

RESOLUTION NO. 2023-32571

RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA (M-DCPS) FOR THE 2023-2024 SCHOOL YEAR, SUBJECT TO TWO (2) ADDITIONAL ONE-YEAR EXTENSIONS, BY MUTUAL AGREEMENT OF THE PARTIES; SAID AGREEMENT PROVIDING FOR AN ANNUAL CITY CONTRIBUTION, IN THE AMOUNT NOT TO EXCEED \$45,945.00, WITH M-DCPS FUNDING THE REMAINING COSTS, TO SUPPORT THE CONTINUATION OF THE CITY VPK CLASSROOM AT BISCAYNE BEACH ELEMENTARY SCHOOL, WHICH CLASSROOM SERVES UP TO 20 CITY RESIDENT CHILDREN PURSUANT TO A LOTTERY REGISTRATION SYSTEM.

WHEREAS, on December 9, 2015, the City Commission passed and adopted Resolution No. 2015-29222, authorizing the City Manager to negotiate an agreement (the "Agreement") with the School Board of Miami-Dade County, Florida (M-DCPS), for the City to provide funding to M-DCPS for one prekindergarten classroom (VPK) at each of the following schools: Biscayne Elementary School and Fienberg/Fisher K-8 Center (the "CMB VPK classrooms"); and

WHEREAS, CMB and M-DCPS executed the Agreement, dated February 10, 2016; and

WHEREAS, the VPK services offered at Biscayne Elementary School and Fienberg-Fisher K-8 Center, under the terms of the Agreement, served the City of Miami Beach resident children from the following four targeted schools (Biscayne Elementary School, Fienberg-Fisher K-8 Center, North Beach Elementary School and South Pointe Elementary School), following the Registration and Lottery Procedures for school years 2016/17, 2017/18, and 2018/19; and

WHEREAS, On April 11, 2018, the Mayor and City Commission adopted Resolution No. 2018-30259, approving the reduction in funding for the CMB VPK classrooms during the 2018-2019 school year, by approving the removal the CMB VPK class at Fienberg/Fisher K-8 Center and providing funding for fifty percent (50%) of personnel costs for the CMB VPK class at Biscayne Elementary School, serving up to 20 City resident children from the four targeted Miami Beach schools, based upon a lottery system, in an amount not to exceed \$35,000.00, with M-DCPS funding the remaining costs; and

WHEREAS, on June 26, 2018, the parties executed Amendment No. 1 to the February 10, 2016 Interlocal Agreement, memorializing that the CMB VPK class at Biscayne Elementary School would be providing the VPK program for the four targeted Miami Beach schools during the 2018-2019 school year; and

WHEREAS, on June 5, 2019, the Miami-Dade County Public School Board adopted a resolution relating to Item D-67, renaming the Miami Beach public schools, and Biscayne Elementary School was renamed Biscayne Beach Elementary School; and

WHEREAS, on June 5, 2019, the Mayor and City Commission adopted Resolution No. 2019-30840, approving Amendment. No 2 to the Agreement between the City and the School Board of Miami Dade County, for the continuation of the CMB VPK classroom at Biscayne Beach Elementary School for the 2019-2020 school year; subject to two (2) additional one-year

extensions by mutual agreement of the parties, based upon the same financial terms, which included an annual City contribution in the amount not to exceed \$35,000.00; and

WHEREAS, instead of executing Amendment No. 2, the City and M-DCPS executed a new Interlocal Agreement, dated January 3, 2020, for the 2019-2020 school year; and

WHEREAS, the following two year extensions of the CMB VPK program at Biscayne Beach Elementary School were memorialized pursuant to the following two new Interlocal Agreements: an Interlocal Agreement, dated August 2, 2021, covering the period from July 1, 2021 through June 30, 2022; and an Interlocal Agreement, dated August 30, 2022, covering the period from July 1, 2022 through June 30, 2023; and

WHEREAS, the City Administration and M-DCPS have agreed to continue the CMB VPK program at Biscayne Beach Elementary School for the 2023-2024 school year, which VPK program is accessible by City resident children who reside within the attendance boundaries of the four selected schools pursuant to a lottery selection process; and

