STATE BOARD OF EDUCATION
Action Item
May 20, 2014

SUBJECT: Dismissal of Charter School Appeal for Lack of Jurisdiction

PROPOSED BOARD ACTION

Ratify Decision to Dismiss for Lack of Jurisdiction

AUTHORITY FOR STATE BOARD ACTION

Section 1002.33, Florida Statutes

EXECUTIVE SUMMARY

A sponsor shall receive and review all applications for a charter school using an evaluation instrument developed by the Department of Education. Section 1002.33(6)(b), Florida Statutes.

An applicant may appeal any denial of that applicant's application or failure to act on an application to the State Board of Education no later than 30 calendar days after receipt of the sponsor's decision or failure to act and shall notify the sponsor of its appeal. Section 1002.33(6)(c), Florida Statutes.

City of North Miami vs. School Board of Miami-Dade County
October 25, 2006 – The City of North Miami and the School Board of Miami-Dade County entered into an Amended and Restated Interlocal Agreement. The Agreement provided that the City of North Miami would not seek, approve or accept any charter school within the City that would compete with the District-owned and operated schools within the City during the term of the ground leases for the district-operated schools.
August 1, 2013 – City of North Miami submitted a charter school application to the School Board of Miami-Dade County.
October 18, 2013 – City of North Miami received rejection of the application without review via email from the School Board of Miami-Dade County.
November 18, 2013 – Appeal of the Denial received by the Agency Clerk at Department of Education from the City of North Miami. (November 17, 2013, the 30th day, was a Sunday. The appeal was received the next business day.)

Recommendation
The School Board of Miami-Dade County did not evaluate the application using the required evaluation instrument, but rejected it without review as violating an Interlocal Agreement between the parties. The rejection of an application for violation of an agreement between the applicant and the district is not an issue reviewable by the Charter School Appeal Commission. Interlocal Agreements are governed by Section 163.01 and Chapter 1013, Florida Statutes, neither of which grant authority for review and enforcement to the State Board of Education. Therefore, the Chair of the Charter School Appeal Commission recommends that the State Board dismiss the appeal for lack of jurisdiction and instruct the parties to file in a court of competent jurisdiction to resolve the matter of the underlying Interlocal Agreement.

Supporting Documentation Included: Interlocal Agreement; Appeal of Charter School; School Board's Response to Appeal; and Section 1002.33, Florida Statutes

Facilitator/Presenter: Matthew J. Carson, General Counsel

This instrument prepared by or under the supervision of, and after recording return to:

Name: **Nancy B. Lash, Esq.**
Address: **Greenberg Traurig, P.A.**
1221 Brickell Avenue
Miami, Florida 33131

AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA AND THE CITY OF NORTH MIAMI, FLORIDA

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT (the "Interlocal Agreement" or "Agreement") is entered into as of the 25th day of October, 2006, by and between The School Board of Miami-Dade County, Florida, a public body corporate and politic existing under the laws of the State of Florida, its successors and assigns (hereinafter referred to as the "Board"), and The City of North Miami, Florida, a Florida municipal corporation, its successors and assigns (hereinafter referred to as the "City"). The Board and City are sometimes referred to herein individually as a "Party", and collectively as the "Parties". The effective date (the "Effective Date") of this Interlocal Agreement shall be the date this Interlocal Agreement is recorded in the Public Records of Miami-Dade County, Florida.

RECITALS

WHEREAS, Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," authorizes public agencies to enter into interlocal agreements for mutual benefit and to provide facilities to service the needs of local communities;

WHEREAS, Section 166.021, Florida Statutes, authorizes the City to exercise any power for municipal purposes, except when expressly prohibited by law;

WHEREAS, the City and Board entered into that certain Interlocal Agreement dated December 13, 2005, as amended by First Amendment to Interlocal Agreement dated as of March 1, 2006 (as so amended, the "Original Interlocal Agreement"), which Original Interlocal Agreement addressed the general terms and conditions relating to, *inter alia*, the replacement of North Miami Senior High School, and the development and construction of new educational and recreational facilities located in the City of North Miami, Florida more particularly described in Section 5 thereof;

WHEREAS, pursuant to Section 4 of the Original Interlocal Agreement, the City and Board agreed to use good faith efforts to negotiate and finalize "Project Documents" intended to govern the specific rights and obligations of the parties with respect to the

replacement, development and construction of such educational and recreational facilities;

WHEREAS, after extensive negotiations, the City and Board recognized that the Board was in the best position to be responsible for the administration of the design, development and construction of the contemplated facilities, and agreed to restructure the terms and conditions of the Original Interlocal Agreement, including without limitation the provisions thereof governing the design, development and construction of the contemplated facilities;

WHEREAS, the Parties continue to recognize and agree that the relocation and replacement of North Miami Senior High School, the redevelopment of North Miami Cagni Park and the development of the other new educational and recreational facilities described in Section 5 hereof (collectively, the "New Facilities"), will serve a public purpose by benefiting the City, the County and their respective student population, and in furtherance thereof, the Parties have agreed to amend and restate the Original Interlocal Agreement on the terms and conditions provided herein to provide a revised framework for the financing, development, construction, maintenance, leasing, acquisition and operation of the New Facilities within the City; and

WHEREAS, the Board and the City have determined that it shall serve the public interest to enter into this Interlocal Agreement in order to accomplish all of the foregoing goals.

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree that the terms, conditions and provisions of the Original Interlocal Agreement are amended and restated in their entirety as follows:

Section 1. Recitals Incorporated. The above recitals are true and correct and are incorporated herein.

Section 2. Purpose. The purpose of this Interlocal Agreement is to provide for the implementation of the following projects:

a. The construction of a new North Miami Senior High School ("NMHS"), on those lands more particularly described or depicted in Exhibit "A" hereto ("Future NMHS Parcel"), which lands are composed of two (2) adjacent parcels, consisting of (i) a parcel of land owned by the City and more particularly described as Parcel 1 in Exhibit "A" hereto (the "Future NMHS Parcel-City"), and (ii) a parcel of land owned by the Board and more particularly described as Parcel 2 in Exhibit "A" hereto (the "Future NMHS Parcel-Board");

b. The construction of a new high school at Biscayne Landing ("BLHS") on those lands owned by the City, located in the vicinity of Biscayne Landing

and more particularly described or depicted in Exhibit "B" hereto ("Future BLHS Parcel");

c. The resurfacing of the track at the facility known as "North Miami Stadium" as provided in Section 5.e. below (the "North Miami Stadium Improvements") located directly adjacent to and west of the Future BLHS Parcel and more particularly described or depicted in Exhibit "B-1" hereto ("North Miami Stadium Parcel");

d. The construction of a new K through 8 educational center (the "K to 8 Educational Center") on those lands owned by the Board and more particularly described or depicted in Exhibit "C" hereto ("Future K to 8 Parcel"); and

e. The redevelopment of North Miami Cagni Park ("New Cagni Park") on those lands owned by the City and more particularly described or depicted in Exhibit "D" hereto ("Cagni Park Parcel"), which will be a renovation of the existing Cagni Park open space and recreational facilities currently located on the Cagni Park Parcel to accommodate the needs of NMHS and the community.

The Parties agree that the development, construction, and implementation of all the foregoing projects shall be subject to and in compliance with all applicable laws, codes, ordinances, rules and regulations.

Section 3. Responsibility for Construction. The Board shall be responsible for the administration of the design, development and construction of New Facilities, subject to the terms and conditions of this Interlocal Agreement. The Board has also accepted responsibility for the construction of the New Facilities (which, in the case of NMHS and BLHS, the Board has accepted on behalf of the City), in accordance with the terms and conditions of this Interlocal Agreement and the other agreements entered into by the Parties pursuant hereto. The cost of the New Facilities shall be paid for or financed as provided in Section 8. The Board shall perform the work required of it hereunder through design professionals (including without limitation architects and engineers), consultants, contractors or other persons, firms or entities (collectively, "Contractors") selected by the Board for the performance of such work in accordance with the terms hereof.

Section 4. Project Documents. In order to effect the transactions contemplated by this Agreement, the Board and City shall:

a. Enter into a joint use agreement (the "NMHS/Cagni Park Joint Use Agreement") setting forth the terms and conditions for the joint use of the recreational and other amenities to be constructed and located on the Cagni Park Parcel, which amenities are identified as the "Cagni Park Amenities" on the Conceptual Layout Plan attached hereto as Exhibit "E-1"

(as revised and modified from time to time, the "NMHS/K to 8 Conceptual Layout Plan"), and certain portions of NMHS specifically identified in the NMHS/Cagni Park Joint Use Agreement;

b. Enter into a joint use agreement (the "K to 8 Joint Use Agreement") setting forth the terms and conditions for the joint use of the athletic and related amenities to be constructed and located on the Future K to 8 Parcel, which amenities are identified as the "K Through 8 Amenities" on the NMHS/K to 8 Conceptual Layout Plan. Notwithstanding the terms of the last grammatical paragraph of this Section 4, the Parties recognize that the K to 8 Joint Use Agreement will not be executed simultaneously with this Interlocal Agreement and will be substantially similar to the NMHS/Cagni Park Joint Use Agreement, with such modifications as may be necessary to reflect the facilities on the Future K to 8 Parcel to be shared by the Parties, to address the responsibility for construction of such shared facilities and to incorporate the other agreements of the Parties with respect to the K through 8 Amenities, all as contemplated in this Interlocal Agreement. The special rights granted to the City under the NMHS/Cagni Park Joint Use Agreement to name the facilities, install cellular communication equipment and construct structured parking shall be rights of the Board as the fee owner of the Future K to Parcel (and not the City) under the K to 8 Joint Use Agreement. The Parties shall use reasonable efforts to finalize and execute the K to 8 Joint Use Agreement by the Possession Date;

