Memorandum

MIAMI-DADE COUNTY

Date: October 5, 2016

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

Agenda Item No. 3(B)(1)

From: Carlos A. Gimenez
Mayor

Subject: Resolution Ratifying the Mayor's Execution of an Access Agreement with the School Board of Miami-Dade County for Colonial Drive Elementary School Property

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Recommendation
It is recommended that the Board of County Commissioners ratify the Mayor's or Mayor's designee's execution of an access agreement with the School Board of Miami-Dade County (School Board) to allow remediation activities at the Colonial Drive Elementary School property.

Scope
Colonial Drive Park is located at 10750 SW 156 Terrace and Colonial Drive Elementary School is located at 10755 SW 160 Street. Both the school and park are in County Commission District 9, which is represented by Commissioner Dennis C. Moss.

Fiscal Impact/Funding Source
Implementation of this resolution will have a $10.00 fiscal impact to the County.

Track Record/Monitor
PROS' project manager, Pablo Gonzalez, will monitor the access agreement and remediation activities.

Background
Colonial Drive Park is an actively used 9.4-acre community park, serving not only students of the adjacent Colonial Drive Elementary School, but all those who live in the surrounding Richmond Heights and Palmetto Estates neighborhoods, and families throughout the County who come to Colonial Drive Park for sport and recreation. PROS has been using and operating the park property since 1975, including a portion of the adjacent School Board property under a joint use agreement with the School Board since 1996. The South Kendall Optimist Club runs successful football, baseball, and cheerleading programs under a programming partnership permit with PROS. These programs serve more than 200 children, year-round. The park is also used for recreation by the adjacent public Colonial Drive Elementary School, which has an enrollment of 328 children. Furthermore, there are more than 60 children enrolled in summer camp and approximately 80 children in the after-school program at the park operated by Knowledge Builders under a programming partnership with PROS. The park's recreation center, basketball courts, tennis courts, and playground are also heavily used by residents.

Random testing in May and June 2014 by Miami-Dade County's Regulatory and Economic Resources Department (RER) revealed that the park and a portion of the elementary school field had elevated levels of arsenic in the soil. The highest levels were localized in the baseball outfields area where the documented arsenic levels were on average 25 times higher than background levels for the surrounding areas. Upon discovery of the arsenic impacts to the soils at the park, in the abundance of caution, RER required

immediate action be taken to minimize any risk to the public. Temporary measures were implemented by PROS to restrict access to the baseball outfields by erecting a chain link fence in September 2014. The remainder of the park remains open for all regular activities. It is RER's position that remediation of the arsenic is necessary and the Miami-Dade Health Department supports that position. A public meeting was conducted on April 11, 2016 at the Colonial Drive Elementary School library located at 10755 SW 160 Street where representatives of PROS, RER, the Health Department and School Board made themselves available to answer questions. In addition to the public meeting, notice of the Colonial Drive Park contamination issue was posted on the PROS website and released to the media in September 2014.

The remediation project is anticipated to remove 12 inches of existing soils and replace with 12 inches of clean soil in order to cover the arsenic impacted soils at an estimated cost of $3.2 million funded from the 2016 Capital Asset Bond Series and Capital Outlay Reserve. This will require the contaminated soil to be excavated and properly disposed of and new clean soil imported to the site. This plan also includes the preservation of all existing buildings and structures including drainage and lighting during construction. The construction work will be coordinated with the school administrative staff and the South Kendall Optimist Club to minimize disruption to their use; however, relocating the baseball sports program to Eureka Park and the football program to Southridge Park during the assessment and remediation phases has been necessary.

In April 2016, PROS contracted a consultant through the Equitable Distribution Program (EDP) to design and provide construction documents for the remediation project. In December 2016, 100 percent completion of the remediation construction documents are anticipated to be delivered to RER and PROS. RER and PROS will work closely with the School Board on the review of the construction documents and on the planning of the actual field work. The remediation construction work is scheduled for the summer of 2017 during school recess. The necessary construction activities by a contractor to be hired by the County on the Colonial Drive Elementary School property will require access permission (Attachment A) from the School Board.