WHEREAS, the City Manager recommends that the Mayor and City Commission approve and authorize the City Manager to execute the Interlocal Agreement with M-DCPS, a copy of which is attached to the City Commission Memorandum accompanying this Resolution, for the 2023-2024 school year; and further authorize the City Manager to extend the Interlocal Agreement for two (2) additional one-year terms, upon mutual agreement of the parties, with the City providing a City contribution, in an amount not to exceed \$45,945.00 per school year, covering approximately 50% of the salary of the teacher and paraprofessional for the CMB VPK classroom, with M-DCPS funding the remaining costs.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve and authorize the City Manager to execute an Interlocal Agreement with the School Board of Miami-Dade County, Florida for the 2023-2024 school year, subject to two (2) additional one-year extensions, by mutual agreement of the parties; said Agreement providing for an annual City contribution, in the amount not to exceed \$45,945.00, with M-DCPS funding the remaining costs, to support the continuation of the City VPK classroom at Biscayne Beach Elementary School, which classroom serves up to 20 City resident children pursuant to a lottery registration system.

PASSED and ADOPTED this 28 day of April 2023.

ATTEST:

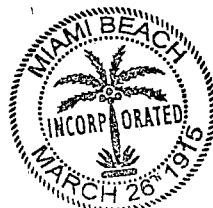


Dan Gelber, Mayor



MAY 02 2023

Rafael E. Granado, City Clerk



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney *[Signature]*

4-12-23
Date

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Alina T. Hudak, City Manager
DATE: April 28, 2023

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA (M-DCPS) FOR THE 2023-2024 SCHOOL YEAR, SUBJECT TO TWO (2) ADDITIONAL ONE-YEAR EXTENSIONS, BY MUTUAL AGREEMENT OF THE PARTIES; SAID AGREEMENT PROVIDING FOR AN ANNUAL CITY CONTRIBUTION, IN THE AMOUNT NOT TO EXCEED \$45,945.00, WITH M-DCPS FUNDING THE REMAINING COSTS, TO SUPPORT THE CONTINUATION OF THE CITY VPK CLASSROOM AT BISCAYNE BEACH ELEMENTARY SCHOOL, WHICH CLASSROOM SERVES UP TO 20 CITY RESIDENT CHILDREN PURSUANT TO A LOTTERY REGISTRATION SYSTEM.

RECOMMENDATION

Amendment No. 3 to the Agreement between the City and the School Board of Miami Dade County will allow for the continuation of the CMB VPK classroom at Biscayne Beach Elementary School for the 2023-2024 school year, subject to two (2) additional one-year extensions by mutual agreement of the parties, based upon the same financial terms, which includes an annual City contribution in the amount not to exceed \$45,945 which is 50 percent of the cost to sustain the classroom.

BACKGROUND/HISTORY

On December 9, 2015, the City Commission passed and adopted Resolution No. 2015-29222 authorizing the City Manager to negotiate an agreement (the "Agreement") with M-DCPS, for the City to provide funding to M-DCPS for one prekindergarten classroom (VPK) at each of the following schools: Biscayne Elementary School and Fienberg/Fisher K-8 Center (the "CMB VPK classrooms").

CMB and M-DCPS executed the Agreement, dated February 10, 2016. Prekindergarten services were offered at Biscayne Elementary School and Fienberg/Fisher K-8 Center under the terms of the Agreement for City of Miami Beach resident children from the four targeted schools (Biscayne Elementary School, Fienberg/Fisher K-8 Center, North Beach Elementary School and South Pointe Elementary School), following the Registration and Lottery Procedures for school years 2016/17, 2017/18, and 2018/19.

On April 11, 2018, the City Commission approved the reduction in funding for the CMB VPK classrooms during the 2018-2019 school year, by approving the removal the CMB VPK class at Fienberg/Fisher K-8 Center and providing funding for fifty percent (50%) of personnel costs for the CMB VPK class at Biscayne Elementary School, in an amount not to exceed \$35,000, contingent upon M-DCPS funding the remaining costs.

On June 26, 2018, the parties executed Amendment No. 1, memorializing that the CMB VPK class at Biscayne Elementary School would be providing the VPK program for the four targeted Miami Beach schools.

The Administration and MDCPS agreed to extend the Agreement to continue the CMB VPK program at Biscayne Elementary School for the 2019-2020 school year, with two (2) additional one-year extensions, upon mutual agreement of the parties, with the City continuing to contribute an amount not to exceed \$35,000 per school year.

