OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(10)

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

DATE: October 6, 2015

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

SUBJECT: Resolution approving contract for purchase by the Florida Department of Transportation ("FDOT") of a portion of the County-owned property located at 351 SW 107 Avenue, Sweetwater, Florida and improved with a fire station, required by the FDOT for State Road 985 (SW 107 Avenue) Road Improvement Project, for a total purchase price of $1,509,641.00; authorizing the Chairperson or Vice-Chairperson of the Board to execute a County Deed for such purpose; authorizing execution by Mayor of the purchase agreement as well as a lease agreement between Miami-Dade County and the School Board of Miami-Dade County for $1.00 per year for premises located adjacent to such property to be utilized as a temporary fire station during renovation of impacted fire station

Resolution R-882-15

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

MEMORANDUM

(Revised)

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

DATE: October 6, 2015

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

SUBJECT: Agenda Item No. 11(A)(10)

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)(10)
10-6-15

RESOLUTION NO. R-882-15

RESOLUTION APPROVING CONTRACT FOR PURCHASE BY THE FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT") OF A PORTION OF THE COUNTY-OWNED PROPERTY LOCATED AT 351 SW 107 AVENUE, SWEETWATER, FLORIDA AND IMPROVED WITH A FIRE STATION, REQUIRED BY THE FDOT FOR STATE ROAD 985 (SW 107 AVENUE) ROAD IMPROVEMENT PROJECT, FOR A TOTAL PURCHASE PRICE OF $1,509,641.00; AUTHORIZING THE CHAIRPERSON OR VICE-CHAIRPERSON OF THE BOARD TO EXECUTE A COUNTY DEED FOR SUCH PURPOSE; AUTHORIZING EXECUTION BY MAYOR OR MAYOR'S DESIGNEE OF THE PURCHASE AGREEMENT AS WELL AS A LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY FOR $1.00 PER YEAR FOR PREMISES LOCATED ADJACENT TO SUCH PROPERTY TO BE UTILIZED AS A TEMPORARY FIRE STATION DURING RENOVATION OF IMPACTED FIRE STATION; AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SUCH LEASE AGREEMENT AND TO EXERCISE ANY RIGHTS CONFERRED THEREIN; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE THE CONVEYANCE OF SAID COUNTY PROPERTY AND THE LEASE

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference and attached as Exhibit "A"; and

WHEREAS, the Florida Department of Transportation ("FDOT") has programmed a road improvement project for improvements to SW 107 Avenue from SW 12 Street to Flagler Street, in Miami-Dade County the ("Project"); and

WHEREAS, the Project includes the widening of SW 107 Avenue from four to six lanes between SW 4 Street and Flagler Street; and

WHEREAS, in order to accomplish the widening, a portion of the County-owned property improved with a fire station, located at 351 SW 107 Avenue, Miami-Dade County (the "Fire Station Site"), will need to be acquired by the FDOT, including 3,111 square feet of a 29,882 square foot site, as depicted in the sketch attached as Exhibit "B" (the "Property"); and

WHEREAS, the FDOT provided the County with a pre-condemnation offer letter attached as Exhibit "C," offering to purchase such property for the FDOT's appraised market value of $761,600; and

WHEREAS, the acquisition will require the County to renovate the Fire Station Site in order to continue smooth and efficient operation of the fire station; and

WHEREAS, during the road project and during such period of renovation, the County will be unable to continue such operation at the Fire Station Site; and

WHEREAS, the School Board of Miami-Dade County, Florida owns and operates Sweetwater Elementary school on property adjacent to the fire station site, which includes a large activity field (the "School Board Property"); and

WHEREAS, the School Board is willing to lease to the County, for the nominal rental of $1.00 per year, a portion of the School Board Property for approximately a 2½ year period in order for the County to build and operate a temporary fire station, pending completion of the renovations to the Fire Station Site and the FDOT road improvements, as set forth in the Lease Agreement attached as Exhibit "G" (the "Lease Agreement"); and

WHEREAS, certain due diligence activities must be conducted by the County prior to its occupation of the temporary School Board site, and accordingly, the County Mayor's designee has executed the Agreement to Conduct Due Diligence Investigations on Board-Owned land" (the "Due Diligence Agreement"), attached as Exhibit "A" to the Lease Agreement; and

WHEREAS, the County estimates that compensation is due to the County in the amount of $1,524,641.00, including the market value of the property acquired by the FDOT, costs of renovation, costs and expenses related to the construction and operation of the temporary site, and County fees and costs, as further set forth in Exhibit "D" attached hereto; and

WHEREAS, FDOT has agreed to pay such amount and to purchase the County Property, on the terms and conditions set forth in Exhibit "E" hereto (the "Purchase Agreement contract"),

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

Section 1. This Board ratifies and adopts the matters set forth in the foregoing recitals.

Section 2. This Board approves the Purchase Agreement contract in the amount of $1,524,641.00, and the conveyance of the Property to the FDOT pursuant to the terms therein, authorizes the County Mayor or County Mayor's designee to execute same in substantially the form attached hereto as Exhibit "E," authorizes the County Mayor or County Mayor's designee to take all actions necessary to effectuate such conveyance, and authorizes the Chairperson or Vice-Chairperson of the Board to execute a County Deed for such purpose in substantially the form attached as Exhibit "F" in connection with same.

Section 3. This Board approves the Lease Agreement between the County and the School Board in substantially the form attached as Exhibit "G," ratifies the Due Diligence Agreement executed by the County Mayor's designee, authorizes the County Mayor or the County Mayor's designee to execute the Lease Agreement, to exercise any and all rights conferred therein, and to take all actions necessary to effectuate same.

Section 4. Pursuant to Resolution No. R-974-09, this Board directs the County Mayor of the Mayor's designee to record the instrument of conveyance in the Public Records of Miami-Dade County, Florida; and to provide a recorded copy of the instrument to the Clerk of the Board within thirty (30) days of execution of said instrument; and directs the Clerk of the Board to attach and permanently store a recorded copy together with this resolution.

Section 5. This Board directs the County Mayor or County Mayor's designee to appoint staff to monitor compliance with the terms of this conveyance.

The Prime Sponsor of the foregoing resolution is Commissioner Jose "Pepe" Diaz. It was offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman **aye**
Esteban L. Bovo, Jr., Vice Chairman **aye**

Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**absent**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of October, 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: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MKP for

Debra Herman

"EXHIBIT A"

Memorandum

MIAMI-DADE COUNTY

Date:

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

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing the Conveyance of a Portion of County-Owned Real Property located at 351 SW 107 Avenue, City of Sweetwater, Florida, to the Florida Department of Transportation for Necessary Road Improvements to SR 985 (SW 107 Avenue) and Approving Lease for $1.00 Per Year with School Board of Miami-Dade County for Temporary Fire Station Site on Adjacent Property

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Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution, which authorizes the following actions:

- Approves a Contract for Sale and Purchase, attached as Exhibit E to the resolution, between Miami-Dade County and the Florida Department of Transportation (FDOT) for the conveyance of Parcel 116 consisting of 3,111 square feet along the frontage of a 29,882 square foot site and being a portion of County-owned land identified under Folio Number 24-4005-001-0511 located at 351 SW 107 Avenue, City of Sweetwater, Florida, for necessary road improvements to SR 985 (SW 107 Avenue).
- Authorizes the County Mayor or the County Mayor's designee to execute the Contract for Sale and Purchase in the amount of $1,524,641.00, which includes $323,900.00 for the land and improvements (i.e. trees and pavement), $588,741.00 for implementation of a cure to the site as proposed by the FDOT, $597,000.00 to establish a temporary fire rescue station during road improvements to SR 985 (SW 107 Avenue), $10,000.00 for the County's attorneys' fees and $5,000.00 for the County's expert fees.
- Authorizes the County Mayor or the County Mayor's designee to approve the conveyance by County Deed, to record the instrument of conveyance in the public records of Miami-Dade County, and to exercise any and all other rights set forth in the Contract for Sale and Purchase.
- Authorizes the County Mayor or the County Mayor's designee to execute a lease agreement, attached as Exhibit G to the resolution, and due diligence agreement with the School Board of Miami-Dade County (School Board) to establish a temporary fire station on vacant land adjacent to the existing station.

Scope

The property is located in Commission District 12, which is represented by Commissioner Jose "Pepe" Diaz.

Fiscal Impact/Funding Source

The conveyance of the 3,111 square foot property (Parcel 116) will result in the County receiving a payment of $1,524,641.00 from FDOT. These funds will be used to establish a temporary fire station on nearby property to be leased from the School Board and to cure the damages caused to the station resulting from the FDOT's acquisition of the frontage of the property. It should be noted that the County is not obligated to implement the cure proposed by the FDOT, and may utilize the money to implement any cure to the site that it deems to be the best alternative. The Miami-Dade Fire Rescue Department (MDFR) is currently evaluating options for reconstruction with respect to Station 29.

Track Record/Monitoring
Scott Mendelsberg, Assistant Director for the MDFR is managing the conveyance of the property to FDOT and the lease of the temporary site from the School Board.

Delegation of Authority
Authorizes the County Mayor or the County Mayor's designee to execute the Contract for Sale and Purchase and to exercise any and all other rights conferred therein, and authorizes the County Mayor or the County Mayor's designee to execute the lease agreement with the School Board of Miami-Dade County and to exercise any and all rights conferred therein, and to effectuate such conveyance and lease.

Background
The FDOT has programmed road improvements to SW 107 Avenue from SW 12 Street to Flagler Street in Miami-Dade County. Phase 1 of the project will consist of widening SW 107 Avenue from four (4) to six (6) lanes between SW 8 Street and SW 4 Street under Project No. 412479-352-01 scheduled for construction in June 2016.