Attachments

Michael Spring
Senior Advisor

ATTACHMENT A

ACCESS AGREEMENT ALLOWING MIAMI-DADE COUNTY TO CONDUCT REMEDIATION ACTIVITIES AT COLONIAL DRIVE ELEMENTARY SCHOOL CAMPUS

THIS AGREEMENT TO ALLOW MIAMI-DADE COUNTY TO CONDUCT REMEDIATION ACTIVITIES AT COLONIAL DRIVE ELEMENTARY SCHOOL CAMPUS ("**Agreement**"), is made and entered into this _____ day of _____ 2016, 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 "**School District**"), whose principal address is 1450 NE 2nd Avenue #923, Miami, Florida, 33132, and **MIAMI-DADE COUNTY,** a municipal corporation of the State of Florida ("**County**"), authorizing the County, at the County's sole cost and expense, to conduct remediation required by its Department of Regulatory and Economic Resources ("**RER**") at Colonial Drive Elementary School Campus, located at 10755 SW 160th Street, Miami, FL ("**Site**") in accordance with terms and conditions set forth herein. School District and County shall individually be referred to herein as "**Party**" and collectively as "**Parties**".

IN CONSIDERATION of the Sum of Ten Dollars ($10.00) and the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to the following terms and conditions:

1. **Site Description:** The County, its agents, employees and representatives shall be authorized to access the Site, situated in Miami-Dade County, Florida, as described in **Folio # 30-5030-000-0050**, and as more particularly described as follows:

> **All of Tract B, of AC FAIRWAYS ESTATES SECTION SIX, according to the Plat thereof as recorded in Plat Book 95, at Page 42, of the Public Records of Miami-Dade County, Florida. Containing 9.36 acres more or less.**
> **AND**
> **The North ½ of SW 158th Street of SW 107th Avenue closed by Resolution #33176.**

for the sole purpose of effecting soil remediation activities required by RER adjacent to Colonial Drive Park.

2. **Remediation/ Work/ Engineering Plans:** The County's access thereto shall be for the expressed and limited purpose of performing all remediation activities of the Site ("**Remediation**"), included in the RER approved Engineering Plans ("**Engineering**

Plans), collectively the "**Work**", at County's sole cost and expense. The Work shall take place at a mutually acceptable scheduled time after approval of the Engineering Plans by RER. The proposed Engineering Plans, the final design of which shall result in the installation of a 12 inch "cap" of clean fill material over a high visibility geotextile liner throughout and in certain areas, shall eliminate exposure to arsenic contaminated soil. The design of the Engineering Plans shall be coordinated with the School District at the 75% and 100% dry run phases to achieve concurrence and ensure that no detrimental impacts occur to the school's facilities and structures, and that the area subject to the Work is restored to the previous physical conditions or equivalent. Furthermore, the design of the Engineering Plans shall not cause harm to the health, safety or well-being of the students, faculty and staff of Colonial Drive Elementary School. The Work shall be fully bonded in accordance with Florida Statutes 255.05. The County may waive bonding requirements if the Work is valued at less than $200,000 as allowed by statute. All Consultant/Contractors, as defined hereinafter, shall be pre-approved by the School Board prior to commencement of the Work.

3. **Coordination of Work:**

3.1 It is further agreed that the County shall in all cases coordinate all of the Work at the Site, including but not limited to any excavations which may be required, with the Board or its designee prior to initiating the Work. 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 sole cost and expense. In conformance with Article 3.2 of this Agreement, and given the need to assure the safety and well being of students, faculty and staff at Colonial Drive Elementary School during regular school hours on regular school days, the County shall make the Board or its designee, aware of the Work that will take place on Site, a minimum of five (5) working days prior to initiating any such work.

3.2 Prior to undertaking the Work, 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, for concurrence by the Board, or its designee, such concurrence not to be unreasonably withheld. Reasonable costs and expenses incurred by the Board, as evidenced by invoices or other documentary evidence reflecting the Board's payment of such reasonable costs and expenses, in connection with the County's Work shall be at the County's sole cost and expense, not to exceed Seven Thousand Five Hundred Dollars ($7,500). 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 Colonial Drive Elementary School to the extent feasible and agreed upon by both Parties. The entire construction Site will be closed and fenced during the construction phase.