M-DCPS agreed to fund the portion of the costs to operate the CMB VPK classroom which would not be funded by CMB for the 2019-2020 school year.

On June 5, 2019, MDCPS adopted a resolution related to Item D-67, renaming the Miami Beach public schools, and Biscayne Elementary School was renamed Biscayne Beach Elementary School.

On June 5, 2019, the Mayor and City Commission adopted Resolution No. 2019-30840, approving, in substantial form, Amendment No 2 to the Agreement between the City and the School Board of Miami Dade County, for the continuation of the CMB VPK classroom at Biscayne Beach Elementary School for the 2019-2020 school year; subject to two (2) additional one-year extensions by mutual agreement of the parties, based upon the same financial terms, which included an annual City contribution in the amount not to exceed \$35,000.

Instead of executing Amendment No. 2, the City and M-DCPS executed a new Interlocal Agreement, dated January 3, 2020, for the 2019-2020 school year. The following two year extensions of the CMB VPK program at Biscayne Beach Elementary School were memorialized pursuant to the following two new Interlocal Agreements: an Interlocal Agreement, dated August 2, 2021, covering the period from July 1, 2021 through June 30, 2022; and an Interlocal Agreement, dated August 30, 2022, covering the period from July 1, 2022 through June 30, 2023.

ANALYSIS

The second additional one-year extension will expire on June 30, 2023. As such, Administration has negotiated with MDCPS to extend the Agreement to continue the CMB VPK program at Biscayne Beach Elementary School for the 2023-2024 school year, with two (2) additional one-year extensions, upon mutual agreement of the parties, with the City contributing an amount not to exceed \$45,945 per school year. The additional cost is 50 percent of the salary increase for the teacher and paraprofessional. MDCPS would be responsible for any remaining costs.

SUPPORTING SURVEY DATA

49% of Residents are satisfied or very satisfied with public schools in Miami Beach

FINANCIAL INFORMATION

FY 2023: \$45,945 (already allocated in FY 2023 Budget)

Applicable Area

Not Applicable

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

No

Does this item utilize G.O. Bond Funds?

No

Strategic Connection

Prosperity - Be known for (K-12) educational excellence.

Legislative Tracking

Education and Performance Initiatives

ATTACHMENTS:

Description

- Interlocal Agreement
- Resolution

INTERLOCAL AGREEMENT FOR VOLUNTARY PRE-KINDERGARTEN (VPK)

THIS INTERLOCAL AGREEMENT (Agreement) is made and entered into as of this ____ day of _____, 2023, (the Effective Date, which shall be the date this Agreement is fully executed) by and between

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

a political subdivision of the State of Florida,
whose principal place of business is
1450 N.E. 2nd Avenue
Miami, Florida 33132

And

THE CITY OF MIAMI BEACH, FLORIDA

a body corporate and political subdivision of the State of Florida,
whose principal place of business is
1700 Convention Center Drive
Miami Beach, Florida 33139

WHEREAS, since the Education Compact implementation on January 16, 2008, the City of Miami Beach (“City” or “CMB”) has collaborated with The School Board of Miami-Dade County, FL (“School Board” or “M-DCPS”) (collectively referred to as the “Parties”) to improve educational opportunities for youth in the City; and

WHEREAS, the Miami Beach City Commission supports entering into an Agreement with the School Board whereby the City will fund certain prekindergarten classes for eligible City of Miami Beach residents; and

WHEREAS, the Parties executed an Interlocal Agreement, dated February 10, 2016, in which the City provided funding to M-DCPS for one prekindergarten classroom (“VPK”) at each of the following schools: Biscayne Elementary School and Fienberg/Fisher K-8 Center; and

WHEREAS, on April 11, 2018, the Mayor and City Commission adopted Resolution No. 2018-30259, removing the VPK classroom at Fienberg/Fisher K-8 Center and reducing the funding for Biscayne Elementary School to an amount not to exceed \$35,000 for the personnel costs contingent on M-DCPS funding the remaining costs; and

WHEREAS, on June 26, 2018, M-DCPS and the City executed Amendment No. 1; and

WHEREAS, on June 5, 2019, the Miami Dade County Public School Board adopted a resolution relating to Item D-67, renaming Biscayne Elementary School to Biscayne Beach Elementary School; and