Phase 2 of the project will consist of widening SW 107 Avenue from four (4) to six (6) lanes between SW 4 Street and Flagler Street under Project No. 412479-2-52-01 tentatively scheduled for construction in 2017. The SW 4 Street intersection improvements (impacting Station 29) will take place under Phase 1 of the project.

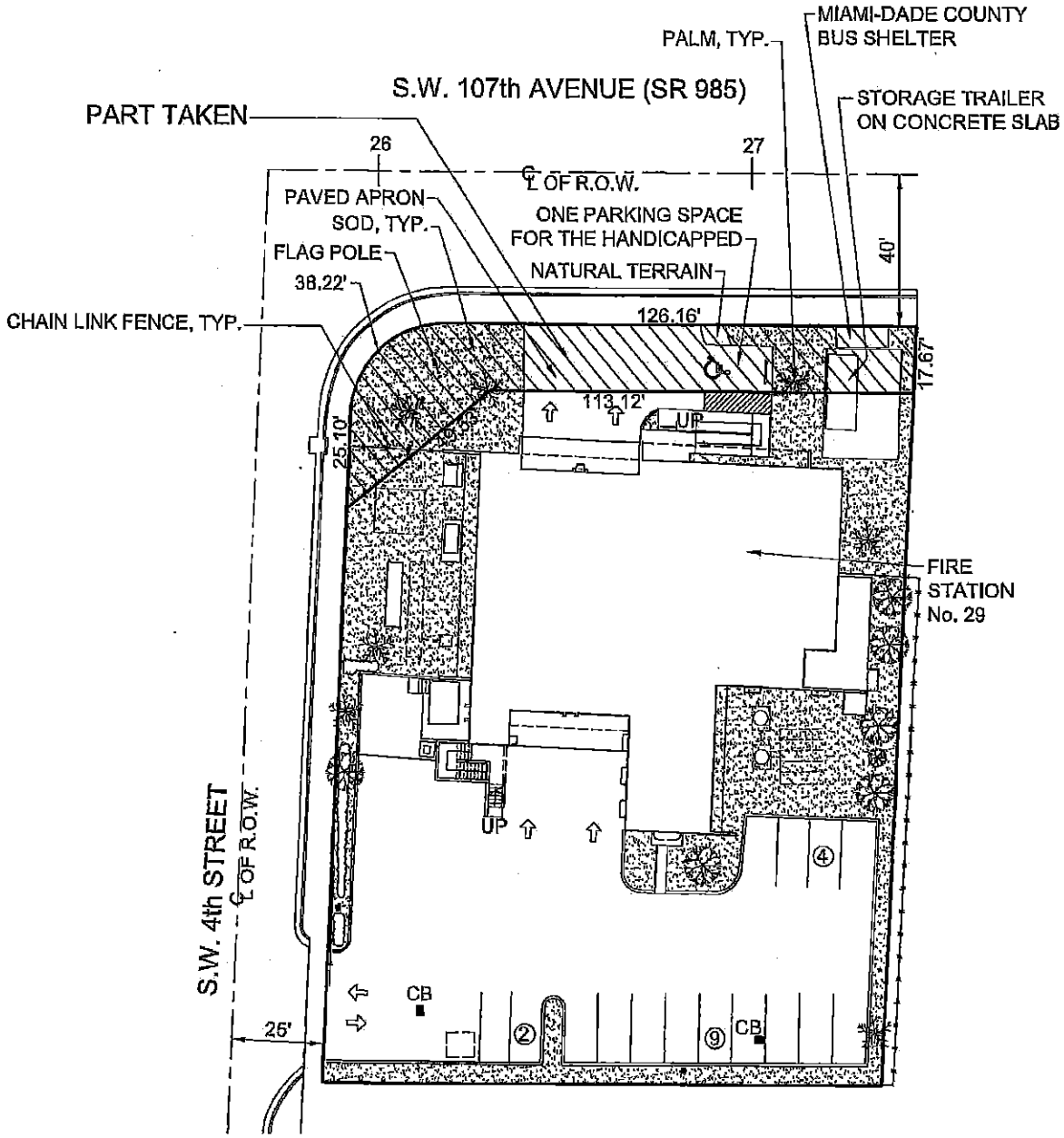
The programmed road improvements to SW 107 Avenue will impact the operation of Sweetwater Fire Station No. 29 located at 351 SW 107 Avenue. The widening of SW 107 Avenue will primarily impact the emergency unit apron including the visitor and handicap parking spaces. The apron is an integral part of the fire station located along the front of the fire station and utilized by emergency response units to stage their departure and assure traffic clearance. In addition to the aforementioned impacts to the fire station, the fire station will be impacted due to the substantial time delays associated with exiting the current facility and navigating the expected slow traffic flow during the road improvement project surrounding the fire station.

Accordingly, the FDOT formally requested that the County convey Parcel 116 in order to achieve the programmed road improvements, under threat of condemnation, via a statutory initial offer letter. Parcel 116 was appraised by an independent appraiser for a total value of $761,600.00. The County declined the offer in the amount of $761,600.00, and in an effort to avoid condemnation proceedings, and to assist the FDOT in moving the project forward, negotiated a compensation award of $1,524,641.00, which includes $323,900.00 for the land and improvements (i.e. trees and pavement), $588,741.00 for implementation of a cure to the site, $597,000 to establish a temporary fire rescue station during road improvements to SR 985 (SW 107 Avenue), $10,000.00 for the County's attorneys' fees and $5,000.00 for the County's expert fees.

In an effort to maintain the fire station operational within the City of Sweetwater, MDFR worked with the School Board to establish a lease, at no cost, for a temporary fire station on a portion of the activity field belonging to Sweetwater Elementary. The School Board administration agreed to allow the County to utilize the property for a 2-year, six (6) month period for $1.00 per year upon the terms set forth in the lease contingent upon approval by the School Board and the Board.

The temporary fire station will consist of a double wide trailer to accommodate the staff and a canopy to shelter the emergency equipment. The temporary fire station will operate during the road improvement project and during the renovations to the fire station site. Upon completion of the road improvement project and the reconstruction at the original site, the staff and emergency equipment will return to the original site, the temporary fire station will cease to operate, and the lease with the School Board will terminate. The County will be required to restore the site to its original condition in accordance with the lease provisions. The compensation from the FDOT includes both the construction of the temporary site, and the restoration of the School Board site at the termination of the lease.

Russell Benford
Deputy Mayor



N

0' 20' 40'

CALCULATION:

PART TAKEN:	3,111 S.F.
REMAINDER:	0.615 AC.
PARENT TRACT:	0.686 AC.

EXHIBIT 2 - SKETCH OF PART TAKEN

PARCEL 116 - 351 S.W. 107th AVENUE - SR 985 / S.W. 107th AVENUE - F.P.412479 -3

CARLOS MARIN & ASSOCIATES, P.A.

EXHIBIT "B"

//

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

STATEMENT OF OFFER

575-030-08
RIGHT OF WAY
06/10

Miami-Dade County
Fire Rescue
9300 NW 41st Street
Miami, FL 33178

ITEM/SEGMENT NO.: 4124793
DISTRICT: SIX
FEDERAL PROJECT NO.: N/A
STATE ROAD NO.: 985 (SW 107th Avenue)
COUNTY: Miami-Dade
PARCEL NO.: 116

Dear Chief Downey:

As you are probably aware, the State of Florida Department of Transportation is in the process of acquiring the needed right of way for the above referenced facility. A determination has been made that either a part or all of your property will be needed. A search of the Public Records of the County in which this property is situated has been made and it was determined that property is owned by you.

The interest being acquired in your property is: Fee Simple

In addition, the following list will identify the buildings, structures, fixtures, and other improvements which are considered to be a part of the real property acquired, or personal property being acquired, if any: Concrete Apron, Flag Pole, Chain Link Fence, and Miscellaneous Landscaping.

The following items were excluded: N/A

You are further advised that the Department's offer of just compensation for the property required for the construction of this facility is based on the Fair Market Value of the property and that the Department's offer to you is not less than the approved appraised value of the property.

The following represents a summary of the Department's offer to you and the basis therefore:

Land	$ 311,100.00
Improvements	$ 12,800.00
Real Estate Damages	$ 437,700.00
Incentive	$ 0.00
Total	$ 761,600.00

This statement of offer is not a contract; if you agree to accept this offer, you will be required to sign a purchase agreement. Any additional information you may require can be obtained through the Department's Representative that contacted you. If that representative is not readily available, please contact:
Richard Lineberger
at 305-470-5245

Yours very truly,

Alejandro Casas
District Right of Way Manager
By: Kevin Warthen
Right of Way Agent

Legal Review	Carmen C Ferreira Type or Print Name	10/6/14 Date
Delivered By	Kevin Warthen Type or Print Name	10/6/14 Date
Receipt Acknowledged By	Scott Mendelsberg Type or Print Name	10/6/14 Date

EXHIBIT "C"

12

MIAMI-DADE COUNTY FIRE RESCUE STATION NO. 29

	FDOT ORIGINAL OFFER	COUNTY CLAIMS
LAND	$ 311,100	$ 311,100
SITE IMPROVEMENTS	$ 12,800	$ 12,800
COST TO CURE	$ 437,700	$ 588,741
TEMP. OFF-SITE LOCATION		$ 597,000
ATTORNEYS' FEES AND EXPERT FEES OF COUNTY		$ 15,000
TOTAL	**$ 761,600**	**$ 1,524,641**

EXHIBIT "D"

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PURCHASE AGREEMENT

ITEM SEGMENT NO.: 4124793
DISTRICT: SIX
FEDERAL PROJECT NO.: N/A
STATE ROAD NO.: 985 (SW 107th Avenue)
COUNTY: Miami-Dade
PARCEL NO.: 116

Seller: Miami-Dade County

Buyer: State of Florida, Department of Transportation

Buyer and Seller hereby agree that Seller shall sell and Buyer shall buy the following described property pursuant to the following terms and conditions:

I. Description of Property

(a) Estate being purchased: ☒ Fee Simple ☐ Permanent Easement ☐ Temporary Easement ☐ Leasehold

(b) Real property described as: Parcel 116, consisting of 3,111 square feet, more or less of land area and the following site improvements: one handicapped parking space, 18 LF of chain link fence, a flag pole, 1,124 SF of asphalt pavement, 312 SF of concrete pavement, 1,675 SF of sod, portion of storage trailer, and three palm trees.