c. Enter into a joint use agreement (the "BLHS/North Miami Stadium Joint Use Agreement") setting forth the terms and conditions for the joint use of the North Miami Stadium facilities (including existing and future recreational, parking and other amenities), the BLHS recreational and other amenities similar in type and nature to the amenities shared under the NMHS/Cagni Park Joint Use Agreement (to the extent such amenities are actually included in the BLHS), and any other portions of BLHS specifically identified in the BLHS/North Miami Stadium Joint Use Agreement. Notwithstanding the terms of the last grammatical paragraph of this Section 4, the Parties recognize that the BLHS/North Miami Stadium Joint Use Agreement will not be executed simultaneously with this Interlocal Agreement and will be substantially similar to the NMHS/Cagni Park Joint Use Agreement, with such modifications as may be necessary to reflect the facilities on the Future BLHS Parcel and North Miami Stadium Parcel to be shared by the Parties (to the extent known), to address the responsibility for construction of such shared facilities and to incorporate the other agreements of the Parties with respect to the BLHS shared facilities and North Miami Stadium, all as contemplated in this Interlocal Agreement. The Parties shall use reasonable efforts to finalize and execute the BLHS/North Miami Stadium Joint Use Agreement within fifteen (15) days following the Effective Date;

d. Enter into a ground lease for the Future NMHS Parcel-City, leasing such parcel to the Board (the "NMHS Ground Lease");

e. Enter into a ground lease for the Future BLHS Parcel, leasing such parcel to the Board (the "BLHS Ground Lease");

f. Enter into a multi-party agreement with certain lenders regarding the construction and financing of BLHS and NMHS (the "Multiparty Agreement"), together with any notes and other instruments contemplated therein; and

g. If requested, execute standard title affidavits for any property owned by it in fee simple sufficient in form to allow a title company to delete the "standard exceptions" in any title commitment or policy insuring the interests of the Parties in such property, including exceptions for the "gap", liens for labor and materials, parties in possession (other than parties remaining in occupancy after the Effective Date expressly under and subject to the terms of this Interlocal Agreement), and survey matters, provided that such affidavits shall address survey matters only if a survey exists for the property in question and no improvements have been made to such property since the date of the most recent survey thereof.

The NMHS Ground Lease and BLHS Ground Lease are sometimes referred to herein collectively as the "Ground Leases". The NMHS/Cagni Park Joint Use Agreement, BLHS/North Miami Stadium Joint Use Agreement and K to 8 Joint Use Agreement are sometimes referred to herein collectively as the "Joint Use Agreements". The Ground Leases, Joint Use Agreements, Multiparty Agreement and other covenants, instruments and agreements required under Section 4.a. through 4.g. above are sometimes referred to herein collectively as the "Project Documents". The Joint Use Agreements will require the Parties to comply with the Jessica Lunsford Act to the extent applicable.

The Parties agree that this Interlocal Agreement is intended to address the general terms and conditions relating to the development, construction and use of the New Facilities and to provide a framework for the implementation of the projects described herein. The Parties further agree that the Project Documents required by this Interlocal Agreement will govern the rights and obligations of the Parties with respect to the development, financing, construction, acquisition, maintenance, repair and operation of the New Facilities. Accordingly, the Parties shall negotiate and finalize the terms, conditions and provisions of the Project Documents, and this Interlocal Agreement shall be conditioned upon the final agreement as to the form of and/or execution of all such Project Documents. The Parties acknowledge and agree that the Ground Leases and the Joint Use Agreements shall include such provisions for the benefit of any party providing permanent financing to the Board for the release of title to NMHS and BLHS, including without limitation subordination and non-disturbance provisions reasonably satisfactory to the Parties, as may be reasonably required to ensure that all such financing (and any future financing for the projects) will not be hindered; provided,

however, if the Board ceases to operate NMHS or BLHS as a result of the exercise of remedies under such financing, then (i) the NMHS/Cagni Park Joint Use Agreement shall remain in effect for so long as NMHS is (or is intended to be) used for educational purposes, but shall cease in the event NMHS is used for non-educational purposes, and (ii) the BLHS/North Miami Stadium Joint Use Agreement shall remain in effect for so long BLHS is (or is intended to be) used for educational purposes, but shall cease in the event BLHS is used for non-educational purposes, except that the portions of the North Miami Stadium Parcel used for parking and traffic circulation will remain available for use by the BLHS facility, subject to the rights of the City to use same in the manner contemplated by the BLHS/North Miami Joint Use Agreement. The City also agrees to subordinate any deed restriction or restrictive covenant requiring that the Future NMHS Parcel, Future BLHS Parcel or the Future K to 8 Parcel be used for school purposes (including any right of reverter arising from a breach of such restriction or covenant) held by or in favor of the City, to any financing obtained by the Board from time to time for such property as may reasonably be required by the lender. In the event that any term, condition or provision of any Project Document conflicts with any term, condition or provision of this Interlocal Agreement governing the same subject matter, the term, condition or provision of this Interlocal Agreement shall control.

Section 5. Project Descriptions. Subject to the terms and provisions of Section 8.a., the City and Board agree as follows:

a. NMHS Project. NMHS shall have approximately 3,200 permanent high school student stations. No "portable" classrooms shall be allowed on the Future NMHS Parcel; however, portable classrooms may be utilized in the event of a disaster which prevents the Board from using a portion of NMHS, for a period of up to twelve (12) months. The NMHS project shall include approximately four hundred fifteen (415) parking spaces (through a combination of surface and structured parking on the Future NMHS Parcel and the Cagni Park Parcel) in accordance with the State Requirements for Educational Facilities, of which approximately two hundred fifty-one (251) parking spaces will be located within a parking structure on the Future NMHS Parcel. The City shall have the use of certain portions of the NMHS facilities for the benefit of its residents through the NMHS/Cagni Park Joint Use Agreement to be entered into by the City and the Board pursuant to Section 4 above, which shared facilities will be specifically identified in the NMHS/Cagni Park Joint Use Agreement. The NMHS/Cagni Park Joint Use Agreement shall be for an initial term of forty (40) years at a charge to each of the City and the Board of one dollar ($1.00) per year and shall contain such other terms and conditions as may be mutually agreed to by the Parties. The NMHS/Cagni Park Joint Use Agreement shall be coterminous with the NMHS Ground Lease, such that any renewal of the NMHS Ground Lease shall result in the automatic renewal of the NMHS/Cagni Park Joint Use Agreement.

b. K to 8 Educational Center Project. The K to 8 Educational Center shall be comprised of an elementary school and the replacement of North Miami Middle School, which shall have approximately 1,720 permanent student stations. No "portable" classrooms shall be allowed on the Future K to 8 Parcel; however, portable classrooms may be utilized in the event of a disaster which prevents the Board from using a portion of the K to 8, for a period of up to twelve (12) months. The K to 8 Educational Center shall include approximately one hundred and fourteen (114) on-site surface parking spaces as well as the right to use off-site on-street parking neighboring the facility. The K to 8 Educational Center shall also initially include the "K Through 8 Amenities" reflected on the NMHS/K to 8 Conceptual Layout Plan. The City shall have the use of the K Through 8 Amenities and certain portions of the K to 8 Educational Center for the benefit of its residents through the Joint Use Agreement to be entered into by the City and the Board pursuant to Section 4 above. The City's use rights under the K to 8 Joint Use Agreement shall be limited to the K Through 8 Amenities and such other portions and amenities in the K to 8 Educational Center specifically identified in the K to 8 Joint Use Agreement (if any); it being the intention of the Parties that the City shall have no right to use the educational facilities which comprise the K to 8 Educational Center or any amenities accessory to the K to 8 Educational Center unless specifically identified in the K to 8 Joint Use Agreement. The K to 8 Joint Use Agreement shall be for an initial term of forty (40) years at a charge to the City of one dollar ($1.00) per year and shall contain such other terms and conditions as may be mutually agreed to by the Parties. The K to 8 Joint Use Agreement shall contain provisions for renewal that are consistent with the renewal provisions of the Ground Leases and the other Joint Use Agreements. The Board shall have the right to alter, replace, renovate and improve the K to 8 Educational Center, and add additional permanent improvements on the Future K to 8 Parcel, as the needs of the student population and facility dictate, provided that all such alterations and improvements are consistent with the then current governing rules and standards for public educational facilities comparable to the K to 8 Educational Center, subject to the restriction on portable classrooms as hereinabove provided and the terms, conditions and limitations of the K to 8 Joint Use Agreement.

c. New Cagni Park Project. North Miami Cagni Park shall be renovated and redeveloped in its current location on the Cagni Park Parcel as "New Cagni Park". New Cagni Park shall include approximately one hundred sixty-four (164) on-site surface parking spaces located on the Cagni Park Parcel. To the extent permitted by applicable laws, codes, ordinances, rules and regulations for public parks, the New Cagni Park project shall also initially include the "Cagni Park Amenities" reflected on the NMHS/K to 8 Conceptual Layout Plan, together with the installation by the Board at the

cost of the City of certain lighting facilities and fixtures as more particularly described in Section 6 below. The City, K to 8 Educational Center and NMHS shall share in the use of such Cagni Park Amenities and parking areas through the NMHS/Cagni Park Joint Use Agreement. The NMHS/Cagni Park Joint Use Agreement shall, *inter alia*:

(i) allow the City to retain the right, in its sole discretion, to rename "Cagni Park",

(ii) address the consideration for, hours of operation and use of, and maintenance and repair of, New Cagni Park,

(iii) grant the City the right to alter, replace, renovate and improve New Cagni Park, provided that the quality of all such alterations and improvements are consistent with the then current governing rules and standards for public parks and school athletic facilities comparable to New Cagni Park and will not result in a type or types of facilities of substantially lesser size and scope as those in existence prior to such alteration or improvement, and subject further to the terms, conditions and limitations (if any) of the NMHS/Cagni Park Joint Use Agreement,

(iv) allocate costs associated with the maintenance and operation of New Cagni Park to the Parties in an equitable manner based on usage of the facilities or as otherwise agreed to by the Parties in the NMHS/Cagni Park Joint Use Agreement,

(v) include provisions which require compliance with all applicable laws, codes, ordinances, rules and regulations for public parks and school athletic facilities, provided that if the standards and requirements under such laws, codes, ordinances, rules and regulations (A) address the same subject matter, the Joint Use Agreement shall require compliance with both sets of standards and requirements to the extent reasonably feasible, and (B) conflict, the Joint Use Agreement shall require compliance with the higher standard or requirement.