WHEREAS, on June 5, 2019, the Mayor and Commission adopted Resolution No. 2019-30840, approving Amendment No. 2 to the agreement with two (2) additional one-year extensions by mutual agreement of the parties, providing funding for one VPK classroom at Biscayne Beach Elementary School for the 2019-2020 school year in the amount not to exceed \$35,000; and

WHEREAS, instead of proceeding with Amendment No. 2 to the agreement, the Parties agreed to enter into a new Interlocal Agreement on January 3, 2020; and

WHEREAS, the Parties executed an Interlocal agreement, dated August 2, 2021; in which the city provided funding to M-DCPS for one (1) Prekindergarten classroom (VPK) at the following school: Biscayne Beach Elementary School; and

WHEREAS, the Parties executed an Interlocal agreement, dated August 30, 2022; in which the city provided funding to M-DCPS for one (1) Prekindergarten classroom (VPK) at the following school: Biscayne Beach Elementary School; and

WHEREAS, on April 28, 2023, the Mayor and Commission adopted Resolution No. _____, approving this Agreement between the City and the School Board of Miami-Dade County for the continuation of the CMB VPK classroom

at Biscayne Elementary School for the 2023-2024 school year, subject to two (2) additional one-year extensions by mutual agreement of the parties, which includes an annual City contribution in the amount not to exceed \$45,945; and

WHEREAS, Prekindergarten services offered at Biscayne Beach Elementary School under the terms of this Agreement may be accessed by City of Miami Beach resident children from the four targeted schools (Biscayne Beach Elementary School, Fienberg/Fisher K-8 Center, North Beach Elementary School and South Pointe Elementary School) following the Registration and Lottery Procedures in section 1.06 of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 – RECITALS AND DEFINITIONS

1.01 Recitals

Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated into this Agreement by reference.

1.02 Purpose and Goals

The purpose of the Program, known as the VPK Program, is to provide four-year-old children with a variety of meaningful learning experiences in environments that give them opportunities to create their own knowledge, through initiatives shared with supportive adults. The program's curriculum framework focuses on active learning, early literacy, adult-child interactions, the daily routine, the learning environment, and assessment. The goals of the program serve as a conceptual framework, within which the foundation for successful learning is developed and implemented. They are as follows:

- support a positive self-image in the child;
- enrich the language and literacy skills of the prekindergarten child;
- provide experiences that will enhance the child's knowledge of the world around him/her;
- encourage the development of a support system between home and school;
- promote social, emotional, physical, and cognitive development through developmentally appropriate activities; and
- develop skills that are necessary for future success in learning.

1.03 Eligibility Requirements

Under this Agreement, Biscayne Beach Elementary School will house one CMB VPK classroom. M-DCPS will implement current VPK Program registration guidelines for the classroom funded by the City. Services at this school may be accessed by City of Miami Beach resident children from the four targeted schools (Biscayne Beach Elementary School, Miami Beach Fienberg/Fisher K-8 Center, North Beach Elementary School and Miami Beach South Pointe Elementary School) following the Registration Procedures in Section 1.06 of this Agreement.

Requirements for Participation in the CMB VPK Program are as follows:

- Child must have attained the age of four, on or before September 1 of each school year; and
- Child must reside within the attendance boundaries of the four targeted schools.

1.04 Funding

State funding for VPK provides a three-hour program from 8:20 a.m. to 11:20 a.m., Monday through Friday. In addition, M-DCPS offers a Prekindergarten Enrichment Program from 11:20 a.m. through 1:50 p.m. In the classroom identified in this Agreement, CMB will fund the Prekindergarten Enrichment Program to operate under the same procedures as all M-DCPS Prekindergarten Enrichment Programs as follows: (1) CMB shall contribute up to one half of the personnel costs, in an amount not to exceed \$45,945; and (2) M-DCPS shall fund the remaining costs of this VPK classroom. The personnel salaries, fringe benefits and indirect costs may fluctuate based on

teacher/paraprofessional qualifications, seniority, contract requirements, retirement, surplus, and personnel changes. Attached hereto and incorporated herein as Exhibit A is the Estimated Cost Breakdown.

1.05 Class Size and Staffing Requirements

Class size of the VPK Program is limited to 20 students per classroom. Schools must adhere to the adult/student ratio of 1 to 10.

The instructional team must include one certified early childhood or prekindergarten/primary teacher, and one highly qualified (HQ) paraprofessional. Teachers and paraprofessionals must attend training in the delivery of the District's VPK program curriculum, the administration of the Florida VPK Assessment ; and Florida Early Learning and Developmental Standards for Four-Year-Olds.