4. **Compliance with Laws:** The County's Work at the Site shall be done in compliance with all applicable rules, statutes, codes and regulations, including, without limitation, the State Requirements for Educational Facilities, the Florida Building Code and the Jessica Lunsford Act, as they may be amended from time to time. If the Board, or its designee, requests in writing, except in the event of an emergency, in which case prior written notification will not be required, that the County cease any of its Work due to violation of any applicable rules and regulations concerning safety, including the Board's safety criteria, then the County shall immediately discontinue its activities. The County shall be entitled to proceed with the Work upon the Board's, or the Board's designee, review and acceptance, within forty-eight (48) hours of its submission, of a plan to rectify the safety violation(s) causing stoppage of the Work. The Board or the Board's designee shall not unreasonably withhold acceptance of the County's proposal to rectify any safety violation(s) causing stoppage of the Work. At the conclusion of the Work, the areas where Work was conducted on the Site shall be restored, at County's sole cost and expense, to the previous physical condition or equivalent and safe and secure, as detailed in the approved Engineering Plans and previously agreed upon by both Parties.

5. **Indemnification by County:** The County does hereby agree to indemnify and hold harmless the Board, subject 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.

6. **County's Consultant/Contractors:** It is understood and agreed between the Parties, that the County shall include the following provisions in its contract ("**Contract**") with any and all Consultant/Contractors and/or contractors, relating to the Work to be performed at the Site ("**Consultant/Contractor**"), as it relates to indemnification and insurance, as follows:

6.1. **Indemnification:** The Consultant/Contractor shall indemnify and hold harmless the County and Board their officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County and Board or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of action, or proceedings of any kind or nature arising out of, relating to or resulting from the negligent performance of this Contract, recklessness or intentional wrongful misconduct by the Consultant/Contractor or its employees, agents, servants, partners, principals, or subcontractors. Consultant/Contractor shall pay all claims and losses in

connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the County and the Board, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Consultant/Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Consultant/Contractor shall in no way limit the responsibility to indemnify, keep, and save harmless and defend the County and Board or their officers, employees, agents, and instrumentalities as herein provided.

6.2. **Insurance:** The Consultant/Contractor shall not commence any Work pursuant to this Agreement until all insurance required under this Article has been obtained and such insurance has been approved by the County's Risk Management Division. The Consultant/Contractor shall maintain during the term of this Agreement and furnish to the County and the Board their certificates of insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

6.2.1 Worker's Compensation Insurance for all employees of the Consultant/Contractor as required by Florida Statute 440, as presently written or hereafter amended.

6.2.2 Public Liability Insurance, on a comprehensive basis, in an amount not less than $500,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County and The School Board of Miami-Dade County, Florida must be named as an additional insured with respect to this coverage.

6.2.3 Pollution Liability Insurance in an amount not less than $500,000 combined single limit per occurrence.

6.2.4 Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the Work, in an amount not less than $500,000 per occurrence combined single limit for bodily injury and property damage. Under no circumstances is the Consultant/Contractor permitted on Miami-Dade County airport property, Airside Operation Area, without increasing automobile coverage to $5,000,000.

6.2.5 Professional Liability Insurance in the amount of $1,000,000 providing for all sums which the Consultant/Contractor shall become legally obligated to pay as damages for claims arising out of the services performed by the Consultant/Contractor or any person employed by the Consultant/Contractor in connection with this Agreement.

6.2.6 The Consultant/Contractor shall furnish certificates of insurance to the County's Risk Management Division, Suite 2460, Miami-Dade Center, 111 N.W. First Street, Miami, Florida, 33128-1987 and to the School District's Office of Risk and Benefits Management 1501 NE 2nd Avenue, Suite 324, Miami, Florida, 33132, prior to the commencement of the Work, which certificates shall clearly indicate that the Consultant/Contractor has obtained insurance in the type, amount and classification as required for strict compliance with this Article and that no material change or cancellation of this insurance shall be effective without thirty (30) days prior written notice to the County and to the Board.

6.2.7 Compliance with the foregoing requirements shall not relieve the Consultant/Contractor of the liabilities and obligations under this Article or under any other portion of this Agreement. The Consultant/Contractor shall not commence any Work pursuant to this Agreement until all the required insurance coverages have been obtained and such insurance has been approved by the County's Risk Management Division and The School Board of Miami-Dade County.

6.2.8 As a precondition to the County or County's Consultant/Contractor accessing the Site for the purpose of commencing the Work, the County shall: (1) provide to the Board all insurance certificates or other proofs of insurance required under this Agreement, acceptable to the Board's Office of Risk Management, and (2) schedule and coordinate the Work with, and receive approval from, the Board or designee.