(c) Personal property: N/A

(d) Outdoor advertising structure(s) permit number(s): N/A

Buildings, structures, fixtures and other improvements owned by others: N/A
These items are **NOT** included in this agreement. A separate offer is being, or has been, made for these items.

II. PURCHASE PRICE

(a)	**Real Property**		
	Land	1.	$ 311,100.00
	Improvements	2.	$ 12,800.00
	Real Estate Damages (Severance/Cost-to-Cure)	3.	$ 1,185,741.00
	Incentive	4.	$ 0.00
	Total Real Property	**5.**	**$ 1,509,641.00**
(b)	**Total Personal Property**	6.	$ 0.00
(c)	**Fees and Costs**		
	Attorney Fees	7.	$ ~~5,000.00~~ $10,000.00
	Appraiser Fees & Expert Fees	8.	$ 5,000.00
	0.00		
	0.00		
	0.00 Fee(s)	9.	$ 0.00
	Total Fees and Costs	**10.**	$ ~~10,000.00~~ $15,000.00
(d)	**Total Business Damages**	**11.**	$ 0.00
(e)	**Total of Other Costs**	**12.**	$ 0.00
	List: N/A		

Total Purchase Price (Add Lines **5, 6, 10, 11** and **12**) $ ~~1,519,641.00~~ $1,524,641.00

(f) Portion of Total Purchase Price to be paid to Seller by Buyer at Closing $ ~~1,519,641.00~~ $1,524,641.00

(g) Portion of Total Purchase Price to be paid to Seller by Buyer upon surrender of possession $ 0.00

EXHIBIT "E"

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III. Conditions and Limitations

(a) Seller is responsible for all taxes due on the property up to, but not including, the day of closing.

(b) Seller is responsible for delivering marketable title to Buyer. Marketable title shall be determined according to applicable title standards adopted by the Florida Bar in accordance with Florida Law subject only to those exceptions that are acceptable to Buyer. Seller shall be liable for any encumbrances not disclosed in the public records or arising after closing as a result of actions of the Seller.

(c) Seller shall maintain the property described in **Section I** of this agreement until the day of closing. The property shall be maintained in the same condition existing on the date of this agreement, except for reasonable wear and tear.

(d) Any occupancy of the property described in **Section I** of this agreement by Seller extending beyond the day of closing must be pursuant to a lease from Buyer to Seller.

(e) The property described in **Section I** of this agreement is being acquired by Buyer for transportation purposes under threat of condemnation pursuant to **Section 337.25 Florida Statutes.**

(f) Pursuant to **Rule 14-10.004, Florida Administrative Code,** Seller shall deliver completed **Outdoor Advertising Permit Cancellation Form(s), Form Number 575-070-12,** executed by the outdoor advertising permit holder(s) for any outdoor advertising structure(s) described in **Section I** of this agreement and shall surrender, or account for, the outdoor advertising permit tag(s) at closing.

(g) Seller agrees that the real property described in **Section I** of this agreement shall be conveyed to Buyer by conveyance instrument(s) acceptable to Buyer.

(h) Seller and buyer agree that this agreement represents the full and final agreement for the herein described sale and purchase and no other agreements or representations, unless incorporated into this agreement, shall be binding on the parties.

(i) Other: Buyer and Seller agree all fees and costs, including business damages if any, are included in this purchase agreement.

(ii) The closing of the transaction is subject to Seller clearing all encumbrances or interests affecting the property, recorded or unrecorded, if any, including but not limited to: mortgages, leasehold interests, and easements, unless same are acceptable to Buyer.

(j) Seller and Buyer agree that a real estate closing pursuant to the terms of this agreement shall be contingent on delivery by Seller of an executed Public Disclosure affidavit in accordance with **Section 286.23, Florida Statutes.**

IV. Closing Date

The closing will occur no later than 60 days after Final Agency Acceptance.

V. Typewritten or Handwritten Provisions

Any typewritten or handwritten provisions inserted into or attached to this agreement as addenda must be initialed by both Seller and Buyer.

☒ There is an addendum to this agreement. Pages 5&6 ~~is~~ are made a part of this agreement.
☐ There is not an addendum to this agreement.

VI. Seller and Buyer hereby acknowledge and agree that their signatures as Seller and Buyer below constitute their acceptance of this agreement as a binding real estate contract.

It is mutually acknowledged that this Purchase Agreement is subject to Final Agency Acceptance by Buyer pursuant to **Section 119.0711, Florida Statutes.** A closing shall not be conducted prior to 30 days from the date this agreement is signed by Seller and Buyer to allow public review of the transaction. Final Agency Acceptance shall not be withheld by Buyer absent evidence of fraud, coercion, or undue influence involving this agreement. Final Agency Acceptance shall be evidenced by the signature of Buyer in **Section VII** of this agreement.

Seller(s)

_____
Signature Date

_____
Type or print name

_____
Signature Date

_____
Type or print name

Buyer

State of Florida Department of Transportation

BY: _____
Signature Date

_____
Type or print name and title

VII. FINAL AGENCY ACCEPTANCE

The Buyer has granted Final Agency Acceptance this _____ day of _____, _____.

BY: _____
Signature

_____
Type or print name and title

Legal Review: [signature] 6/15/15
Date

Carmen C Ferreira, Esq
Type or print name and title

ADDENDUM
TO PURCHASE AGREEMENT
BETWEEN
MIAMI-DADE COUNTY, AS SELLER
AND
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, AS BUYER

Date: _____, 2015

PROPERTY: 3,111 SF of Parcel 116, 351 SW 107th Avenue, Miami-Dade County (the "Property")

The following terms and provisions shall be made a part of the above-described Purchase Agreement (the "Agreement") entered into by Buyer and Seller under the threat of condemnation.

1. Paragraph III (a) of the Purchase Agreement is not applicable to this sale and is therefore deleted.

2. Paragraph III (b) is deleted and replaced as follows: Seller shall convey the Property to the Buyer pursuant to the terms of the attached County Deed. Buyer has reviewed title through 7/16/2015 and accepts title as to all matters of record through said date. Prior to the closing of the transaction, Buyer shall have the opportunity to examine and update the title of the parcel. If such examination discloses any additional encumbrances of record after 7/16/2015, and Buyer objects to same, Buyer shall provide written notice to the Seller of the same, specifically identifying such encumbrance. Such written notice shall be provided no later than ten days from the earlier of the date that the deed appears of record in the Miami-Dade County Public Records or 45 days from the date of recordation of the deed, or such objections shall be waived. Seller may, at its option, elect to remove the encumbrance(s). If the Seller elects not to remove the same, then Buyer may elect to either:

   (i) accept title to the parcel subject to such encumbrances, or
   (ii) terminate this Agreement, by providing written notice to the Seller, and thereafter this Agreement shall terminate and each Party shall be released from further obligations or liabilities hereunder.

   Upon the closing of the transaction, the purchase funds shall be held in escrow by Buyer until such time that the Buyer has updated and reviewed the title from the last title update prior to closing through the date of the recording of the deed ("gap period"). Buyer's title review of the gap period shall be no later than ten days from the earlier of the date that the deed appears of record in the Miami-Dade County Public Records or 45 days from the date of recordation of the deed. Buyer shall, within one (1) business day of the closing of the transaction, record the deed, and shall thereafter use due diligence to update the title during the gap period. In the event that the gap period reveals new encumbrances of record, subsequent to encumbrances of record after 7/16/2015, the parties shall cooperate to immediately resolve the issues. If the gap title search is acceptable to Buyer, or if Buyer fails to provide written notice to Seller within the time period provided in this section, Buyer shall forthwith release the escrow funds to Seller.

3. Paragraph III (d) of the Purchase Agreement is amended to include the following: Buyer and Seller shall enter into a lease, in form and substance reasonably acceptable to both parties providing for the Seller's occupancy of the Property through the later of March 31, 2016, or one day before the date of letting of Buyer's roadway project. In the event that the latter date is the date of termination of possession by Seller, Buyer shall provide prior notice as provided for in the lease.

4. Paragraph III (f) of the Purchase Agreement is not applicable to this sale and is therefore deleted

5. Paragraph III (g) Seller agrees that the real property described in Section I of this agreement shall be conveyed to Buyer by conveyance instrument(s) as provided in Florida Statue 125.411.

6. Paragraph III (h) This Agreement establishes the full compensation for the purchase of Parcel 116, and further constitutes full and final settlement of all claims and damages of any nature, including but not limited to, all costs and fees, arising from Buyer's acquisition of Parcel 116.

   Additionally, Paragraph IIIh(ii) is deleted.

7. Paragraph III (j) of the Purchase Agreement is not applicable to this sale and is therefore deleted.

8. This Agreement, and the Addendum, shall not be recorded in the public records of Miami-Dade County, Florida.

[No Further Text on This Page]

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date first above written.

Witnesses:

BUYER:

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

_____

_____

By: _____
Name: _____
Title: _____

SELLER:

MIAMI-DADE COUNTY

Witnesses:

_____

_____

By: _____
Name: _____
Title: _____

03-BSD.03

This instrument prepared by,
or under the direction of,
Alicia Trujillo, Esq.
District Six Chief Counsel
State of Florida
Department of Transportation
1000 N.W. 111th Avenue
Miami, Florida 33172
August 12, 2013 - NE

Parcel No. : 116.1
Item/Segment No. : 412479-3
Managing District : 6

COUNTY DEED

THIS DEED, made this _____day of_____20 _____, by **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, grantor, to the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, grantee: (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors, and assigns of organizations).