(vi) allow the City, in its sole discretion, to lease or permit the installation of communication equipment or facilities at New Cagni Park, whether by third parties or otherwise (the "City Communication Equipment"), subject to the approval of the Board as to location (not to be unreasonably withheld, conditioned or delayed) and applicable legal requirements, and to retain the revenues generated thereby, provided that (A) the installation and/or operation of the City Communication Equipment do not unreasonably interfere with the rights of the Board to use New

Cagni Park or any of the New Cagni Park facilities for their intended purposes, (B) the Board is given a reasonable opportunity to colocate equipment and facilities of a similar nature for its own use (the "Board Communication Equipment") at competitive market rates to the extent feasible, provided that (1) the installation and/or operation of the Board Communication Equipment do not unreasonably interfere with the City Communication Equipment and the City's use of New Cagni Park as a municipal park facility, and (2) the Board shall be solely responsible for any damages, losses, claims, liabilities, complaints, costs and expenses of any kind or nature arising from the installation and operation of the Board Communication Equipment, and (C) the City is solely responsible for any damages, losses, claims, liabilities, complaints, costs and expenses of any kind or nature arising from the installation and operation of the City Communication Equipment, and

(vii) grant the City the right, at the City's sole expense, to construct structured parking in addition to (or in lieu of) the surface parking area located within the Cagni Park Parcel as depicted on the NMHS/K to 8 Conceptual Layout Plan, provided that (A) the construction of such structured parking does not unreasonably interrupt or interfere with any rights of the Board to use New Cagni Park or the Cagni Park Amenities under the NMHS/Cagni Park Joint Use Agreement other than the affected surface parking area, (B) the City performs such construction in a manner designed to minimize interference with the Board's use of New Cagni Park and the Cagni Park Amenities, and (C) during any period of construction, the City provides sufficient alternative parking that meets all applicable rules, regulations and requirements for educational facilities (including school athletic facilities) and is otherwise located within a reasonable walking distance to the Cagni Park Parcel.

d. BLHS Project. BLHS shall have approximately 1,560 permanent high school student stations. No "portable" classrooms shall be allowed on the Future BLHS Parcel; however, portable classrooms may be utilized in the event of a disaster which prevents the Board from using a portion of BLHS, for a period of up to twelve (12) months. The BLHS project shall include, *inter alia*, the construction of faculty and student parking areas, bus queuing areas, carpool lanes and other entryways and exits necessary for traffic circulation to and from BLHS (collectively, the "BLHS Drop-Off Areas") on portions of the Future BLHS Parcel and North Miami Stadium Parcel as generally depicted on the Conceptual Layout Plan attached hereto as Exhibit "E-2" (as revised and modified from time to time, the "BLHS Conceptual Layout Plan"). North Miami Stadium (including existing and future recreational, parking and other amenities), the BLHS Drop-Off

Areas, the recreational, athletic and other amenities included in the BLHS project similar in type and nature to the amenities shared under the NMHS/Cagni Park Joint Use Agreement (to the extent such amenities are actually included in the BLHS), and any other portions of BLHS specifically identified in the BLHS/North Miami Stadium Joint Use Agreement, shall be shared by the Parties pursuant to the BLHS/North Miami Stadium Joint Use Agreement to be entered into by the City and the Board pursuant to Section 4 above. The BLHS/North Miami Stadium Joint Use Agreement shall (i) be for an initial term of forty (40) years at a charge to each of the Board and the City of one dollar ($1.00) per year, (ii) be coterminous with the BLHS Ground Lease, such that any renewal of the BLHS Ground Lease shall result in the automatic renewal of the BLHS/North Miami Stadium Joint Use Agreement, (iii) address the issues set forth in Section 5.e. below, and (iv) contain such other terms and conditions as may be mutually agreed to by the Parties. Nothing contained herein or in any other Project Document shall dictate or require that the Board include in the BLHS project any particular shared recreational, athletic or other amenity included in the NMHS/Cagni Park Joint Use Agreement; however, if any such amenities are in fact included in the BLHS project, then the City shall have the right to use such amenity under the BLHS/North Miami Stadium Joint Use Agreement on the same (or substantially similar) terms and conditions as those applicable to the NMHS amenity under the NMHS/Cagni Park Joint Use Agreement.

e. North Miami Stadium. The Board shall make the North Miami Stadium Improvements, which consist solely of resurfacing the track pursuant to the specifications attached to this Interlocal Agreement as Exhibit "G". North Miami Stadium shall include student and faculty parking areas servicing BLHS sufficient to accommodate approximately two hundred and ten (210) parking spaces, and portions of the BLHS Drop-Off Areas, all of which shall be available to the Board under and pursuant to the terms of the BLHS/North Miami Stadium Joint Use Agreement. In addition to the terms set forth in Section 5.d. above, the BLHS/North Miami Stadium Joint Use Agreement shall, *inter alia*:

(i) allow the City to retain the right, in its sole discretion, to rename "North Miami Stadium",

(ii) address the consideration for, hours of operation and use of, and maintenance and repair of, North Miami Stadium,

(iii) grant the City the right to alter, replace, renovate and improve North Miami Stadium, subject to the terms, conditions and limitations of the BLHS/North Miami Stadium Joint Use Agreement, provided that the quality of all such alterations and improvements are consistent with the then current governing rules and standards for public parks

and school athletic facilities comparable to North Miami Stadium and will not result in a type or types of facilities of substantially lesser size and scope as those in existence prior to such alteration or improvement, and subject further to the terms, conditions and limitations (if any) of the BLHS/North Miami Stadium Joint Use Agreement,

(iv) allocate costs associated with the maintenance and operation of North Miami Stadium to the Parties in an equitable manner based on usage of the facilities or as otherwise agreed to by the Parties in the BLHS/North Miami Stadium Joint Use Agreement,

(v) include provisions which require compliance with all applicable laws, codes, ordinances, rules and regulations for public parks and school athletic facilities, provided that if the standards and requirements under such laws, codes, ordinances, rules and regulations (A) address the same subject matter, the Joint Use Agreement shall require compliance with both sets of standards and requirements to the extent reasonably feasible, and (B) conflict, the Joint Use Agreement shall require compliance with the higher standard or requirement.

(vi) allow the City, in its sole discretion, to lease or permit the installation of City Communication Equipment, subject to the approval of the Board as to location (not to be unreasonably withheld, conditioned or delayed) and applicable legal requirements, and to retain the revenues generated thereby, provided that (A) the installation and/or operation of the City Communication Equipment do not unreasonably interfere with the rights of the Board to use North Miami Stadium or any of the North Miami Stadium facilities (including the BLHS Drop-Off Areas) for their intended purposes, (B) the Board is given a reasonable opportunity to colocate Board Communication Equipment at competitive market rates to the extent feasible, provided that (1) the installation and/or operation of the Board Communication Equipment do not unreasonably interfere with the City Communication Equipment and the City's use of North Miami Stadium or the North Miami Stadium facilities for their intended purposes, and (2) the Board shall be solely responsible for any damages, losses, claims, liabilities, complaints, costs and expenses of any kind or nature arising from the installation and operation of the Board Communication Equipment, and (C) the City is solely responsible for any damages, losses, claims, liabilities, complaints, costs and expenses of any kind or nature arising from the installation and operation of the City Communication Equipment, and

(vii) grant the City the right, at the City's sole expense, to construct structured parking in addition to (or in lieu of) the surface parking areas located within North Miami Stadium as depicted on the BLHS Conceptual Layout Plan, provided that (A) the construction of such structured parking does not unreasonably interrupt or interfere with any rights of the Board to use North Miami Stadium or the North Miami Stadium facilities (including the BLHS Drop-Off Areas) under the BLHS/North Miami Stadium Joint Use Agreement other than the affected surface parking area, (B) the City performs such construction in a manner designed to minimize interference with the Board's use of North Miami Stadium and the North Miami Stadium facilities (including the BLHS Drop-Off Areas), and (C) during any period of construction, the City provides sufficient alternative parking that meets all applicable rules, regulations and requirements for educational facilities (including school athletic facilities) and is otherwise located within a reasonable walking distance to North Miami Stadium and the Future BLHS Parcel.