7. **Sovereign Rights:** It is expressly understood that notwithstanding any provisions of this Agreement and the County's status hereunder, the County retains all of its sovereign rights, prerogatives, and regulatory authority (quasi-judicial or otherwise). Without limiting the foregoing:

7.1 The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county or city under State law and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction, development, and/or remediation of Colonial Drive Elementary campus, or be liable for the same; and,

7.2 The County shall not by virtue of this Agreement be obligated to grant any approvals of applications for building, zoning, planning, development and/or remediation under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or remediation of Colonial Drive Elementary School campus.

8. **Governing Laws/ Venue/ Attorney's Fees**: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. In the event of any dispute with respect to this Agreement, the Parties agree that venue shall be in Miami-Dade County, Florida. Each Party shall be responsible for its own attorney's fees and costs incurred as a result of any action or proceeding under this Agreement.

9. **Survival:** Those provisions which by their nature are intended to survive the expiration, cancellation or termination of this Agreement, including by way of example only, the indemnification provision, shall survive the expiration, cancellation or termination of this Agreement.

10. **Notices:** Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and deemed to have been served and given if delivered by e-mail or in person to the address listed below for each Party. If mailed, said notice must be sent by certified mail, return receipt requested, and the effective date will be the date received. The address of the Parties for all purposes under this Agreement and for notice hereunder shall be as follows:

As to the Board:

The School Board of Miami-Dade County, Florida
1450 NE 2nd Avenue, Room 923
Miami, FL 33132
Attn: Mr. Jaime Torrens, Chief Facilities Officer

With Copy to:

Walter J. Harvey, Esquire
School Board Attorney
1450 NE 2nd Avenue #430
Miami, FL 333132

As to the County:

Miami-Dade County Mayor
Stephen P. Clark Center
111 Northwest 1st Street, 29th Floor
Miami, Florida 33128

With a copy to:

Director, Miami-Dade County Parks,
Recreation, and Open Spaces Department
275 Northwest 2nd Street, 5th Floor
Miami, Florida 33128

and

County Attorney
Stephen P. Clark Center
111 Northwest 1st Street, 29th Floor
Miami, Florida 33128
Attn: Mr. Miguel A. Gonzalez, Assistant County Attorney

11. **Effective Date/ Completion of Work:** 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 completion of Work evidenced by Closure Letter to Board issued by RER, but not later than 365 calendar days from the County's issuance of Notice to Proceed to Consultant/Contractor. Notice to Proceed shall be issued by no later than one year from the Effective Date of this Agreement. Notwithstanding the foregoing, the County, through its Mayor or the Mayor's Designee, for good cause shown, may request from the Board, through its Chief Facilities Officer, extensions of time for the completion of the Work, and the Board may not unreasonably withhold consent to the County's requested time extensions.

12. **Termination at Will**: Notwithstanding the above, the Board may terminate this Agreement at any time by providing prior written notice to the County.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Board and the County hereby represent that they 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

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

ATTEST:

By:_____
County Clerk

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

By: _____
County Attorney

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

By:_____
Alberto M. Carvalho
Superintendent of Schools
Date: 5/10/16

RECOMMENDED:

By:_____
Jaime G. Torrens
Chief Facilities Officer
Date: 5/2/16

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

5/5/16
School Board Attorney

MEMORANDUM

(Revised)

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

DATE: October 5, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 3(B)(1)

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**

_____ **Statement of social equity 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**

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 3(B)(1)
10-5-16

RESOLUTION NO. _____

RESOLUTION APPROVING AND RATIFYING THE COUNTY MAYOR OR DESIGNEE'S EXECUTION OF THE ACCESS AGREEMENT WITH THE SCHOOL BOARD OF MIAMI-DADE COUNTY FOR COLONIAL DRIVE ELEMENTARY SCHOOL PROPERTY AT 10755 SW 160 STREET IN THE AMOUNT OF $10.00 PURSUANT TO SECTIONS 2-9 AND 2-10 OF THE CODE OF MIAMI-DADE COUNTY AND RULE 5.05(g) OF THE BOARD'S RULES OF PROCEDURES; AND FURTHER AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO EXECUTE ALL RIGHTS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves and ratifies the County Mayor or designee's execution of the Access Agreement (Attachment A to the accompanying memo) between the School Board of Miami-Dade County and Miami-Dade County to allow remediation activities at the Colonial Drive Elementary School campus, located at 10755 SW 160 Street, pursuant to Sections 2-9 and 2-10 of the Code of Miami-Dade County and Rule 5.05 (g) of the Board's Rule of Procedures. This Board further authorizes the County Mayor or Designee to exercise all rights contained in the Access Agreement.

The foregoing resolution 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	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of October, 2016. 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