WITNESSETH: That the grantor, for and in consideration of the sum of $1.00 and other valuable considerations, receipt and sufficiency being hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Miami-Dade County, Florida, viz:

PARCEL 116 FIN. NO. 412479-3

A portion of Tract 7, Block 3, RICHARDSON-KELLETT COMPANY, as recorded in Plat Book 1, at Page 19, of the Public Records of Miami-Dade County, Florida, said land lying and being in the Southwest ¼ (SW ¼) of Section 5, Township 54 South, Range 40 East, being more particularly described as follows:

Commence at the Northeast corner of the Southwest ¼ of said Section 5, said point being a 60D spike nail thence S 87°49'18" W, along the North line of the Southwest ¼ of said Section 5, for a distance of 2,634.81 feet to the Northwest corner of the Southwest ¼ of said Section 5; thence S 04°36'01" E, along the West line of the Southwest ¼ of said Section 5, for a distance of 1146.86 feet; thence N 85°23'59" E at right angles to the last described course for a distance of 40.00 feet to a point on the Easterly existing Right-of-Way line of State Road No. 985 (S.W. 107th Avenue) as show on Florida Department of Transportation Right-of-Way Map for State Road No. 985 (S.W. 107th Avenue), Section 87519-2603 (87072), recorded in road Plat Book 112, at Page 69, of the Public Records of Miami-Dade County, Florida; said point being the POINT OF BEGINNING of the following described parcel of land:

thence N 87° 47'53" E for a distance of 17.67 feet; thence S 04° 36'14"E for a distance of 113.12 feet; thence S 43° 53'30" E for a distance of 49.53 feet to a point on the Northerly Right-of-Way line of S.W. 4th Street; thence S 87° 47'53" W along said North Right-of-Way line of S.W. 4th Street for a distance of 25.10 feet to the point of beginning of a circular curve to the right having a radius of 25.00 feet and a central angle of 87° 36'06"; thence Northwesterly along the arc of said curve for an arc distance of 38.22 feet to a point on the aforesaid existing Easterly Right-of-Way line of State Road No. 985 (S.W. 107th Avenue); thence N 04° 36'01" W along said Easterly Right-of-Way line of State Road No. 985 for a distance of 126.16 feet to the POINT OF BEGINNING.

Containing 3,111 square feet, more or less.
John Liptak, PSM
Triangle Surveying & Mapping, Inc.
Date: 07/12/13

EXHIBIT "F"
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TOGETHER with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson or Vice-Chairperson of said Board, the day and year aforesaid.

ATTEST: _____

Clerk (or Deputy Clerk) of the Circuit Court

(Affix County Seal)

Miami-Dade County, Florida,
By its Board of County Commissioners

By: _____

Its Chair (or Vice-Chair)

_____

_____

_____
(Address)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____ 20____, by _____, Chairperson (or Vice-Chairperson), who is personally known to me or who has produced _____ as identification.

_____
(Signature of person taking acknowledgment)

_____
(Type, print or stamp name under signature)
Title or rank and serial number, if any: _____

LEASE AGREEMENT

THIS LEASE 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 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 owns and has under its jurisdiction certain real property known as Sweetwater Elementary School, located at 10655 S.W. 4 Street, Miami-Dade County, Florida, and more particularly described as Folio #s 25-4005-001-0460 and 25-4005-001-0510 ("**School**"); and

WHEREAS, the COUNTY owns and has under its jurisdiction certain real property known as Fire Station No. 29, located adjacent to the School at 351 S.W. 107 Avenue, Miami-Dade County, Florida (hereinafter referred to as the "**Fire Station**"); and

WHEREAS, the Florida Department of Transportation ("**FDOT**") will be making a number of roadway improvements to S.W. 107 Avenue (the "**Roadway Project**"), which will prevent the Fire Station from operating at its current location during the Roadway Project; and

WHEREAS, the Fire Station is expected to be inoperable for a period not to exceed 24 months during the Roadway Project; and

WHEREAS, the COUNTY is desirous of entering into an agreement with the BOARD to allow the COUNTY to use a portion of the School playfield, on an interim basis, to construct and operate a temporary fire station (the "**Temporary Station**"), while the Fire Station is rebuilt and made useable; and

WHEREAS, the Parties acknowledge and agree that use of the School site by the COUNTY shall be limited in duration, and will not extend beyond the time set forth herein; and

WHEREAS, the Parties acknowledge and agree that this Agreement shall have no fiscal impact whatsoever on the BOARD; and

WHEREAS, The School Board of Miami-Dade County, Florida, at its meeting of _____, 2015, School Board Agenda item _____, Board Action # _____, approved this Agreement; and

EXHIBIT "6"

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WHEREAS, the Miami-Dade County Board of County Commissioners, by the adoption of Resolution No. _____, at its meeting of _____, 2015, approved this Agreement.

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.

DUE DILIGENCE AGREEMENT AND DEMISED AREA

Upon execution by the Parties of the Agreement to Conduct Due Diligence Investigations on Board-Owned Land (**"Due Diligence Agreement"**) attached as **Exhibit "A"** hereto and made a part hereof, the COUNTY shall be given access to designated portions of the School in order for the COUNTY to (1) provide the BOARD with a boundary survey, certified to the BOARD, legally describing the portion of the School playfield area, consisting of approximately 17,640 square feet, to be used by the COUNTY as the Temporary Station, for the BOARD'S review and approval prior to the Effective Date, and (2) conduct due diligence investigations, as detailed in Article XXXVII(G) of this Agreement. The survey, as approved by the BOARD, shall be attached to this Agreement as **Exhibit "B"** and made a part hereof.

Effective with the Lease Commencement Date of this Agreement (as defined in Article III below), the BOARD does hereby lease to the COUNTY the portion of the School playfield, consisting of approximately 17,640 square feet, as described in Exhibit "B" (hereinafter defined as the "**DEMISED AREA**").

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 date shall also serve as the Lease Commencement Date ("**Lease Commencement Date**"). Subsequent to the Lease Commencement Date, the COUNTY shall have access to the DEMISED AREA for the specific and limited purpose of: 1) conducting a Pre-Construction Environmental Site Assessment

("**Pre-Construction ESA**"); and 2) constructing the Temporary Station, and other activities directly related thereto, all as described in Articles V and XXXVII(F) of this Agreement.

The COUNTY'S access to the DEMISED AREA for the Pre-Construction ESA and construction of the Temporary Fire Station shall be limited to the period of time subsequent to the Lease Commencement Date of this Agreement, but not more than seven (7) months immediately preceding the date the COUNTY is divested of title and possession of the property acquired by the FDOT, and the COUNTY can no longer operate the Fire Station , or as it may be extended by mutual written agreement of the Parties or their designees ("**Possession Date**"). Subsequent to Possession Date, and as a condition precedent to commencement of the Work, as defined below the COUNTY shall construct a 6-foot chain link fence to separate the DEMISED AREA from the balance of the School site, as stipulated in Article V The Parties acknowledge and agree that the COUNTY shall not occupy or operate the Temporary Station until the BOARD'S Building Department issues a Certificate of Occupancy, Certificate of Completion, or equivalent ("**C.O.**") for the Temporary Station, which C.O. shall be attached hereto and made a part hereof as **Exhibit "C" ("Occupancy Date")** . It is further acknowledged and agreed that the period of occupancy under this Agreement shall begin on Occupancy Date, and shall continue until the date the Fire Station site is rebuilt and becomes operable after the completion of the road construction, and in any event, no later than two (2) years from Occupancy Date, unless otherwise extended, cancelled or terminated as provided for herein ("**Occupancy**").

IV.

RENT

The COUNTY shall pay to the BOARD as rent, the sum of one dollar ($1.00) per year in advance beginning on the Lease Commencement Date, and on the anniversary date of the Lease Commencement Date each year thereafter.

V.

CONSTRUCTION ACCESS AND IMPROVEMENTS

Effective with the Possession Date of this Agreement, and as limited by the provisions set forth in Articles III and XXXVII, including approval by the BOARD or its designee as to when on-site construction activities may commence, the BOARD does hereby grant to the COUNTY, the right and privilege to access the DEMISED AREA, for the specific and limited purpose of constructing the Temporary Station thereon, and other activities directly related thereto. Work shall include,

without limitation, the scope of work as substantially set forth in **Exhibit "D"** attached hereto and made a part hereof (all such improvements are referred to herein as the "**Work**"). The COUNTY acknowledges and agrees that prior to commencement of any activities, it shall install a chain link fence, a minimum of 6-feet in height, in order to properly separate the DEMISED AREA from the balance of the School site, in conformance with the provisions of 1012.468(1)2(e) F.S., and the COUNTY shall also comply with any other applicable laws, rules, regulations, statutes and codes. Any change to the scope of Work shall be approved by the BOARD, which approval shall not be unreasonably withheld.

All Work will be done at the COUNTY'S sole cost and expense, and access shall be as previously scheduled and coordinated with the School Administrator and assigned District Project Manager to assure that all necessary safety measures are implemented, and the Work does not interfere with or disrupt the operations of the School. Neither the COUNTY nor its contractors may park their personal vehicles or store construction materials/equipment within the School campus, other than the DEMISED AREA, at any time.

