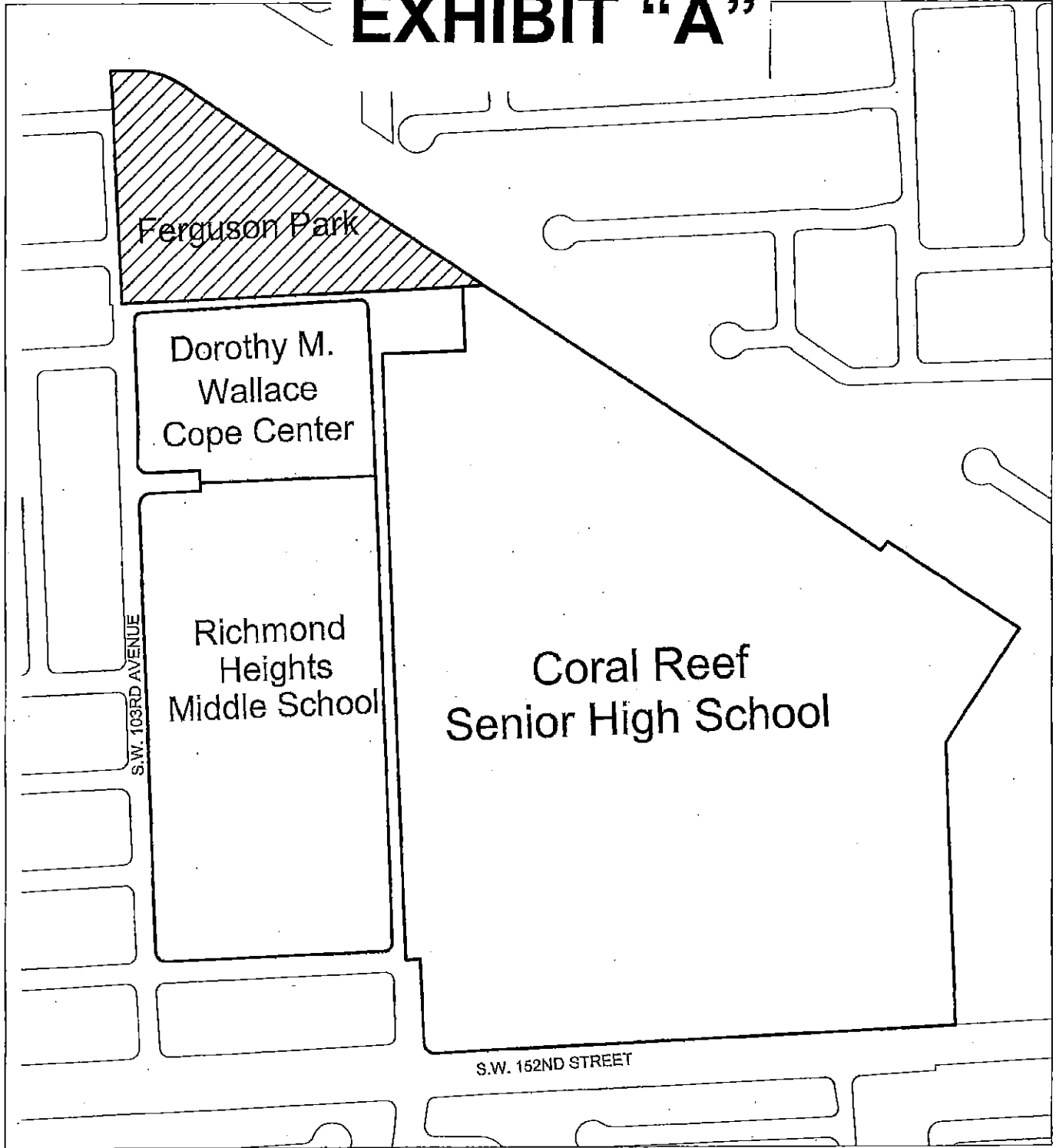
By: _____
County Clerk

School Board Attorney


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

By: _____
County Attorney


EXHIBIT "A"



Legend

	Ferguson Park
---	---------------

N



Not to scale

Exhibit "B"