1.06 Registration and Lottery Procedures

Attached hereto and incorporated herein as Exhibit B is the City of Miami Beach VPK Choice Classes Application. If needed, all lottery registration deadlines and procedures will be established and followed according to the Department of Early Childhood Programs guidelines, for this CMB funded VPK class. Parents from the four targeted schools will be able to apply for prekindergarten through the home school lottery which includes completing the official VPK Choice application. In the official VPK Choice application, parents must select one of two options: not interested or Biscayne Beach Elementary School. Parents of students not selected through the home school lottery will be notified via letter from the home school of the VPK Choice option for the Miami Beach funded VPK Class at Biscayne Beach Elementary School. The choice application may then be submitted for the lottery selection process.

Lottery Participation Requirements

Only children who have all the required documents for initial school entry will be considered to participate in the lottery selection process. All children must reside within the attendance boundaries of the four selected schools in order to participate in the lottery selection process. The Certificate of Eligibility (COE) is not needed to participate in the lottery selection process.

Final Roster for Selected Students

A final roster is completed based on the names of children selected during the lottery.

Waiting List/Open Slots

Once the enrollment capacity is reached at a VPK site, a waiting list of all other eligible children must be established and ranked according to the results of the lottery. The waiting list must be used to maintain an enrollment of 20 students at all times. Parents of children on the waiting list will be contacted throughout the school year once a slot becomes available due to student withdrawals.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 Funding

CMB shall contribute up to one half of the personnel costs, in an amount not to exceed \$45,945; and (2) M-DCPS shall fund the remaining costs of this VPK classroom.

Attached hereto and incorporated herein as Exhibit A is the Salary Range without fringe benefits for teachers and paraprofessionals. School Board shall provide the actual personnel salaries, fringe benefits and indirect costs to CMB for the applicable school year. CMB shall render payment to the School Board for the actual personnel salaries, fringe benefits, and indirect costs, for which CMB is responsible under this Agreement, no later than September 15 each year. In subsequent years, the actual personnel salaries, fringe benefits and indirect costs may fluctuate based on teacher/paraprofessional qualifications, seniority, contract requirements, retirement, surplus, and personnel changes. At the closeout of each fiscal

year, should changes in personnel increase the amount required to maintain the program with qualified teachers/paraprofessionals, CMB will be invoiced the excess funds due to the School Board, in an amount not to exceed CMB's responsibility for personnel costs, as delineated herein. Should changes in personnel decrease the amount required to maintain the program with qualified teachers/paraprofessionals, CMB will be refunded the excess funds by the School Board.

All funds paid to the School Board for the VPK classroom shall be non-refundable with the exception of any changes made in the personnel line item which would require a reimbursement or a refund at the closeout of the fiscal year.

2.02 Term of Agreement

The term of this Agreement shall be effective July 1, 2023 and shall end on June 30, 2024. Any amendment to this Agreement requires the approval of both Parties. Both Parties reserve the right to terminate this Agreement for convenience by giving the other Party a minimum of thirty (30) business days written notification prior to February 1 of the corresponding school year. All funds paid by CMB shall be non-refundable should the City terminate this Agreement.

2.03 Reserved

2.04 Enrollment Procedures

Shall be governed by the provisions of Section 1.03 of this Agreement.

ARTICLE 3 – GENERAL CONDITIONS

3.01 Indemnification

Each Party agrees to be fully responsible for its acts of negligence or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations. Notwithstanding the foregoing, M-DCPS's and CMB's indemnification herein is subject to applicable laws, including, but not limited to, Section 768.28, Florida Statutes, and the limitations, restrictions, and defenses therein. Nothing contained herein shall constitute a waiver of sovereign immunity by any of the Parties to this Agreement.

3.02 No Waiver of Sovereign Immunity

Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.03 No Third Party Beneficiaries

The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the Parties intend to directly or substantially benefit a third Party by this Agreement. The Parties agree that there are no third Party beneficiaries to this Agreement and that no third Party shall be entitled to assert a claim against any of the Parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third Parties in any matter arising out of any contract.