The COUNTY agrees that no construction, major repairs, alterations or improvements on the DEMISED AREA may be undertaken unless the plans are first submitted to and approved in writing by the BOARD, or its 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. Any and all warranties between the COUNTY and its architect/engineer of record shall flow to the BOARD in the event of errors and omissions. The plans shall be prepared in accordance with all applicable laws, rules, regulations, statutes and codes, including without limitation, as applicable, the Miami-Dade County Public School's ("**District**") 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 the Work. The COUNTY shall require its contractor(s) to locate and/or identify any existing underground improvements or utilities within the DEMISED AREA that may be affected by the Work, and the COUNTY shall be responsible for any damage or injury the COUNTY causes arising out of or incidental to any portion of the Work within the DEMISED AREA. The COUNTY'S contractors must be pre-qualified by the BOARD, in accordance with

District and BOARD Policies before commencing the Work or any construction activities on the DEMISED AREA or any other portion of the School.

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 entities, and shall at all times be in compliance with all applicable laws, rules and regulations, including, without limitation, as applicable, the Florida Building Code, the Americans with Disabilities Act, the Jessica Lunsford Act, the State Requirements 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 to the Board without demand. All Work shall be limited to those areas designated in the plans, and the COUNTY shall have no authority to access any other portions of the School, except as otherwise provided for in this Agreement or as authorized in writing by the BOARD, or its designee, on an as-needed basis.

The Work shall conform at all times to the safety criteria established with and approved by the BOARD, or its designee, and shall neither unreasonably disrupt or interfere with the BOARD'S operations at the School. The COUNTY 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 School Administrator and assigned District Project Manager to assure the safety of the BOARD'S students, staff, visitors, invitees and the public at all times. In addition, the COUNTY and its contractors shall work closely with the School Administrator and assigned District Project Manager to assure the Work does not interfere with or disrupt School or District operations. The COUNTY's activities shall neither unreasonably disrupt nor interfere with the School's daily operations. Prior to the commencement of the Work, the COUNTY shall provide the BOARD, or its designee, with a proposed schedule for the commencement and completion of the Work. If the BOARD, or its designee, requests that the COUNTY cease any work at the DEMISED AREA due to unreasonable interference or violation of any applicable rules and regulations or the District's criteria, then the COUNTY shall immediately discontinue its activities at the DEMISED AREA,

and shall proceed only after the BOARD, or its designee, has reviewed the scheduling, safety and/or manner of work in question and has authorized the COUNTY to continue.

The COUNTY shall cause any contractor doing work on the DEMISED AREA to indemnify, defend and hold harmless the BOARD, its employees and representatives from any and all liability, damages and claims. However, nothing herein shall be deemed to require an indemnity of 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, as a pre-condition to commencing the Work, the COUNTY shall require the COUNTY'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 COUNTY'S contractor(s), in an amount not less than $1 million combined single limit per occurrence for bodily injury and property damage, and (3) Workers' Compensation Insurance for all employees of the COUNTY'S contractor(s) to the extent required by Florida Statutes. "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 COUNTY'S contractor(s) shall maintain such insurance at all times during the period of the Work.

To the extent provided under Section 768.28 of the Florida Statutes, and subject to the monetary limitations as set forth in such section, 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 within the DEMISED AREA. However, nothing herein shall be deemed to require an indemnity of 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, the COUNTY shall cause each and every of its contractors and subcontractors ("**County Contractor**") performing work at the DEMISED AREA to further covenant and agree, at the County Contractor's own expense, and upon written request by the BOARD, to defend any suit, action or demand brought against the BOARD on any claim or demand arising out of, resulting from, or incidental to the County Contractor's performance under any contract by and between the COUNTY

and/or its assigns and any and all contractors and subcontractors. This provision shall survive the expiration, cancellation or early termination of this Agreement. Furthermore, the COUNTY and/or its assigns shall cause the indemnification provision and the duty to defend provision in its Contract with the County Contractors to survive the cancellation, early termination or expiration of any and all contracts by and between the COUNTY and/or its assigns and any County Contractor.

If, as a result of the COUNTY'S actions in the performance of the Work, or failure to act, the DEMISED AREA or any other portion of the School campus is damaged, in the reasonable opinion of the BOARD, then the COUNTY shall repair and/or restore the damaged area, at its sole cost and expense, to the same or better condition as existed prior to the COUNTY'S entry onto the site. The COUNTY shall complete the necessary repairs within thirty (30) days of receipt of written notice from the BOARD. In the event that the COUNTY is unable to complete the repair work within said thirty (30) day period, the COUNTY shall provide the BOARD with written notification stating the reasons, together with a mutually agreed to schedule for the completion of the repairs. If the COUNTY fails to complete the repair work within the prescribed time frame, then the BOARD, at its sole option, shall have the right, but not the obligation, to make the necessary repairs, at the COUNTY'S sole cost and expense. The COUNTY covenants and agrees that it shall reimburse the BOARD for this work within thirty (30) days of receipt from the BOARD of an invoice for same, accompanied by such documentation as may be reasonably required by the COUNTY to substantiate the nature and completeness of the work. In the alternative, the BOARD may instead place the COUNTY in default under this Agreement.

Notwithstanding the foregoing, in the event of damage to the DEMISED AREA caused by the COUNTY or its agents, contractors or invitees, resulting in a significant impact to operations or the safety and well-being of the BOARD'S students, staff and visitors, and requiring immediate repair, as determined by the BOARD at the BOARD'S reasonable discretion, the BOARD may, at the BOARD'S reasonable discretion, complete the necessary repairs, at the COUNTY'S sole cost and expense.

Prior to the start of any construction activities at the DEMISED AREA, and irrespective of the COUNTY'S estimate of the cost of construction of the Work, the COUNTY shall provide to the BOARD a payment and performance bond (**"Bond"**) in compliance with Section 255.05 of the Florida Statues. In the event that a person or entity attempts to place a lien upon the

property (in contravention of Florida law), the County shall defend the Board against any such lien. The COUNTY shall not permit any liens to be filed or attached to the DEMISED AREA for any reason whatsoever, including, but not limited to, as a result of the Work performed by the COUNTY pursuant to this Agreement. In the event that any such lien is recorded in the official records of Miami-Dade County, Florida, the COUNTY shall, within twenty (20) calendar days of the date of such filing, cause such lien to be removed of record or properly transferred to a bond under Chapter 713, Florida Statutes. In the event a notice of violation is issued by any jurisdictional agency relating to the Work, said notice of violation shall be the sole responsibility of the COUNTY, and the COUNTY shall cure said violation(s) within thirty (30) days of receipt thereof, at the COUNTY'S sole cost and expense. Should the COUNTY fail to comply with this requirement, then the BOARD may, by its own effort, cause such lien or other violations to be removed of record and cured. The COUNTY shall be liable to the BOARD for all costs of such removal including, without limitation, any and all reasonable attorneys' fees, court costs and any other cost or expense incurred or expended by the BOARD.

In addition to the provisions of Article III, and as conditions precedent to commencing any on-site activities, the COUNTY shall submit the following items to the BOARD:

(a) a proposed construction schedule containing the COUNTY'S major project milestone time lines, including the proposed start, duration and completion of the Work within the timeframe provided for in this Agreement, and with said start date to conform to the provisions contained in Article III;

(b) copies of all permits, certificates and other approvals as required in this Agreement for commencement of construction;

(c) a written statement indicating the COUNTY'S compliance with the provisions of Article V of this Agreement and all other terms and conditions of this Agreement;

(d) a detailed plan, acceptable to the BOARD, or its designee in its sole authority, delineating how the COUNTY and/or its contractors will implement all necessary safety measures within and around the DEMISED AREA, as well as any other locations within or around the School, that may be impacted by the COUNTY'S constructions activities;

(e) evidence of insurance in amounts and types of coverage as required under this Agreement; and

(f) a Bond as specified in Article V of this Agreement.

It is expressly understood by the Parties that the COUNTY shall not commence any of the Work within the DEMISED AREA, until the BOARD, or its designee, has received all of the items listed above and has notified the COUNTY, in writing, as to the approved date for the start of the Work.

The COUNTY shall complete all Work not later than six (6) months from the commencement of construction related activities. The BOARD or designee may, at its sole authority and discretion, and upon written request from the COUNTY, extend the deadline for completion of construction. However, if no time extension is granted by the BOARD, and the COUNTY fails to meet the specified timeframe, then the BOARD may, at its sole discretion, cancel this Agreement immediately, without penalty. In addition, the BOARD'S cancellation of this Agreement shall not relieve the COUNTY of its duty to restore and/or repair any damage caused to the DEMISED AREA or School site as a result of the COUNTY'S actions or failure to act, in accordance with Articles V or XIX of this Agreement.

At the completion of the Work, the COUNTY shall secure an inspection of the Work on the DEMISED AREA from the BOARD'S designee, verifying that the Work has been satisfactorily and properly completed, and shall not release its contractor from its contractual obligations or make final payment to the contractor until the BOARD's designee attests to the satisfactory completion of the Work. In addition, the COUNTY agrees that the COUNTY or its contractor shall restore the DEMISED AREA or other portions of the School impacted or affected by the Work, to a condition that is safe and usable, including, without limitation, the removal and/or disposal of equipment, materials, personal property, debris and/or trash, and shall assure that the School site is left in as good or better condition that existed prior to the commencement of the Work, all at the sole cost and expense of the COUNTY.

The COUNTY shall provide to the BOARD proof of closure of any and all permits related to the Work, without demand and at no cost to the BOARD.

VI.

USE OF DEMISED AREA

The DEMISED AREA as identified in **Exhibit "B"** shall be used solely by the COUNTY for the purpose of constructing the Temporary Station, as further defined in Article V of this Agreement, and for the operation of the Temporary Station by the COUNTY, and for no other purpose. Use of the DEMISED AREA for any other purpose shall constitute a default under this Agreement. The COUNTY covenants and agrees to accept the DEMISED AREA in its "as-is",

"where-is" condition and basis with all faults as of the Effective 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 DEMISED AREA 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 Investigations related to the DEMISED AREA, as detailed in Article XXXVII(G) of this Agreement, and agrees that the BOARD has made no representations whatsoever regarding the DEMISED AREA. The COUNTY represents that it is relying and will continue to rely solely on its own investigations of the DEMISED AREA 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 the condition of the DEMISED AREA. The provisions of this paragraph shall survive the expiration or the early termination or cancellation of this Agreement.