Section 6. Construction of Projects. Except as hereinafter provided, the Board shall be responsible for administration of the design, development and construction of the New Facilities described in Section 5, and for the demolition of existing improvements on the various parcels as set forth in Section 10 hereof, subject to the terms, conditions and provisions of the Project Documents. The Board represents and warrants as follows:

a. The Board shall select Contractors pursuant to a qualifications based selection process as set out in Section 287.055(9)(c), Florida Statutes. The Board shall contract with the selected Contractors to design the New Facilities, prepare architectural and construction documents, and construct the New Facilities. All Contractors previously engaged by the Board in connection with the New Facilities have been selected in accordance with the foregoing process.

b. The New Facilities shall be designed by the Board's design professionals in accordance with all governing rules and criteria for public educational facilities; however, New Cagni Park shall be designed by the Board in consultation with the City, subject to and in compliance with all applicable laws, codes, ordinances, rules and regulations for public parks and school athletic facilities, provided that if the standards and requirements under such laws, codes, ordinances, rules and regulations (A) address the same subject matter, New Cagni Park shall be designed in compliance with both sets of standards and requirements to the extent reasonably feasible, and (B) conflict, New Cagni Park shall be designed in compliance with the higher standard or requirement. The Board shall design and develop the plans, specifications and construction documents, including construction schedules (collectively, the "Design and Construction Documents")

necessary for the construction of the New Facilities as contemplated herein.

c. The New Facilities will be designed, developed and constructed substantially in accordance with (i) the terms of this Interlocal Agreement, (ii) the Design and Construction Documents, (iii) the construction schedule for each such project to be attached to this Interlocal Agreement by the Board as composite Exhibit "F", subject to the provisions of Section 16.a., (iv) with respect to NMHS, New Cagni Park and the K to 8 Educational Center, the NMHS/K to 8 Conceptual Layout Plan, subject to the provisions of Section 8.a., and (v) with respect to BLHS and North Miami Stadium, the BLHS Conceptual Layout Plan, subject to the provisions of Section 8.a. The construction schedules for the New Facilities will be provided by the Board to the City after the Board awards construction contracts and agrees to construction schedules with its Contractor(s) for such New Facilities. The Board agrees that the construction schedules will reflect (x) a completion date for each New Facility consistent with the completion date for such New Facility set forth in this Interlocal Agreement, subject to the provisions of Section 16.a., (y) with respect to NMHS, an estimated date for commencement of construction of October, 2007, and (z) with respect to BLHS, an estimated date for commencement of construction of May, 2008;

d. The construction of NMHS, New Cagni Park and the K to 8 Educational Center shall be phased to the extent feasible to allow for the continued operation of North Miami Middle School and the existing North Miami High School while the K to 8 Educational Center and NMHS, respectively, are under construction. Accordingly, subject to the provisions of Section 16.a., (i) the portion of NMHS located on the Future NMHS Parcel-City, together with the new surface parking lot and basketball courts to be located on the Cagni Park Parcel, shall be completed and ready to open for the August 2009 school year, (ii) the portion of NMHS located on the Future NMHS Parcel-Board, together with the remaining Cagni Park Amenities, shall be completed and ready to open by December 31, 2009, (iii) the K to 8 Educational Center (excluding the K through 8 Amenities) shall be completed and ready to open for the August 2008 school year, and (iv) the K through 8 Amenities shall be completed and ready to open for the August 2010 school year;

e. Subject to the provisions of Section 16.a., BLHS shall be completed and ready to open for the August 2009 school year;

f. Subject to the provisions of Section 16.a., the North Miami Stadium improvements shall be completed by August 2008; and

g. The Board shall be responsible for ensuring that any Contractor and its subcontractors' services and material meet applicable local and state

standards for licensing and competency. The Board shall be responsible for ensuring that each Contractor and its subcontractors maintain in effect the insurance customarily required by the Board for the particular service and material provided for the respective New Facility.

Notwithstanding the foregoing, the City agrees that it shall, at its sole expense, develop and construct the tot lot on the Future K to 8 Parcel in the location depicted on the NMHS/K to 8 Conceptual Layout Plan, and the in-line skating park on the Future K to 8 Parcel in the location depicted on the NMHS/K to 8 Conceptual Layout Plan, except for pouring the concrete required for the skating surface, which shall be the responsibility of the Board. All such work shall be coordinated by the City with the Board, and performed by the City in a good and workmanlike manner, with commercially reasonable diligence (subject to the provisions of Section 16.a.), and in a manner which does not unreasonably interrupt or interfere with the Board's construction, use or operation of the New Facilities. The City shall be responsible for the ongoing maintenance of the tot lot and in-line skating park, subject to any cost sharing provisions of the K to 8 Joint Use Agreement. The City has requested that the Board install separately metered outdoor lighting fixtures and facilities as part of the New Cagni Park project and the K through 8 Amenities (including the walkways), at the sole cost and expense of the City. The Board shall incorporate such lighting fixtures and facilities into the Design and Construction Documents for New Cagni Park and the K to 8 Educational Center. The City shall pay for all costs associated with such lighting fixtures and facilities (including the cost to separately meter same and to bring electricity to the walkways) through progress payments as and when such costs are incurred.

Section 7. Ownership of Parcels.

a. Future BLHS Parcel. The Future BLHS Parcel is currently owned by the City in fee simple, and the City shall retain fee simple title to said parcel of land. Title to the improvements constructed on the Future BLHS Parcel shall be held as provided in the Project Documents. The City shall deliver exclusive possession of the Future BLHS Parcel to the Board on the Possession Date (as defined in Section 12 below), free and clear of the rights of any other party (including without limitation any party to the Munisport Agreement). The City, as lessor, and the Board, as lessee, shall enter into the BLHS Ground Lease for the Future BLHS Parcel, which BLHS Ground Lease shall grant the Board a fully net lease (i.e. the Board, as lessee, shall be responsible for all carrying costs and charges of the property) for an initial term of forty (40) years at a rental rate of one dollar ($1.00) per year. The Board shall have the right to renew the BLHS Ground Lease for one (1) renewal period of twenty (20) years, subject to the following conditions: (i) the Board shall not be in default under the BLHS Ground Lease and have failed to cure same within the applicable notice and cure periods at the time of renewal, (ii) the Board shall have notified the City in writing of its election to renew the BLHS Ground Lease no later than three (3) years prior to the expiration of the term thereof (i.e.

by the end of the 37th lease year), and (iii) within ninety (90) days following receipt of such notice, the Board and City shall review any issues relating to the maintenance and operation of the BLHS facility and shall use good faith efforts to resolve any such issues to the reasonable satisfaction of the Parties. The Board shall have the further right to renew the BLHS Ground Lease for an additional renewal period of ten (10) years or such longer period of time as may be mutually agreed to by the Parties, subject to the same conditions as the conditions to the first 20-year renewal option, except that (x) the Board shall notify the City in writing of its election to renew the BLHS Ground Lease no later than five (5) years prior to the expiration of the term, as previously extended (i.e. by the end of the 55th lease year), and (y) if the Parties agree to renew the lease for a renewal term in excess of ten (10) years, the Board and City shall agree to a plan for the maintenance, repair, renovation and/or improvement of BLHS as may be necessary to render BLHS to a condition mutually acceptable to the Parties. All costs of future maintenance and repair of BLHS shall be the responsibility of the Board under the BLHS Ground Lease, except as otherwise provided in the BLHS/North Miami Stadium Joint Use Agreement. The BLHS Ground Lease shall grant the Board the right, at no expense to the City, to develop, construct, alter, replace, renovate and improve the BLHS, and add additional permanent improvements on the Future BLHS Parcel, as the needs of the student population and facility dictate, provided that the quality of all such alterations and improvements are consistent with the then current governing rules and standards for public educational facilities comparable to BLHS and will not result in a type or types of facilities of substantially lesser size and scope as those in existence prior to such alteration or improvement; subject, however, to the restriction against portable classrooms set forth in Section 5 above and the terms, conditions and limitations (if any) of the BLHS/North Miami Stadium Joint Use Agreement. The BLHS Ground Lease shall grant to any Contractor performing construction work on behalf of the Board such temporary licenses and access rights in the Future BLHS Parcel as may be necessary to develop and construct BLHS as contemplated in Section 6 above and in the BLHS Project Documents; provided, however, that nothing herein contained shall be construed to authorize any lien upon the Future BLHS Parcel or the fee and/or leasehold interests of the Parties therein. The BLHS Ground Lease shall contain such other terms, conditions and provisions as the Parties shall mutually agree, including subordination and nondisturbance provisions reasonably satisfactory to the Parties, as may be reasonably required by any party providing financing for BLHS.

b. Future NMHS Parcel. The Future NMHS Parcel-City is currently owned by the City in fee simple, and the City shall retain fee simple title to said parcel of land. The Future NMHS Parcel-Board is currently owned by the Board

in fee simple, and the Board shall retain fee simple title to said parcel of land. Title to the improvements constructed on the Future NMHS Parcel shall be held as provided in the Project Documents. The City shall deliver exclusive possession of the Future NMHS Parcel-City to the Board on the Possession Date, free and clear of the rights of any other party (including without limitation the Armory Board of the State of Florida), but subject to the rights of the Board under the agreements described in Section 15 below). The City, as lessor, and the Board, as lessee, shall enter into the NMHS Ground Lease for the Future NMHS Parcel-City, which NMHS Ground Lease shall grant the Board a lease for an initial term of forty (40) years at a rental rate of one dollar ($1.00) per year. The Board shall have the right to renew the NMHS Ground Lease for one (1) renewal period of twenty (20) years, subject to the following conditions: (i) the Board shall not be in default under the NMHS Ground Lease and have failed to cure same within the applicable notice and cure periods at the time of renewal, (ii) the Board shall have notified the City in writing of its election to renew the NMHS Ground Lease no later than three (3) years prior to the expiration of the term thereof (i.e. by the end of the 37th lease year), and (iii) within ninety (90) days following receipt of such notice, the Board and City shall review any issues relating to the maintenance and operation of the NMHS facility and shall use good faith efforts to resolve any such issues to the reasonable satisfaction of the Parties. The Board shall have the further right to renew the NMHS Ground Lease for an additional renewal period of ten (10) years or such longer period of time as may be mutually agreed to by the Parties, subject to the same conditions as the conditions to the first 20-year renewal option, except that (x) the Board shall notify the City in writing of its election to renew the NMHS Ground Lease no later than five (5) years prior to the expiration of the term, as previously extended (i.e. by the end of the 55th lease year), and (y) if the Parties agree to renew the lease for a renewal term in excess of ten (10) years, the Board and City shall agree to a plan for the maintenance, repair, renovation and/or improvement of NMHS as may be necessary to render NMHS to a condition mutually acceptable to the Parties. The NMHS Ground Lease shall be fully net with respect to NMHS (i.e., the Board, as lessee, shall be responsible for all carrying costs and charges of the Future NMHS Parcel-City). All costs of future maintenance and repair of NMHS shall be the responsibility of the Board under the NMHS Ground Lease, except as otherwise provided in the NMHS/Cagni Park Joint Use Agreement. The NMHS Ground Lease shall grant the Board the right, at no expense to the City, to develop, construct, alter, replace, renovate and improve the NMHS, and add additional permanent improvements on the Future NMHS Parcel-City, as the needs of the student population and facility dictate, provided that the quality of all such alterations and improvements are consistent with the then current governing rules and standards for public educational facilities comparable to NMHS and will not

result in a type or types of facilities of substantially lesser size and scope as those in existence prior to such alteration or improvement; subject, however, to the restriction against portable classrooms set forth in Section 5 above and the terms, conditions and limitations (if any) of the NMHS/Cagni Park Joint Use Agreement. The NMHS Ground Lease shall grant to any Contractor perf orming construction work on behalf of the Board such temporary licenses and access rights in the Future NMHS Parcel-City as may be necessary to develop and construct NMHS as contemplated in Section 6 above and in the NMHS Project Documents; provided, however, that nothing herein contained shall be construed to authorize any lien upon such parcel or the fee and/or leasehold interests of the Parties therein. The NMHS Ground Lease shall contain such other terms, conditions and provisions as the Parties shall mutually agree, including subordination and nondisturbance provisions reasonably satisfactory to the Parties, as may be reasonably required by any party providing financing for NMHS.