**AGREEMENT TO CONDUCT
DUE DILIGENCE INVESTIGATIONS
ON BOARD-OWNED LAND**

THIS AGREEMENT TO CONDUCT DUE DILIGENCE INVESTIGATIONS ON BOARD-OWNED LAND ("Agreement"), is made and entered into this _____ day of _____ 20____, by and between **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a body corporate and politic organized under the laws of the State of Florida ("Board"), and **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida ("County"), authorizing the County to conduct certain due diligence investigations on Board-owned land, directly relating to the County's use of the Board-owned site, located at SW 146 Street and SW 103 Avenue, Miami ("Site"). The County does hereby agree to the following terms and conditions:

The County, its agents, employees and representatives shall be authorized to access the Site, situated in Miami-Dade County, Florida, as described in folio # 30-5020-000-0220, and as more particularly described in Exhibit "A" attached hereto and made a part hereof, that the County is investigating for possible use by the County for park purposes pursuant to a joint use agreement between the parties hereto. The County's access thereto shall be for the expressed and limited purpose of performing any inspections and testing that the County reasonably determines is necessary solely to determine the ability of the Site to meet the County's needs for recreational use (hereinafter referred to as the "Due Diligence Investigations"). No subterranean testing of any type or nature may be conducted on the Site that is not specifically required to determine the ability of the Site to meet the County's needs for recreational use, and the County shall in all cases coordinate such excavations with the Board or its designee prior to initiating these activities. Any damage to underground improvements or utility lines caused by the County, its contractors, employees or agents, shall be repaired by the County, at the County's expense.

Prior to undertaking the Due Diligence Investigations, and subject to any other requirements or conditions of this Agreement, the County shall provide the Board, or its designee, with a proposed schedule for such work at the Site, to be approved by the Board, or its designee, such approval not to be unreasonably withheld. Any and all costs and expenses incurred by either the County or the Board in connection with the County's Due Diligence Investigations shall be at the County's sole cost and expense, and any activities that take place on or immediately adjacent to any of the Site shall be performed in a manner not to unreasonably interfere with the educational activities or operations taking place at Coral Reef Senior High School, Dorothy M. Wallace Cope Center or Richmond Heights Middle School.

The County's Due Diligence Investigations at the Site shall be done in

compliance with all applicable rules, statutes, codes and regulations, including, without limitation, the Board's design criteria, the State Requirements for Educational Facilities, the Florida Building Code and the Jessica Lunsford Act, as the same may be amended from time to time. If the Board, or its designee, requests that the County cease any of its Due Diligence Investigations due to violation of any applicable rules and regulations or the Board's safety criteria, then the County shall immediately discontinue its activities and shall proceed only after the Board, or its designee, has reviewed the scheduling of the activities in question and has authorized the County to continue. At the conclusion of the work, the areas where work was conducted on the Site shall be restored to a safe and secure condition, as good or better as existed prior to any such investigations, as determined solely by the Board.

The County does hereby agree to indemnify and hold harmless the Board, to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the County 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 County 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 County. 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.

In addition, on or before the Effective Date of this Agreement (as defined below), the entity completing the Due Diligence Investigations of the Site for the County ("County's Vendor") shall provide certificates of insurance to the Board which evidence insurance coverages and limits meeting, at a minimum, the following requirements: 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 County's Vendor, in an amount not less than \$1 million combined single limit per occurrence for bodily injury and property damage, and 3) Workers' Compensation Insurance as required by Florida Statutes. The insurance shall be subject to a maximum deductible not to exceed \$25,000. The minimum limits to be maintained by the County's Vendor (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1 million per claim/annual aggregate. "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. The Insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the County's Vendor.

Subject to the terms and conditions of this Agreement: (1) all insurance certificates or other proofs of insurance required under this Agreement have been

received and approved by the Board, and (2) the County's proposed schedule for the Due Diligence Investigations has been coordinated with and approved by the Board or designee.

This Agreement shall be effective as of the above date ("Effective Date"), and continue and remain in full force and effect covering the Site until the sooner of the following occurs: (1) a joint use agreement is entered into by the County and the Board for the Site, and the commencement date under such joint use agreement has been reached, or (2) December 31, 2015.

Notwithstanding the above, the Board may terminate this Agreement at any time by providing written notice to the County.

IN WITNESS WHEREOF, the Board and the County have caused this Agreement to be executed by their respective and duly authorized officers the day and the year first hereinabove written.