If as a result of its Due Diligence investigations, the COUNTY determines that the DEMISED AREA is not viable for its intended purpose, 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 Possession Date, the COUNTY shall have full control, custody, right and use of the DEMISED AREA The COUNTY shall not be permitted to access any other portion of the School, without the express permission from the School Administrator on a limited, infrequent and as needed basis.

The sale or consumption of alcoholic beverages on the DEMISED AREA is expressly prohibited. In addition, use of any portion of the DEMISED AREA for carnivals, fairs, mechanical rides, midways, or the same or similar kinds of activities is expressly prohibited. Neither Party shall commit nor permit any violations of applicable laws, rules and regulations of the BOARD, including BOARD Policies, COUNTY, State, or Federal government upon the DEMISED AREA.

The COUNTY agrees that it shall comply with all School safety and security criteria, and provide proper supervision of the DEMISED AREA, and maintain the DEMISED AREA safe and secure at all times.

The COUNTY acknowledges and agrees that the COUNTY'S use of the DEMISED AREA shall not unreasonably disrupt nor interfere with any of the School's educational activities or operations, and agrees to work closely with the School Administrator to minimize any impact on

School operations. The COUNTY shall take all necessary safety precautions during its use of the DEMISED AREA, and coordinate on an ongoing basis with the School Administrator to assure the safety of the School's students, staff, visitors, invitees and the public at all times. The COUNTY further agrees to minimize noise within the DEMISED AREA to the extent possible, especially during periods of School testing, and shall work collaboratively with the School Administrator in this regard.

The COUNTY shall not at any time during the term of this Agreement utilize the DEMISED AREA to store or dispense fuel to any personal or COUNTY vehicles located on the site.

VII.
MAINTENANCE

The COUNTY, at the COUNTY'S expense, shall be responsible for all maintenance, repair and upkeep of the DEMISED AREA, including the perimeter fencing and all improvements located or constructed thereon under this Agreement, as is necessary to keep the same in a good, safe, clean and code compliant condition at all times, including, without limitation, maintenance and repair of all buildings and improvements, walking surfaces, parking areas, fences and gates, restrooms, roofing, plumbing systems, electrical systems, structural systems and field mowing.

VIII.
INSURANCE

The COUNTY shall provide the BOARD with confirmation of the COUNTY'S self-insurance program in a form and substance acceptable to the BOARD or its designee, or, in the alternative, proof of insurance evidencing insurance coverage 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, in an amount not less than $1 million combined single limit per occurrence for bodily injury and property damage, and (3) Workers' Compensation Insurance for all employees of the COUNTY as required by Florida Statutes. 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 prior to the commencement of any Work activities within any portion of the DEMISED AREA, 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 the installation and ongoing cost of all utilities serving the DEMISED AREA, including, without limitation, electricity, gas, water, sewer, solid waste disposal, storm water and trash collection. The COUNTY shall install separate utility services and/or meters in its name and shall pay for such services at the COUNTY'S sole cost and expense. The COUNTY shall notify the BOARD in a timely manner of any utility agreements requiring the approval and/or joinder of the BOARD as property owner. The BOARD will cooperate as necessary, subject to review and approval of any such agreements or documents by the BOARD or its designee, in its sole authority and discretion. It is understood and agreed that the BOARD shall not execute any agreements, other than joinders which shall be deemed strictly as evidence of consent of property owner and without any responsibility or liability whatsoever thereunder. The foregoing includes, but it is not limited to WASD Agreements and any off-site improvements which may be required by any jurisdictional agency

X.

INDEMNIFICATION AND HOLD HARMLESS

The COUNTY 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 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, the COUNTY agrees, at its own expense, and upon written request by the BOARD, to defend any suit, action or demand brought against the BOARD on any claim or

demand arising out of, resulting from or incidental to performance under this Agreement, subject to the limitations set forth in the preceding paragraph.

The BOARD does hereby agree to indemnify and hold harmless the COUNTY, 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 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 or the provisions set forth in Florida Statutes, Section 768.28

XI.

NO LIABILITY FOR PERSONAL PROPERTY

The COUNTY agrees to insure or self-insure its interests in personal property to the extent it deems necessary or appropriate and hereby waives all rights to recovery from the Board for loss or damage of such property by any cause whatsoever. The COUNTY hereby waives all rights of subrogation under any policy or policies it may carry on property placed or moved on the DEMISED AREA.

XII.

LIABILITY FOR DAMAGE OR INJURY

The BOARD shall not be liable or responsible for any damage or injury, loss of business, consequential damages or any other damages which may be sustained by the COUNTY or its invitees on or about the DEMISED AREA or School, 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, and in such event the BOARD'S liability shall be subject to the limitations included within Section 768.28, Florida Statutes. The BOARD shall not be responsible or liable for any damages arising from acts of God.

XIII.

ASSIGNMENT AND SUBLETTING

The COUNTY shall not, at any time during the term of this Agreement, sublet in part or whole the DEMISED AREA, 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 DEMISED AREA, or permit the DEMISED AREA to be occupied by other persons, firms, corporations, or governmental units. Any assignment, sublet or otherwise, shall constitute a default under this Agreement, and may result in the automatic termination of this Agreement for cause, irrespective of Article XVI of this Agreement.

XIV.

EXTENSION OF TERM

Only in the event the Fire Station is unable to be reoccupied and used by the COUNTY due to circumstances beyond the control of the COUNTY, the Superintendent of Schools may, in his or her sole and absolute discretion and authority, upon receipt of a written request from the COUNTY, extend the term of this Agreement by up to six (6) additional months, under the same terms and conditions contained in this Agreement.

XV.

CANCELLATION

In addition to the provisions of Articles VI, XVI and XXVIII, the COUNTY shall have the right to cancel this Agreement at any time after the Effective Date hereof, without cause or penalty, by giving the BOARD written notice at least ninety (90) days prior to the effective date of said cancellation.

In addition to the provisions of Articles XVI and XXVIII, the BOARD may immediately cancel the Agreement for cause and without penalty, and without providing the COUNTY with an opportunity to cure the default, if the COUNTY (1) fails to comply with the Jessica Lunsford Act, or (2) assigns or sublets its use of the DEMISED AREA.

In the event of cancellation by either Party, the COUNTY shall surrender and vacate the DEMISED AREA in compliance with Article XX of this Agreement.

XVI.

DEFAULT

The BOARD shall notify COUNTY in writing regarding the COUNTY'S failure to perform or to comply with the terms and conditions 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, and occupy the DEMISED AREA, or to pursue any other legal remedy available.

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, or to pursue any other legal remedy available.

XVII.

PEACEFUL POSSESSION

Subject to the terms, conditions and covenants of this Agreement, the Parties agree that the COUNTY shall and may peaceably have, hold and enjoy the DEMISED AREA, without hindrance or interference by the BOARD.

XVIII.

RIGHT OF ENTRY

Other than in the event of an emergency, 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 DEMISED AREA to examine same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort or preservation of the DEMISED AREA or the School, provided such activities do not unreasonably interfere with the COUNTY'S use of the DEMISED AREA.

XIX.

REGULATORY COMPLIANCE

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 lease, use or occupancy of the DEMISED AREA, the COUNTY acknowledges and

agrees that it shall be responsible for compliance with all applicable requirements, whether on-site or off-site, at the COUNTY'S sole cost and expense. Non-compliance shall be deemed a material breach of this Agreement.

XX.

SURRENDER OF PREMISES

The COUNTY agrees, at the expiration, termination or cancellation of this Agreement, to promptly and peacefully surrender and deliver possession of the DEMISED AREA to the BOARD in good order and repair and in a good, clean and functional condition and in as good or better condition as existed on the Effective 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 DEMISED AREA, including any signage installed by the COUNTY. In addition, upon the expiration, cancellation or termination of this Agreement, the COUNTY agrees to remove the Work, as defined in Article V, including any improvements or facilities constructed by the COUNTY within the DEMISED AREA or off-site, and to restore such area to the same or better condition as existed before the Effective Date of this Agreement.

Notwithstanding the above, the COUNTY acknowledges and agrees that, within ten (10) days of completing the removal of any improvements or facilities constructed by the COUNTY within the DEMISED AREA, the COUNTY shall complete a Post-Occupancy ESA, as defined in Article XXXVII(F), and provide the results of the assessment to the BOARD or its designee for review. In the event the results of the Post-Occupancy ESA document the presence of environmental conditions not evidenced by the Pre-Construction ESA, and resulting from the COUNTY'S use and occupancy of the DEMISED AREA, the COUNTY shall be contractually obligated under this Agreement to remove or otherwise mitigate the environmental condition. The provisions of this paragraph shall survive the cancellation, expiration or early termination of this Agreement.

The COUNTY shall promptly return all keys and other items belonging to the BOARD, if any, and shall coordinate with the BOARD to ensure a proper and timely surrender of the DEMISED AREA. 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 DEMISED AREA. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination in the use of the DEMISED AREA 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: Deputy Chief Facilities and 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:

Miami-Dade County Florida
Internal Services Department
Real Estate Development Division
111 NW 1 Street, Suite 2460
Miami, Florida 33128
Attention: Director

With a copy to:

County Attorney's Office
Miami-Dade County
111 N.W. First Street, 28th Floor
Miami, Florida 33128
Attention: County Attorney

With a copy to:

Miami-Dade Fire Rescue Department
Planning Section
9300 N.W. 41 Street
Doral, Florida 33178
Attention: Carlos Heredia
Fax: 786-331-5259
Email: carlos.heredia@miamidade.gov

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 by this Agreement relating to environmental issues within the DEMISED AREA, and any construction by the COUNTY.