c. New Cagni Park. The Cagni Park Parcel is currently owned by the City in fee simple, and the City shall retain fee simple title to said parcel of land and the improvements constructed and to be constructed thereon. The City shall deliver exclusive possession of the Cagni Park Parcel to the Board on the Possession Date. All costs of future maintenance and repair of New Cagni Park shall be shared by the Parties pursuant to the NMHS/Cagni Park Joint Use Agreement, subject to the terms and conditions thereof. The Board shall be responsible for the design (in consultation with the City), development and construction of the initial improvements to New Cagni Park in the manner contemplated by this Interlocal Agreement and the NMHS/Cagni Park Joint Use Agreement, and any future alterations, renovations, replacements and improvements to New Cagni Park (including without limitation the addition of a structured parking facility) shall be governed by the terms and conditions of the NMHS/Cagni Park Joint Use Agreement. Pursuant to the NMHS/Cagni Park Joint Use Agreement, the City shall grant to any Contractor performing construction work on behalf of the Board such temporary licenses and access rights in Cagni Park as may be necessary to perform the construction and redevelopment with respect to New Cagni Park contemplated in Section 6 above and the Project Documents; provided, however, that nothing herein contained shall be construed to authorize any lien upon such parcel or the fee and/or other interests of the Parties therein.

d. North Miami Stadium. The North Miami Stadium Parcel is currently owned by the City in fee simple, and the City shall retain fee simple title to said parcel of land and all improvements thereon. All costs of future maintenance and repair of North Miami Stadium shall be shared by the Parties pursuant to the BLHS/North Miami Joint Use Agreement, subject to

the terms and conditions thereof. The Board shall be responsible for resurfacing the track at North Miami Stadium and constructing the BLHS Drop-Off Areas in the manner contemplated by this Interlocal Agreement and the BLHS/North Miami Stadium Joint Use Agreement, and any future alterations, renovations, replacements and improvements to North Miami Stadium shall be governed by the terms and conditions of the BLHS/North Miami Stadium Joint Use Agreement. Pursuant to the BLHS/North Miami Stadium Joint Use Agreement, the City shall grant to any Contractor performing construction work on behalf of the Board such temporary licenses and access rights to North Miami Stadium as may be necessary to perform the North Miami Stadium Improvements contemplated in this Interlocal Agreement and the Project Documents; provided, however, that nothing herein contained shall be construed to authorize any lien upon the North Miami Stadium Parcel or the fee and/or other interests of the Parties therein. The Parties acknowledge and agree that each of the City and Board will need to relocate certain activities currently conducted on Cagni Park to the North Miami Stadium facilities during the construction of NMHS and redevelopment of New Cagni Park. The Parties further acknowledge and agree that the renovation of North Miami Stadium by the Board with the North Miami Stadium Improvements may interfere with the use of the North Miami Stadium facilities during the performance of such work. The Board and City agree to work together in good faith (a) to coordinate the relocation of activities currently conducted on Cagni Park to North Miami Stadium during the construction of NMHS and renovation of Cagni Park, (b) to coordinate the renovation of the North Miami Stadium in a manner designed to minimize interference with the use of the North Miami Stadium facilities to the extent reasonably feasible without unreasonably increasing construction costs to the Board, and (c) to allow the use of New Cagni Park (when completed) during the performance of the North Miami Stadium Improvements in the event the renovations to North Miami Stadium interfere with the use of those facilities by the Board.

e. Future K to 8 Parcel. The Future K to 8 Parcel is currently owned by the Board in fee simple. The Board shall retain fee simple title to said parcel and all improvements constructed thereon. All costs of future maintenance and repair of the K to 8 Educational Center shall be the responsibility of the Board, except as otherwise provided in the K to 8 Joint Use Agreement.

Section 8. Financing and Payment of Costs.

a. The Board has identified and listed on the Five-Year Educational Facilities Plan adopted by the Board (i) the NMHS project with an estimated project budget (excluding finance charges) of Ninety-Three Million Dollars ($93,000,000), (ii) the BLHS project with an estimated project budget (excluding finance charges) of Forty-Two Million Five Hundred Thousand Dollars ($42,500,000), and (iii) for the K to 8 Educational Center and New

Cagni Park projects with an estimated project budget (excluding finance charges) of Thirty-Six Million Five Hundred Thousand Dollars ($36,500,000). The City acknowledges that (w) the scope of the New Facilities projects may have changed since the date of the Board's Five-Year Educational Facilities Plan, (x) the cost of construction has increased since such date, (y) construction costs are likely to continue to rise prior to the completion of the New Facilities, and (z) the estimated project budgets noted above do not reflect the current cost to construct the New Facilities. In light of the foregoing, the City agrees that the Board shall control the development and construction of the New Facilities and, as such, shall have the right to modify the scope of the New Facilities (including without limitation the NMHS/K to 8 Conceptual Layout Plan and the BLHS Conceptual Layout Plan), in the Board's sole discretion, necessitated by any budgetary, programmatic, educational and compliance requirements of the Board, provided that (A) the NMHS project shall initially include approximately 3,200 permanent high school student stations and a parking structure with approximately 250 parking spaces, and (B) the Board shall design and construct the North Miami Stadium Improvements, the Cagni Park Amenities and the K Through 8 Amenities as presently contemplated herein and in the Conceptual Layout Plans for such facilities attached hereto. The Board shall keep the City apprised of the status of the development and construction of the New Facilities, and shall take into consideration issues or objections that the City may have with respect to changes to the New Facilities; however, the ultimate decision and control with respect to such development and construction shall remain with the Board. Nothing contained herein shall be deemed a waiver of either Party's right to address the other Party's board or council (as applicable) at a public hearing with respect to the New Facilities. The terms of this subsection 8.a. shall prevail over any conflicting or inconsistent provisions contained in this Interlocal Agreement or any of the Project Documents, including without limitation Sections 5 and 6 hereof and any provision which requires the Board to construct any of the New Facilities in accordance with the NMHS/K to 8 Conceptual Layout Plan or the BLHS Conceptual Layout Plan.

b. The City shall provide the financing for a portion of the design, development and construction costs of BLHS and NMHS pursuant to, and to the extent provided in, the Multiparty Agreement. The City's obligation to provide such financing for a portion of the construction costs of BLHS and NMHS shall be limited to the obligations expressly set forth in the Multiparty Agreement. The Board shall be responsible for all costs and expenses associated with the design, development and construction of NMHS and BLHS in excess of the financing provided by the City, except as otherwise expressly provided in the Multiparty Agreement. The Board shall pay the "Release Amounts" (as defined in the Multiparty Agreement) to the

City for BLHS and NMHS pursuant to, and subject to the terms and conditions of, the Multiparty Agreement. The Board shall be entitled to all cost savings resulting from such projects.

c. The Board shall be responsible for all costs and expenses associated with the design, development, construction and financing of the K to 8 Educational Center, the redevelopment of New Cagni Park contemplated herein and the North Miami Stadium Improvements, except as otherwise expressly provided in Section 6 and 10.d. of this Agreement, the Joint Use Agreements and any other Project Document governing the construction and/or renovation of such facilities. Likewise, the Board shall be entitled to all savings resulting from such projects.

Section 9. Construction of Other Projects. The City has advised the Board that, subsequent to the date of this Interlocal Agreement, the City intends to proceed with the construction of certain off-site improvements consisting of the New North Miami Public Library, Olympic Training Facility, and New Cagni Pool and Community Center projects. In the event of completion of each such project by the City, the City shall make such facilities available to the Board subject to the use and schedule requirements of the national governing boards of various olympic sports who have entered into agreements with the City therefor, for the benefit of the student population, through separate joint use agreements for such facilities to be entered into by the City and the Board. The joint use agreement for such facilities shall (i) be for an initial term of forty (40) years at a charge to the Board of one dollar ($1.00) per year (except that the Board shall also be responsible for its proportionate share of the maintenance and repair costs associated with such facilities), and (ii) contain such other terms and conditions, including without limitation the hours of operation and use by the Parties, as may be mutually agreed to by the Parties.