COUNTY:
MIAMI-DADE COUNTY

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

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Alberto M. Carvalho
Superintendent of Schools
Date: _____

ATTEST:

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

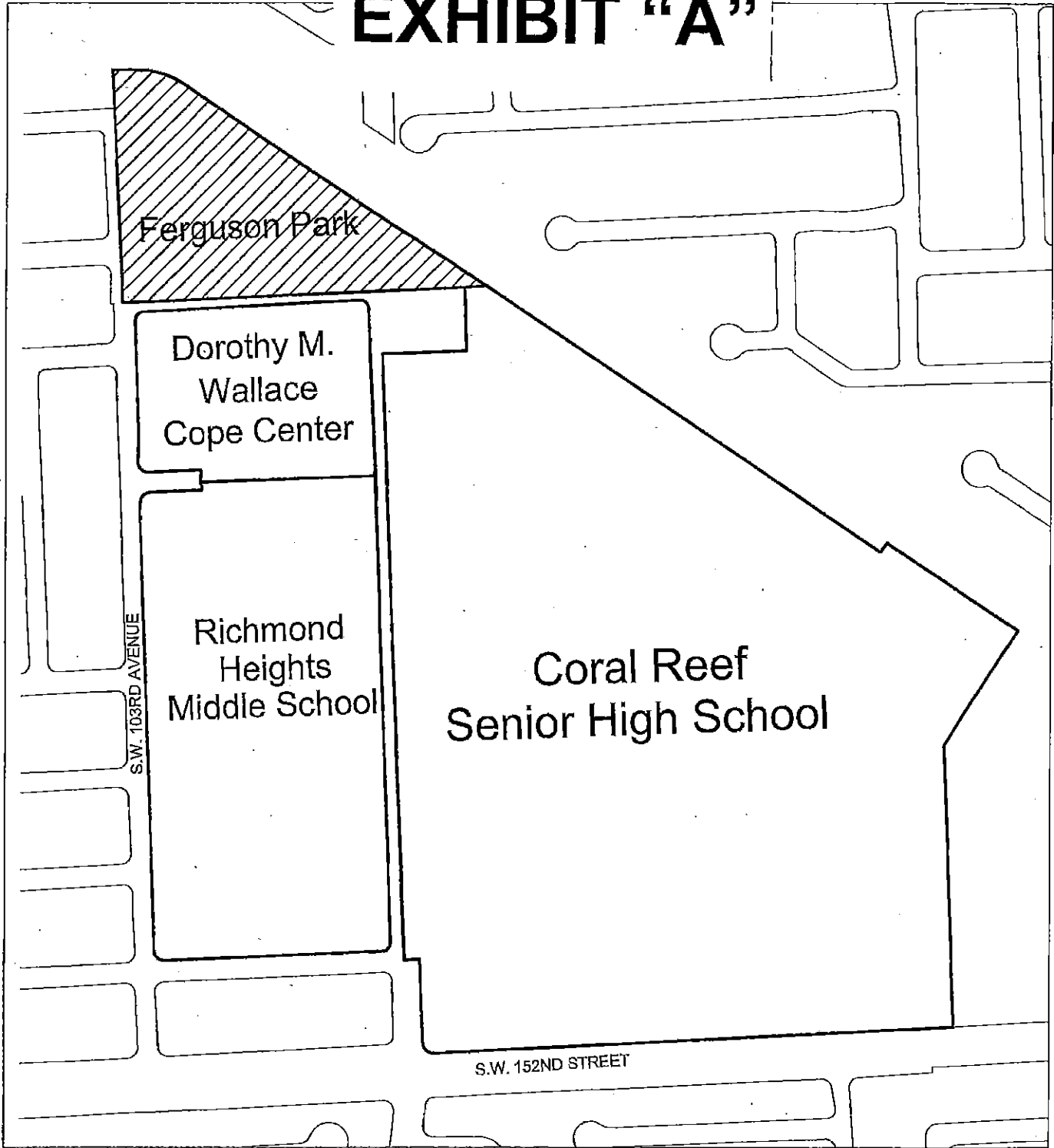
By: _____
County Clerk

School Board Attorney


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

By: _____
County Attorney


EXHIBIT "A"



Legend

 Ferguson Park

N



Not to scale

29