D. In addition to the above, the Superintendent of Schools shall also be the party designated by the BOARD to grant or deny any approvals required by this Agreement, including without limitation, amending any of the exhibits to the Agreement, placing the COUNTY in default, and renewing, extending, canceling or terminating the Agreement as provided herein.

E. 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, as enumerated below, in the event the DEMISED AREA, in whole or in part, should be destroyed or so damaged by fire, windstorm or other casualty to the extent the facilities are rendered untenantable or unfit for the purposes intended, the COUNTY may either cancel this Agreement by giving written notice to the BOARD, or repair/replace the damaged/destroyed facilities, at no cost to the BOARD. In the event the COUNTY elects to repair or replace the damaged/destroyed facilities, the COUNTY shall repair or replace same, and place 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 DEMISED AREA in compliance with Article XX of this Agreement.

Any damage or destruction sustained to the DEMISED AREA where the COUNTY can clearly substantiate that the Improvements were damaged or destroyed as a result of the actions of the BOARD, shall be repaired by the BOARD, at the BOARD'S sole cost and expense.

XXIX.

SUBORDINATION

This Agreement is and shall be subject and subordinate to any conveyance and ground or underlying leases and the rights of the School and the rights of the BOARD under those leases and to all financing that may now or hereafter affect the leases or the DEMISED AREA, or School site, or any portions thereof, 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, within thirty (30) calendar days of request, any certificate that the BOARD may request.

XXX.

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 School or DEMISED AREA, or arising from the COUNTY'S use or occupancy of the DEMISED AREA, 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 DEMISED AREA. 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 DEMISED AREA, or that arises at any time from the COUNTY'S use or occupancy of the DEMISED AREA.

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

The COUNTY shall, at the COUNTY'S expense, comply with all applicable Environmental Laws with respect to the DEMISED AREA and School. The Parties shall, at their 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 DEMISED AREA 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 DEMISED AREA or School, then the COUNTY shall, at the COUNTY'S 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 DEMISED AREA or elsewhere on the School campus, and shall promptly provide the BOARD with all information reasonably requested by the BOARD regarding the use, generation, storage, transportation or disposal of Hazardous Substances in or at the DEMISED AREA.

The obligations and liability of the COUNTY under this Article shall survive the expiration or termination of this Agreement.

XXXI.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The COUNTY shall comply with all applicable laws, rules, regulations, ordinances and codes of all governmental authorities, including, without limitation, BOARD Policies, 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.

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', assigns' 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 assigns, 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, its assigns, contractors and sub-contractors shall (a) retain all records for five (5) years after the completion of any construction work at the DEMISED AREA; and (b) the COUNTY shall retain records for five (5) years after the expiration, early termination or cancellation of this Agreement. Upon termination of this Agreement all public records relating to this Agreement, in possession of the COUNTY, its assigns, and, if applicable, its contractors and subcontractors, must be transferred to the BOARD at no cost to the BOARD. If records are stored electronically, the records must be provided in a compatible format to the BOARD's operating system.

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

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 BOARD Policies, relating to the DEMISED AREA and School 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 DEMISED AREA.

XXXIV.

REPRESENTATIONS

The COUNTY 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 action 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.

SIGNAGE

The COUNTY may erect, at its sole cost and expense, identification signage within the DEMISED AREA, subject to the prior written approval of the BOARD, or its designee, and in conformance with all rules and regulations governing public schools.

Upon the termination, expiration or cancellation of this Agreement, the COUNTY shall remove, at the COUNTY'S expense, from the DEMISED AREA any signage erected by the COUNTY, and restore the area to the same or better condition as existed prior to the COUNTY'S installation of the signage.

XXXVI.

THIS ARTICLE INTENTIONALLY DELETED

XXXVII.

MISCELLANEOUS PROVISIONS

A. **RECORDATION:** This Agreement may not be recorded by either Party.

B. **EMINENT DOMAIN:** If all or portions of the DEMISED AREA or School are 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. **WAIVER OF TRIAL BY JURY:** THE PARTIES WAIVE TRIAL BY JURY IN ANY

ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER WITH RESPECT TO ANY MATTER ARISING UNDER THIS AGREEMENT OR THE COUNTY'S USE OR OCCUPATION OF THE DEMISED AREA.

F. **ENVIRONMENTAL SITE ASSESSMENTS**: The Parties agree and acknowledge that, in conformance with the provisions of Article III of this Agreement, subsequent to the Possession Date of this Agreement but prior to commencing any Work on the DEMISED AREA, the COUNTY shall conduct a Pre-Construction ESA of the DEMISED AREA, in full conformance with the provisions and requirements of ASTM E1527 and ASTM E1903 standards and criteria, and at the COUNTY'S sole cost and expense, using an environmental consultant approved by the BOARD, such approval not to be unreasonably withheld. The Pre-Construction ESA shall, at a minimum, include the following scope of work: Five (5) soil boring samplings at the locations within the Demised Area as shown on **Exhibit "E"** attached hereto and a made a part hereof. In addition, two monitoring wells will be required, one up-gradient of groundwater flow with respect to the COUNTY'S proposed facility and one down-gradient of groundwater flow with respect to the COUNTY'S proposed facility. The sampling parameters shall include, without limitation, Oil & Grease, PAHs and VOAs, and the RCRA metals and any other Hazardous Substance. The locations and number of soil and groundwater samples may change pursuant to the plans submitted by the COUNTY, and whether or not the COUNTY plans to install storm water drainage.

The COUNTY shall promptly provide a copy of the Pre-Construction ESA report to the BOARD for review. If the BOARD or its designee, in its sole authority, determines that further evaluation or testing is necessary in order to properly determine the environmental condition of the DEMISED AREA, the COUNTY shall conduct such additional testing, as recommended by the Pre-Construction ESA report or the BOARD, with such additional testing to be at the COUNTY'S sole cost and expense. The Parties acknowledge and agree that the purpose of such environmental testing, is to establish a baseline for the environmental condition of the DEMISED AREA as of the Effective Date of this Agreement. The completed Pre-Construction ESA shall be attached hereto and made a part hereof as **Exhibit "F"**.

The Parties agree and acknowledge that, in conformance with the provisions of Article XX of this Agreement, at the expiration, termination or cancellation of this

Agreement, the COUNTY shall conduct a Post Occupancy Environmental Site Assessment ("**Post-Occupancy ESA**") in full conformance with the provisions and requirements of ASTM E1527 and ASTM E1903 standards and criteria, and at the COUNTY'S sole cost and expense, using an environmental consultant approved by the BOARD, such approval not to be unreasonably withheld. The Post-Occupancy ESA shall, at a minimum, test for the same substances and materials as the Pre-Construction ESA. If the BOARD or its designee, in its sole authority, determines that further evaluation or testing is necessary in order to properly determine the environmental condition of the DEMISED AREA, the COUNTY shall conduct such additional testing, as recommended by the Post-Occupancy ESA report or the BOARD, with such additional testing to be at the COUNTY'S sole cost and expense. Notwithstanding the provisions of Article X, in the event the results of the Post-Occupancy ESA document the presence of environmental conditions not evidenced by the Pre-Construction ESA, and resulting from the COUNTY'S use and occupancy of the DEMISED AREA, the COUNTY shall be contractually obligated under this Agreement to remove or otherwise mitigate any such environmental condition, and the COUNTY and BOARD agree that payment of such remediation or mitigation costs, if any, are contractual obligations of the COUNTY, to which sovereign immunity does not apply. It is understood and agreed that the COUNTY shall be responsible for the full cost of remediating any contamination caused by the COUNTY and for full compliance with jurisdictional requirements. The provisions of this paragraph shall survive the cancellation, expiration or early termination of this Agreement.

G. **DUE DILIGENCE INVESTIGATIONS**: The COUNTY acknowledges that upon execution by the Parties of the Due Diligence Agreement attached as Exhibit "A", the COUNTY shall be given access to the DEMISED AREA, with full right to: (a) inspect the DEMISED AREA; (b) conduct any and all site surveys, inspections, investigations and tests on the DEMISED AREA, including, but not limited to, soil borings and hazardous waste studies, reasonably necessary for the COUNTY to determine the viability of the DEMISED AREA for the COUNTY'S intended use, and (c) make such other inspections and examinations with respect to the DEMISED AREA as its counsel, licensed engineers, or other representative may have deemed reasonably necessary to determine the viability of the DEMISED AREA for the COUNTY'S intended use (**"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 within sixty (60) days of the Effective Date of the Due Diligence Agreement, in compliance with all terms and conditions of the Due Diligence Agreement.

H. **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.

I. **PROMOTION:** Other than activities undertaken to promote the COUNTY'S program within the DEMISED AREA, the COUNTY shall not be permitted to use the DEMISED AREA or School for promotion or advertising of any type or nature whatsoever.

J. **USE APPROVALS:** The COUNTY shall be responsible for determining and securing, at its sole cost and expense, all federal, state, county, municipal and/or other permits, licenses, use approvals, occupational licenses, certificates or approvals needed, if any, for the COUNTY'S use and operations at the DEMISED AREA, prior to commencement of the Agreement.

K. **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 acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one Agreement.

XXXVIII.

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.