Section 10. Demolition of Facilities.

a. The demolition by the Board of the existing North Miami High School and related facilities located on portions of the Future K to 8 Parcel shall commence and be completed in accordance with the construction schedule for the K to 8 project attached to this Interlocal Agreement as Exhibit "F", subject to the provisions of Section 16.a. The Board agrees to follow its customary protocol with respect to the assessment of environmental conditions following the demolition of the existing structures on the Future K to 8 Parcel. The cost of such demolition shall be part of the K to 8 Educational Center project. At the conclusion of the demolition, the site shall be free of all debris, environmentally clean from the impact resulting from the demolition and ready for immediate construction.

b. The demolition by the Board of (i) the existing North Miami Middle School located on the Future NMHS Parcel-Board, and (ii) all existing structures located on the Future NMHS Parcel-City, including the vacant fire

department building, community center building and armory building, as well as Gribble pool, shall commence and be completed in accordance with the construction schedule for the NMHS project attached to this Interlocal Agreement as Exhibit "F", subject to the provisions of Section 16.a. The Board will use reasonable efforts to cause the demolition work on the Future NMHS Parcel-City to begin with the removal of the former holding pit adjacent to the fire department building. The Board agrees to follow its customary protocol with respect to the assessment of environmental conditions following the demolition of the existing structures on the Future NMHS Parcel-City. The cost of such demolition shall be part of the NMHS project. At the conclusion of the demolition, the site shall be free of all debris, environmentally clean from the impact resulting from the demolition and ready for immediate construction.

c. The demolition by the Board of the structures and facilities located on the Cagni Park Parcel intended to be demolished and/or replaced as part of the New Cagni Park project shall commence and be completed in accordance with the construction schedule for the New Cagni Park project attached to this Interlocal Agreement as Exhibit "F", subject to the provisions of Section 16.a. The cost of such demolition shall be part of the K to 8 project. At the conclusion of the demolition, the site shall be free of all debris from such demolition, environmentally clean from the impact resulting from the demolition and ready for immediate construction.

d. With respect to any environmental conditions that exist on any parcel as of the Effective Date which require remediation under applicable environmental laws (if any), the Parties agree as follows:

(i) With respect to the Future K to 8 Parcel and Future NMHS Parcel-Board, the Board shall be solely responsible for the remediation of all such environmental conditions, whether known or unknown, at its sole cost and expense.

(ii) With respect to the Future BLHS Parcel, the Board shall be solely responsible for the remediation of all such environmental conditions known to the Board as of the Effective Date, at its sole cost and expense. With respect to any environmental conditions affecting the Future BLHS Parcel unknown to the Board as of the Effective Date, but which the Board becomes aware of prior to the date which is twenty-four (24) months following the date of "substantial completion" of BLHS, the Board shall notify the City in writing of such condition and the estimated cost to remediate same. With respect to such unknown environmental conditions, (A) the Board shall be solely responsible for all costs associated with the remediation of such environmental conditions up to a maximum amount of $100,000.00, (B) if the cost to remediate exceeds

$100,000.00 but is less than $1,000,000.00 in the aggregate, then the Board shall be responsible for the first $100,000.00 of such costs and the Parties shall share all such costs in excess of $100,000.00 equally, on a 50-50 basis, up to a maximum aggregate amount of $1,000,000, and (C) if the cost to remediate exceeds $1,000,000.00 in the aggregate, the Parties shall use good faith efforts to agree to a plan for remediation and sharing the cost of such remediation mutually acceptable to the Parties within forty-five (45) days following receipt of notice from the Board, failing which the Board shall have the option (but not the obligation) to terminate all of the terms, conditions and provisions of this Interlocal Agreement as it relates to BLHS and North Miami Stadium, including without limitation any obligation of the Board to construct BLHS and the North Miami Stadium Improvements. In the event that the Board terminates this Interlocal Agreement under the foregoing provision as it relates to BLHS and North Miami Stadium, the BLHS Ground Lease and BLHS/North Miami Stadium Joint Use Agreement shall simultaneously terminate without further action by the Parties. In such event, the City and Board shall use best efforts to enter into a new joint use agreement for the use of the amenities at North Miami Stadium, which (i) requires the City to pay to the Board the sum of $620,000.00, which is the consideration/buyout due to the Board for the termination of the North Miami Stadium Lease (defined below) under the original terms thereof, (ii) requires the Board to contribute fifty percent (50%) of the total cost of resurfacing the North Miami Stadium track (including all necessary repairs thereto) up to a maximum amount of $250,000.00, and (iii) otherwise grants the Parties the right to use North Miami Stadium on similar terms and conditions as those contained in the BLHS/North Miami Stadium Joint Use Agreement. Any required remediation of environmental conditions hereunder will be performed by the Board under the joint supervision of the Board and the City. The Parties shall pay their pro rata share of the costs of such remediation to the extent required hereunder from time to time as and when such costs are incurred. All payments shall be made on a timely basis and as necessary to avoid late charges and penalties.

(iii) With respect to the Future NMHS Parcel-City, the Board shall be solely responsible for the remediation of all such environmental conditions known to the Board as of the Effective Date, at its sole cost and expense. With respect to any environmental conditions affecting the Future NMHS Parcel-City unknown to the Board as of the Effective Date, but which the Board becomes aware of prior to the date which is twenty-four (24) months following the date of

"substantial completion" of NMHS, the Board shall notify the City in writing of such condition and the estimated cost to remediate same. With respect to such unknown environmental conditions, (A) the Board shall be solely responsible for all costs associated with the remediation of such environmental conditions up to a maximum amount of $1,000,000.00, (B) if the cost to remediate exceeds $1,000,000.00 but is less than $2,000,000.00 in the aggregate, then the Board shall be responsible for the first $1,000,000.00 of such costs and the Parties shall share all such costs in excess of $1,000,000.00 equally, on a 50-50 basis, up to a maximum aggregate amount of $2,000,000, and (C) if the cost to remediate exceeds $2,000,000.00 in the aggregate, the Parties shall use good faith efforts to agree to a plan for remediation and sharing the cost of such remediation mutually acceptable to the Parties within forty-five (45) days following receipt of notice from the Board, failing which the Board shall have the option (but not the obligation) to terminate all of the terms, conditions and provisions of this Interlocal Agreement as it relates to NMHS, the K to 8 Educational Center and New Cagni Park (except for the City's reimbursement obligation under subsection 10.d(v) below, which shall survive a termination), including without limitation any obligation of the Board to construct NMHS, the K to 8 Educational Center and New Cagni Park. In the event that the Board terminates this Interlocal Agreement under the foregoing provision as it relates to NMHS, the K to 8 Educational Center and New Cagni Park, the NMHS Ground Lease, NMHS/Cagni Park Joint Use Agreement and K to 8 Joint Use Agreements shall simultaneously terminate without further action by the Parties. In such event, the City and Board shall use best efforts to enter into a new joint use agreement for the use of the amenities at Cagni Park, which grants the Parties the right to use Cagni Park on similar terms and conditions as those contained in the NMHS/Cagni Park Joint Use Agreement, but reserving the right of the City to modify Cagni Park as reasonably necessary to accommodate the potential loss of the structures demolished on the Future NMHS Parcel-City, subject to applicable laws, codes, ordinances, rules and regulations for public parks. Any required remediation of environmental conditions hereunder will be performed by the Board under the joint supervision of the Board and the City. The Parties shall pay their pro rata share of the costs of such remediation to the extent required hereunder from time to time as and when such costs are incurred. All payments shall be made on a timely basis and as necessary to avoid late charges and penalties.

(iv) With respect to any environmental conditions affecting the Future BLHS Parcel or the Future NMHS Parcel-City unknown to the Board as of the Effective Date, but which the Board becomes aware of after the date which is twenty-four (24) months following the date of "substantial completion" of BLHS or NMHS, respectively, the Board shall be solely responsible for the remediation of same, at its sole cost and expense.

(v) With respect to the Cagni Park Parcel, the Board shall be responsible for the remediation of all such environmental conditions known to the Board as of the Effective Date; provided, however, that the City shall reimburse the Board for all costs associated with the transporting and disposal of any contaminated soil, up to a maximum amount of $1,600,000.00. The responsibility of the City hereunder shall not include the cost of excavating and replacing contaminated soil, which shall be the sole responsibility of the Board. The City shall reimburse the Board for the costs incurred by the Board in connection with the transporting and disposal of contaminated soil on Cagni Park no later than January 31, 2010; provided, however, that if the Board elects to terminate the terms of this Interlocal Agreement as it relates to New Cagni Park under subsection 10.d(iii) above, the City shall make such reimbursement to the Board no later than November 1, 2007. With respect to any environmental conditions affecting the Cagni Park Parcel unknown to the Board as of the Effective Date, the City shall be solely responsible for the remediation of same, at its sole cost and expense.

(vi) With respect to the North Miami Stadium Parcel, the City shall be solely responsible for the remediation of all such environmental conditions, whether known or unknown, at its sole cost and expense.

For purposes hereof, an environmental condition shall be deemed "known" only if it is disclosed in the environmental reports received by the Board prior to the Effective Date. Except as disclosed in said reports, the City has no written notice or actual knowledge of the existence of "hazardous materials" on the parcels owned by the City, or any past or present generation, recycling, reuse, storage, handling, transport and/or disposal of any hazardous materials on such parcels, or any failure of such parcels to comply with applicable local, state or federal environmental laws, regulations, rules or requirements. As used herein, the term (x) "substantial completion" shall mean the date a temporary certificate of occupancy is issued for the school in question, and (y) "hazardous materials" shall mean any substance or material defined or designated as a hazardous or toxic waste material or substance, or other similar term, by

any applicable federal, state or local environmental statute, regulation or ordinance. This Section 10.d is intended to address the responsibility of the Parties with respect to environmental conditions that exist on any parcel as of the Effective Date, whether known or unknown, which require remediation under applicable environmental laws. Any new environmental conditions which did not exist as of the Effective Date, but rather arise thereafter, shall be handled in the manner set forth in the Project Documents, but consistent with the terms and conditions set forth herein.