3.04 Independent Contractor

The Parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither Party nor its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other Party unless specifically authorized in writing to do so. No right

to Party's retirement, leave benefits or any other benefits of employees shall exist for the employees of the other Party as a result of the performance of any duties or responsibilities under this Agreement. Neither Party shall be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other Party or the other Party's officers, employees, agents, subcontractors or assignees.

3.05 Equal Opportunity Provision

The Parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the Parties' respective duties, responsibilities and obligations under this Agreement.

3.06 Notice

When any of the Parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, return receipt requested, or by Federal Express, addressed to the Party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To M-DCPS: Jose L. Dotres
Superintendent of Schools
Miami-Dade County Public Schools
1450 N.E. 2nd Avenue, Suite 912
Miami, Florida, 33132

With a copy to: Dr. Sylvia Diaz
Chief Academic Officer
Office of Academics and Transformation
Miami-Dade County Public Schools
1450 N.E. 2nd Avenue, Suite 921
Miami, Florida, 33132

And a copy to: Walter Harvey
School Board Attorney
Miami-Dade County Public Schools
1450 N.E. 2nd Avenue, Suite 430
Miami, Florida, 33132

To CMB: Alina T. Hudak
City Manager
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

With copies to: City Attorney
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

Dr. Leslie Rosenfeld
Chief Education Officer
City of Miami Beach
1700 Convention Center Drive, 1st Floor
Miami Beach, Florida 33139

3.07 Default

The Parties agree that, in the event that either Party is in default of its obligations under this Agreement, the non-defaulting Party shall provide to the defaulting Party (30) business days written notice to cure the default. However, in the event said

default cannot be cured within said thirty (30) day period, and the defaulting Party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting Party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting Party upon thirty (30) business days' notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any Party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof.

3.08 Annual Appropriation

The performance and obligations of either Party under this Agreement shall be contingent upon the required budgetary appropriation by its governing body. If either Party does not allocate funds for the payment of services or programs to be provided under this Agreement, this Agreement may be terminated by that Party at the end of the period for which funds have been allocated. That Party shall notify the other Party at the earliest possible time before such termination but not less than 90 business days prior to the termination. No penalty shall accrue to either Party in the event this provision is exercised, and neither Party shall be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.09 Excess Funds

M-DCPS agrees to promptly notify CMB of any funds erroneously received from CMB upon the discovery of an erroneous payment or overpayment. Any excess funds shall be refunded to CMB.

3.10 Public Records

Pursuant to Section 119.0701, Florida Statutes, any Party contracting with M-DCPS or CMB is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to M-DCPS or CMB and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such Party's records stored electronically must be provided to M-DCPS or CMB in a format that is compatible with M-DCPS' or CMB's information technology systems. Each Party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each Party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each Party acknowledges that this Agreement and all attachments thereto are public records and to not constitute trade secrets.

3.11 Student Records

M-DCPS shall fully comply with the requirements of Section 1002.33, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records.

3.12 Compliance with Laws

Each Party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.13 Governing Law and Venue

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of a State court in Miami-Dade County, Florida.

3.14 Entirety of Agreement

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements

or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

3.16 Assignment

Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any Party without the prior written consent of the other Party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from CMB.

3.17 Captions

The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 Severability

In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.19 Preparation of Agreement

The Parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

3.20 Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each Party hereto. The City Manager of the City of Miami Beach, Florida, shall be authorized to execute any amendment or extension of this Agreement on behalf of CMB. Jose L. Dotres, Superintendent of M-DCPS shall be authorized to execute any amendment or extension of this Agreement on behalf of M-DCPS.

3.21 Waiver

The Parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the Party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.22 Force Majeure

Neither Party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either Party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either Party be deemed Force Majeure.

3.23 Survival

All representations and warranties made herein, regarding indemnification obligations, obligations to reimburse CMB, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.24 Authority

Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all provisions contained in this Agreement.

[Signature Page to Follow]

The Parties hereto have made and executed this Agreement on the date last signed below.

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA:

By: _____
Jose L. Dotres
Superintendent of Schools or his Designee

Date: _____

ATTEST:

By: _____

Date: _____

Approved as to Form and Legal Sufficiency:

School Board Attorney

Date: _____

THE CITY OF MIAMI BEACH:

By: _____
Alina T. Hudak, City Manager

Date: _____

ATTEST:

By: _____
Rafael E. Granado, City Clerk

Date: _____

Approved as to Form & Language &
For Execution:

City Attorney

Date: _____