WITNESSES AS TO THE BOARD:

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

_____
Print Name:_____

_____
Print Name:_____

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

RECOMMENDED:

_____
Jaime G. Torrens
Chief Facilities Officer
Date: _____

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

_____
School Board Attorney
Date: _____

WITNESSES AS TO THE COUNTY:

COUNTY:
MIAMI-DADE COUNTY

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

_____
Print Name:_____

_____
Print Name:_____

ATTEST:

_____
County Clerk
Date: _____

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

By: _____
County Attorney
Date: _____

Exhibit "A"

AGREEMENT TO CONDUCT DUE DILIGENCE INVESTIGATIONS ON BOARD-OWNED LAND

THIS AGREEMENT TO CONDUCT DUE DILIGENCE INVESTIGATIONS ON BOARD-OWNED LAND ("**Due Diligence 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 a portion of Sweetwater Elementary School, located at 10655 S.W. 4 Street, Miami, Florida ("**School**"). The Board and County are sometimes referred to in this Due Diligence Agreement individually as "**Party**" and collectively as the "**Parties**". The County does hereby agree to the following terms and conditions:

The County, its agents, employees and representatives shall be authorized to access designated portions of the School, situated in Miami-Dade County, Florida, as more particularly described in **Exhibit "A"** attached hereto and made a part hereof ("**Demised Area**"), that the County is investigating for possible use by the County for the operation of a temporary fire station pursuant to that certain lease agreement between the Board and County for the County's temporary use of the Demised Area ("**Lease Agreement**"). The County's access to the Demised Area shall be for the expressed and limited purpose of (1) inspecting the Demised Area, (2) conducting any and all site surveys, inspections, investigations and testing on the Demised Area, including, but not limited to, soil borings and hazardous waste studies, reasonably necessary for the County to determine the viability of the Demised Area for the County's intended use, and (3) making such other inspections and examinations with respect to the Demised Area as the County's counsel, licensed engineers, or other representative may have deemed reasonably necessary to determine the viability of the Demised Area for the County's intended use (collectively the "**Due Diligence Investigations**"). No subterranean testing of any type or nature may be conducted on the Demised Area that is not specifically required to determine the ability of the Demised Area to meet the County's needs as a temporary fire station, 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 Due Diligence Agreement, the County shall provide

the Board, or its designee, with a proposed schedule for such work at the Demised Area, 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 the Demised Area shall be performed in a manner not to unreasonably interfere with the educational activities or operations taking place at the School.

The County's Due Diligence Investigations at the Demised Area shall conform at all times to the safety criteria established with and approved by the School Administrator, and shall neither disrupt or interfere with any of the School's educational activities or operations. Such work shall be done in compliance with all applicable rules, statutes, codes and regulations, including, without limitation, as applicable, 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 Demised Area 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 monetary 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, the County shall cause any entity completing the Due Diligence Investigations of the Demised Area for the County ("**County's Vendor**") to indemnify, defend and hold harmless the Board, its employees and representatives from and against all claims, actions, loss, damages, injury, liabilities, cost or expense of whatsoever kind or nature including, but not by way of limitation, attorneys' fees and court costs, arising out of the County's Vendor's actions or failure to act, arising or

incidental to the Due Diligence Investigations at the Demised Area by or on behalf of the County. In addition, the County shall cause the County's Vendor to further covenant and agree, at the County Vendor's own expense, and upon written request by the Board, to defend any suit, action or demand brought against the Board on any claim or demand arising out of, resulting from, or incidental to the County Vendor's performance under any contract by and between the County and/or its assigns and the County's Vendor relating to this Agreement. This provision shall survive the expiration, cancellation or early termination of this Agreement

In addition, on or before the Effective Date of this Agreement (as defined below), the 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 for all employees of the County's Vendor 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. The County's Vendor shall maintain such insurance at all times throughout the term of this Agreement.

The following shall be conditions precedent to commencement of the Due Diligence Investigations, subject to the terms and conditions of this Due Diligence Agreement: (1) the Board has authorized the execution of this Due Diligence Agreement and Lease Agreement, at a duly held meeting of The School Board of Miami-Dade County, Florida, and this Due Diligence Agreement has been executed by the Parties, (2) all insurance certificates or other proofs of insurance required under this Due Diligence Agreement have been received and approved by the Board, and (3) 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 upon the date on which the last of the Parties initials or executes this Due Diligence Agreement (the "**Effective Date**"), and continue and remain in full force and effect covering the Demised Area until the sooner of the following occurs: (1) the County notifies the Board that it has completed its Due Diligence Investigations, or (2) sixty (60) days following the Effective Date of this Due

Diligence Agreement.

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

All notices or communications under this Due Diligence 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 the 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: Deputy Facilities and 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:

Miami-Dade County Florida
Internal Services Department
Real Estate Development Division
111 NW 1 Street, Suite 2460
Miami, Florida 33128
Attention: Director

With a copy to:

County Attorney's Office
Miami-Dade County
111 N.W. First Street, 28th Floor
Miami, Florida 33128
Attention: County Attorney

With a copy to:

Miami-Dade Fire Rescue Department
Planning Section
9300 N.W. 41 Street
Doral, Florida 33178
Attention: Carlos Heredia
Fax: 786-331-5259
Email: carlos.heredia@miamidade.gov

Except as otherwise provided in this Due Diligence 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 Due Diligence 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.

In the event of any litigation between the Parties under this Due Diligence 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 Due Diligence Agreement.

This Due Diligence 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.

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

WITNESSES AS TO THE BOARD:

_____
Print Name:_____

_____
Print Name:_____

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

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

RECOMMENDED:

_____
Jaime G. Torrens
Chief Facilities Officer
Date:_____

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

_____
School Board Attorney
Date:_____

WITNESSES AS TO THE COUNTY:

Print Name: Liliana D. Collazo

Print Name: Ingrid Bethune

COUNTY:
MIAMI-DADE COUNTY

By:
Name: Russell Benford
Title: Deputy Mayor
Date: 8/13/2015

ATTEST:

County Clerk
Date:

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

By:
County Attorney
Date: 8/13/15

Exhibit "B"

Demised Area

[Survey to be provided by County]

Exhibit "C"

Certificate of Occupancy, Completion or equivalent

[to be attached upon completion of the Work and issuance of same]

Exhibit "D"

Work

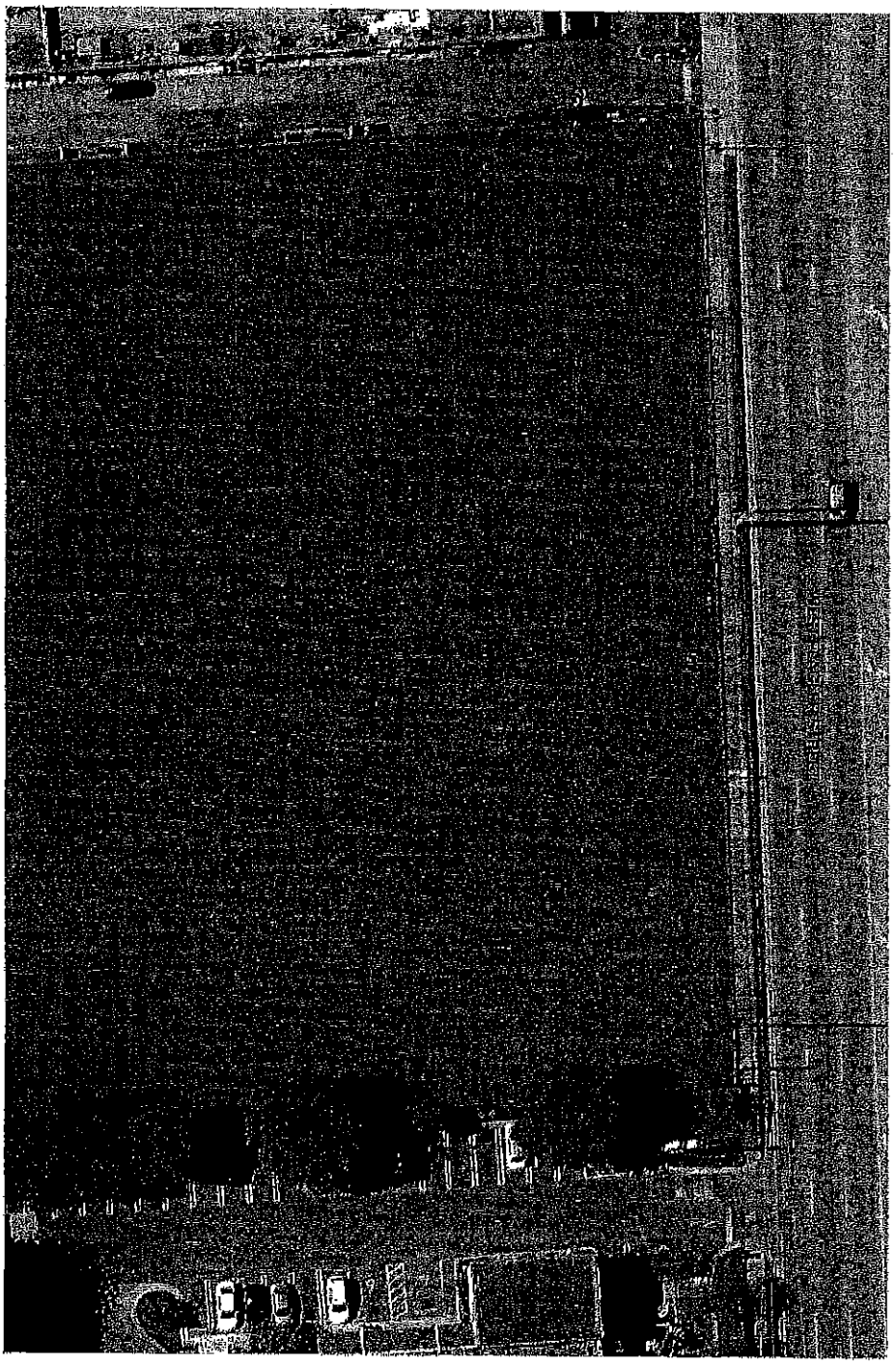
[to be provided by County]

Exhibit "E"

Completed Pre-Construction ESA Report

[to be attached upon completion and issuance of report]

Exhibit "F"

Soil Boring Sampling Locations

[locations subject to change]