Section 11. Additional Requirements and Covenants.

a. Permitting. The Board shall comply with the permitting and inspection requirements imposed on public educational facilities under applicable law, and shall retain the services of a State Certified Building Code Compliance consultant as it pertains specifically to the New Facilities comprised of public educational and recreational facilities, for purposes of building plan review and/or building permit issuance and/or all required building code compliance inspections up through and including issuance of a certificate of occupancy for each such facility.

b. Zoning. The Board and City shall comply with their respective obligations under Section 1013.33, Florida Statutes, to the extent applicable to the New Facilities, including the determination that NMHS and BLHS are consistent with the City's comprehensive plan and land development regulations, and the site plan review process. The City agrees to expedite the determination of consistency of such projects with the City's comprehensive plan and land development regulations to the fullest extent possible, and agrees that the final determination of consistency shall be made no later than the Effective Date.

c. Divided Ownership of Future NMHS Parcel. In addition to the foregoing, given the divided fee simple ownership of the Future NMHS Parcel, the Parties shall enter such agreements and covenants with regard to the ownership of such parcel as may be reasonably necessary or desirable to facilitate the development, use and operation of the NMHS as contemplated herein, and the bifurcated ownership of the NMHS facilities at the expiration of the term of the NMHS Ground Lease.

d. Use Restriction. The City agrees that, to the extent required by any applicable law, code, ordinance, rule or regulation, any and all property owned by the City within the vicinity of the New Facilities shall not be permitted to be used for any purpose that is not compatible with public educational and recreational facilities, provided, however, that this provision shall only apply prospectively and shall not apply to any existing non-conforming uses on City owned property.

e. Indemnities. Any direct construction contracts entered into by the Board for the construction of NMHS, BLHS, New Cagni Park and the North Miami Stadium Improvements shall include indemnities from the contractors that are consistent with the standard indemnities obtained by the Board from its contractors in connection with the construction of similar facilities. Such indemnities shall name both the City and the Board as indemnified parties. All indemnities extended by the Board and the City under the Project Documents shall be deemed to be subject to the provisions and monetary limitations of Section 768.28(5), whether or not the indemnification provision expressly so provides.

f. Use of Impact Fees. The Board may use school impact fees generated from construction in the City or elsewhere within the East Benefit District, or other funding sources as described above, for the construction or financing of all facilities contemplated hereunder.

Section 12. Delivery of Possession. The City represents and warrants to the Board that there are no leases or other occupancy agreements, either written or oral, which affect (i) the Future BLHS Parcel, except for the Project Documents, (ii) the North Miami Stadium Parcel, except for the Project Documents and the North Miami Stadium Lease (as defined in Section 15 below), (iii) the Future NMHS Parcel-City, except for the Project Documents, the leases described in Section 15 below and the Armory Lease (defined below), or (iv) the Cagni Park Parcel, except for the Project Documents and the lease described in Section 15.a. below. The City covenants and agrees that all operations on the Cagni Park Parcel and the Future NMHS Parcel-City, including without limitation the park facilities, community center, Gribble pool and the Armory, shall cease on or before January 8, 2007 or such other later date as may be mutually agreed to by the Parties or their respective designees (such date to be referred to herein as the "Possession Date"), that Cagni Park Parcel and the Future NMHS Parcel-City shall be vacated as of such date, and that the City shall deliver exclusive possession of the Future BLHS Parcel, Cagni Park Parcel and the Future NMHS Parcel-City to the Board on the Possession Date as required by Sections 7.a., 7.b. and 7.c. hereof, respectively. With respect to the Armory Lease, the City agrees to deliver to the Board on or before the Effective Date (a) a true, correct and complete copy of the Armory Lease (including all amendments thereto) certified as such by the City and confirming that there are no subleases of any space leased by the Armory Board (defined below), and (b) a copy of the agreement between the City and the Armory Board confirming the mutual termination of the Armory Lease by the parties and the agreement of the Armory Board to vacate the Future NMHS Parcel-City no later than the Possession Date and otherwise in form and content reasonably acceptable to the Board. The City shall deliver to the Armory Board payment in full of the relocation contribution required by the Armory Lease termination agreement (and provide evidence of same to the Board) no later than seven (7) days following the Effective Date. The City agrees to reimburse the Board for any costs, expenses, losses or damages incurred by the Board as a result of the failure of the Armory Board to vacate the Future NMHS Parcel-City by the Possession Date (or an agreed-upon liquidated

damage amount). The City agrees that it shall take all legal action necessary to meet its obligations under this Section, including without limitation enforcing its rights against the Armory Board if it fails to vacate the Future NMHS Parcel-City when required to do so under the termination agreement referred to in clause (b) above. The City shall provide to the Board any additional documentation that the Board may reasonably request based upon its review of the Armory Lease. As used in herein, the term "Armory Lease" means that certain lease agreement dated January 12, 1954 by and between the City, as Lessor, and Armory Board of the State of Florida, as Lessee (the "Armory Board"), as affected by Agreement dated June 28, 1983 by and between the City and the Armory Board.

Section 13. Existing/Future Charter Schools. The City currently holds a charter (the "BLHS Charter") for Biscayne Landing High School pursuant to that certain Charter School Contract dated July 15, 2004 by and between the Board, as sponsor and the City, as school, as amended. The City has agreed to terminate the existing charter for BLHS prior to or simultaneously with the execution and delivery of this Interlocal Agreement and the Project Documents. Accordingly, the City hereby terminates the BLHS Charter and relinquishes any and all rights it has and/or may have with respect to the BLHS Charter. Furthermore, the City and Board hereby jointly terminate the Charter School Contract for the BLHS Charter and all of the respective rights and obligations of the Parties thereunder, which contract shall be deemed terminated and of no further force and effect on the Effective Date for all purposes. In addition, the City has advised the Board that it intends to enter into an amendment to the Munisport Agreement (defined below), which, inter alia, terminates the provisions of the Munisport Agreement relating to the Biscayne Landing Charter High School, including without limitation any obligation thereunder to construct a charter school. Such amendment shall fully release the Future BLHS Parcel from the terms, conditions and provisions of the Munisport Agreement so that the Future BLHS Parcel may be leased to the Board pursuant to the BLHS Ground Lease free and clear of the Munisport Agreement. The foregoing release shall be a condition precedent to the obligations of the Board under this Interlocal Agreement. The City covenants and agrees that, during the term of the Ground Leases (as same may be extended), the City shall not seek, approve or accept any charter school within the City that would compete with NMHS, BLHS or the K to 8 Educational Center for so long as such facility is operated for school purposes. The foregoing covenant shall not restrict the City's ability to seek a charter school contract for the Museum Art School located in the City of North Miami, provided that the City grants the Board the first right and a reasonable opportunity to be the operator of any school contemplated for such facility. As used herein, the term "Munisport Agreement" shall mean that certain Munisport Agreement dated November 26, 2002, by and between the City and Preserve Partners, Ltd., as amended by that certain Amendment to Munisport Agreement dated as of the 26th day of October, 2004, by and between the City and the Biscayne Landing Developer, as successor in interest to Preserve Partners Ltd., through a series of assignments, as the same may be further amended and/or modified by the City and Biscayne Landing Developer from time to time.

Section 14. As Is. Each Party hereto represents and warrants that such Party (i) has been given a full opportunity to inspect the property owned by the other Party, (ii) has conducted any and all inspections that it deems necessary or appropriate to evaluate such property and whether it deems same to be suitable for the intended uses contemplated for such property in this Interlocal Agreement and in the Project Documents, and (iii) accepts all of the property affected by the Project Documents in its "as–is" condition, with all faults, and without representations, warranties, covenants and indemnities of any kind, express or implied, except only the representations, warranties, covenants and indemnities expressly set forth in this Interlocal Agreement and in the Project Documents.

Section 15. Termination/Replacement of Existing Agreements. The Board and City acknowledge and agree that each of the following existing agreements shall remain in full force and effect following the Effective Date, the Project Documents shall be subject to same and the Board shall have the right to use the property leased under such existing agreements for the purposes described therein (irrespective of whether such uses are permitted under the Project Documents) until the respective date for termination of such agreement set forth below, whereupon such agreement shall automatically terminate without the need for any further action or agreement between the Parties:

a. Lease Agreement dated April 1, 1994, by and between the City and the Board for the existing Cagni Park, which shall be deemed terminated as of the date a notice to proceed is issued for construction of New Cagni Park or Cagni Park is needed for construction staging for the New Facilities, whichever is earlier;

b. Lease Agreement dated July 18, 1997 by and between the City and the Board for use of the North Miami Armory parking lot, which shall be deemed terminated as of the date a notice to proceed is issued for the demolition of the existing improvements on the Future NMHS Parcel-City and/or the construction of NMHS;

c. Letter Agreement dated November 29, 2001 (as amended) by and between the City and the Board for the interim use of parking facilities located at the City Community Center, which shall be deemed terminated as of the date a notice to proceed is issued for the demolition of the existing improvements on the Future NMHS Parcel-City and/or the construction of NMHS; and

d. Lease Agreement dated November 22, 1960 (as amended) between the City and the Board for the placement of portables, which shall be deemed terminated as of the date the students attending North Miami Middle School are relocated to the K to 8 Educational Center.

In addition to the foregoing, the Board and City are parties to that certain Agreement dated May 25, 1983 (as amended), pursuant to which the City leased North Miami

Stadium to the Board (the "North Miami Stadium Lease"). A number of disputes have arisen with regard to the North Miami Stadium Lease, including without limitation disputes relating to the termination of the North Miami Stadium Lease, reimbursement of pre-paid rent to the Board, compensation to the City for previous repairs to the stadium and responsibility for the cost of refurbishment of the track, all of which have been or will be resolved and subsumed in the agreements of the Parties contained in this Interlocal Agreement and the BLHS/North Miami Stadium Joint Use Agreement. Accordingly, to avoid any doubt or further dispute with regard to the North Miami Stadium Lease, the Parties agree that (i) the North Miami Stadium Lease is hereby terminated, (ii) the City shall not be required to pay any consideration for such lease termination, (iii) the terms and conditions of the North Miami Stadium Lease are superseded and replaced by the terms and conditions of this Interlocal Agreement and the BLHS/North Miami Stadium Joint Use Agreement, insofar as each such document relates to North Miami Stadium, (iv) all prior disputes between the Parties relating to the North Miami Stadium Lease have been or will be resolved and addressed in the Project Documents (or waived by the Parties), and (v) from and after the Effective Date, the only rights and obligations of the Parties relating to the North Miami Stadium facilities are or will be set forth in this Interlocal Agreement and the BLHS/North Miami Stadium Joint Use Agreement.

Section 16. Miscellaneous.

a. UNAVOIDABLE DELAY. In the event that the Board is unable to meet any deadline for performance of the Board's obligations under this Interlocal Agreement or complete construction of any of the New Facilities in accordance with Section 6 hereof, in either case due to any circumstance beyond the control of the Board, including without limitation, the occurrence of a *force majeure* event, then the time for such performance shall be extended for such reasonable period of time as may be required by such circumstance or the occurrence of such event. The Board shall be responsible for any cost overrun as a result of such delay. The term "*force majeure*" shall include without limitation labor strikes (whether lawful or not), fire, hurricanes, adverse weather conditions, unavoidable casualties, inability to obtain labor or materials, Acts of God, vandalism, terrorism, civil unrest, moratoriums and the like.

b. NOTICES. All notices, requests, consents, and other communications under this Agreement ("Notices") shall be in writing and shall be personally delivered, mailed by First Class Mail, postage prepaid, or sent by overnight delivery service, to the parties as follows:

If to the School Board:	Superintendent Miami-Dade County Public Schools 1450 N.E. Second Avenue, Room 912 Miami, Florida 33132 Fax: (305) 995-1488

With a Copy to:	Board Attorney The School Board of Miami-Dade County 1450 N.E. Second Avenue, Room 400 Miami, Florida 33132 Fax: (305) 995-1412
If to the City:	City Manager City of North Miami 776 N.E. 125th Street North Miami, Florida 33161 Fax: (305) 893-1367
With a Copy to:	City Attorney City of North Miami 776 N.E. 125th Street North Miami, Florida 33161 Fax: (305) 895-7029

Except as otherwise provided in this Interlocal Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the Board and counsel for the City may deliver Notice on behalf of the Board and the City, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the Parties.

c. DEFAULT. An event of default shall be deemed to have occurred by either Party to this Interlocal Agreement if such Party fails to observe or perform any covenant, condition or agreement of this Interlocal Agreement, or breaches a representation contained herein, and such failure or breach continues for a period of thirty (30) days after written notice specifying such default and requesting that it be remedied is sent to the defaulting party by the non-defaulting party; provided, however, that if the default is curable but cannot be cured within thirty (30) days, then the defaulting party shall have such additional time as is reasonably needed to cure such default so long as the defaulting party promptly commences and diligently pursues

the cure of such default to completion. If an event of default shall have occurred and shall continue, the non-defaulting party shall be entitled to all remedies available at law or in equity, which may include, but not be limited to, the right to damages and/or specific performance.

d. ENFORCEMENT OF AGREEMENT. In the event that either Party is required to enforce this Interlocal Agreement by court proceedings or otherwise, then the Parties agree that each Party shall be responsible for all fees and costs incurred by such Party, including all attorneys' fees and costs (of trial, alternative dispute resolutions, or appellate proceedings).

e. ENTIRE AGREEMENT. This Interlocal Agreement and the simultaneously delivered Project Documents embody the entire agreement of the Parties relating to the subject matter hereof, and supersede all prior written and/or oral understandings or agreements with respect thereto. The Parties agree that all of the terms, conditions and provisions of the Original Interlocal Agreement are amended, restated and replaced in their entirety by the terms, conditions and provisions of this Interlocal Agreement. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any discrepancy between the provisions of the Original Interlocal Agreement and this Interlocal Agreement, or any prior representations or agreements whether oral or written.

f. AMENDMENTS. Amendments and Addenda to and waivers of the provisions contained in this Interlocal Agreement may be made only by an instrument in writing which is executed by both Parties.

g. JOINT PREPARATION. This Interlocal Agreement has been negotiated fully between the Parties as an arm's length transaction. Both Parties participated fully in the preparation of this Interlocal Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Interlocal Agreement, both Parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against any Party.

h. ASSIGNMENT. This Interlocal Agreement may not be assigned, in whole or in part, by any Party without the prior written consent of the other Party, which may be granted or withheld in its sole discretion. The City's prior consent shall not be required with respect to any design professionals, contractors, developers or other parties engaged by the Board in connection with or for the purpose of performing any of the Board's obligations hereunder.

i. THIRD PARTY BENEFICIARIES. Except as otherwise expressly provided in the Multiparty Agreement, this Interlocal Agreement is solely for the benefit of the Board and the City and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a

formal party to this Interlocal Agreement. Except as otherwise expressly provided in the Multiparty Agreement, nothing in this Interlocal Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Board and the City any right, remedy, or claims under or by reason of this Interlocal Agreement or any of the provisions or conditions of this Interlocal Agreement; and all of the provisions, representations, covenants, and conditions contained in this Interlocal Agreement shall inure to the sole benefit of and shall be binding upon the Board and the City, and their respective representatives, successors, and assigns.

j. JOINT DEFENSE In the event that the validity of this Agreement is challenged by a third party or parties unrelated to the Parties through legal proceedings or otherwise, the Parties hereto agree to cooperate with each other in defense of this Agreement, with each such Party to bear its own attorney's fees and costs associated with such defense.

k. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Interlocal Agreement shall not affect the validity or enforceability of the remaining portions of this Interlocal Agreement or any part of this Interlocal Agreement not held to be invalid or unenforceable.

l. TIME OF ESSENCE. The Parties acknowledge that time is of the essence in the performance of all obligations required hereunder and all "days" referenced herein shall be deemed "calendar days" unless otherwise specifically set forth.

m. CONTROLLING LAW. This Interlocal Agreement and the provisions contained herein shall be construed, interpreted, and controlled according to the laws of the state of Florida. Venue for any dispute shall be in Miami-Dade County, Florida.

n. AUTHORIZATION. The execution of this Interlocal Agreement has been duly authorized by the Board and the City. The Board and the City have complied with all the requirements of law in connection with the execution and delivery of this Interlocal Agreement and the performance of their respective obligations hereunder. The Board and the City have full power and authority to comply with the terms and provisions of this instrument.

o. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Interlocal Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Interlocal Agreement.

p. COUNTERPARTS. This Interlocal Agreement may be executed in any number of counterparts, each of which when executed and delivered shall

be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgments pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

q. JURY TRIAL WAIVER. The Parties waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other for any matter whatsoever arising out of or in any way connected with this Interlocal Agreement.

[Execution Page(s) Follow]

IN WITNESS WHEREOF, the Parties have caused this Interlocal Agreement to be executed in their names by their duly authorized officers and the corporate seals to be affixed all as of the day and year first above written.

CITY OF NORTH MIAMI, FLORIDA

By: _____
Clarance Patterson, City Manager

ATTEST:

By: _____
Frank Wolland, City Clerk

APPROVED AS TO FORM:

By: _____
V. Lynn Whitfield, City Attorney

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 25th day of October, 2006 by Clarance Patterson, as City Manager of THE CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation, on behalf of the City. He personally appeared before me, and is personally known to me or produced FLDL as identification.

[NOTARIAL SEAL]

Notary Public State of Florida
Nancy Cotto
My Commission DD484601
Expires 11/18/2009

Notary: _____
Print Name: Nancy Cotto
My Commission expires: 11/18/09

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 25th day of October, 2006 by Frank Wolland, as City Clerk of THE CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation, on behalf of the City. He personally appeared before me, and is personally known to me or produced FLDL as identification.

[NOTARIAL SEAL]

Notary Public State of Florida
Nancy Cotto
My Commission DD484601
Expires 11/18/2009

Notary: _____
Print Name: Nancy Cotto
My Commission expires: 11/18/09

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

By: _____
Ofelia San Pedro
Deputy Superintendent
Business Operations

ATTEST:

By: _____
Dr. Rudolph F. Crew
Superintendent and Secretary

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
JulieAnn Rico, Esq.
School Board Attorney

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 25th day of October, 2006 by Ofelia San Pedro, as Deputy Superintendent, Business Operations of THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a public body corporate and politic existing under the laws of the State of Florida, on behalf of the School Board. She personally appeared before me, and is personally known to me or produced _____ as identification.

[NOTARIAL SEAL]

Notary: Giselle Perdomo
Print Name: Giselle Perdomo
My Commission expires: 6-24-08

GISELLE PERDOMO
Notary Public, State of Florida
My Comm. expires June 24, 2008
No. DD314027
Bonded thru Arthur J. Gallagher & Co.

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 25th day of October, 2006 by Dr. Rudolph F. Crew, as Superintendent and Secretary of THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a public body corporate and politic existing under the laws of the State of Florida, on behalf of the School Board. She personally appeared before me, and is personally known to me or produced _____ as identification.

[NOTARIAL SEAL]

Notary: Giselle Perdomo
Print Name: Giselle Perdomo
My Commission expires: 6/24/08

GISELLE PERDOMO
Notary Public, State of Florida
My Comm. expires June 24, 2008
No. DD314027
Bonded thru Arthur J. Gallagher & Co.

EXHIBIT A

LEGAL DESCRIPTION OF FUTURE NMHS PARCEL

Parcel 1: Existing Armory, Pool, Community Center Parcel/Future NMHS Parcel - City

The South One Half (S½) of Lots 5 and 6, FRED C MILLER'S SUBDIVISION of the Northeast quarter (NE¼) of Section 30, Township 52 South, Range 42 East, Miami-Dade County, Florida, according to the Plat thereof, recorded in Plat Book B at Page 21 of the Public Records of Miami-Dade County, Florida, less and except the parcel of land legally described as "Parcel 2" in this Exhibit "A".

Parcel 2: Existing Middle School Site/Future NMHS Parcel – Board

The West 280 feet of the South One Half (S½) of Lot 6, FRED C MILLER'S SUBDIVISION of the Northeast quarter (NE¼) of Section 30, Township 52 South, Range 42 East, Miami-Dade County, Florida, according to the plat thereof, recorded in Plat Book B at Page 21 of the Public Records of Miami-Dade County, Florida, less the West 30 feet and the South 30 feet thereof.

EXHIBIT B

LEGAL DESCRIPTION OF FUTURE BLHS PARCEL

Commence at the Southwest corner of Section 15, Township 52 South, Range 42 East, run N 03°00'20" W along the west line of said Section 15 for a distance of 110.00 feet to the POINT OF BEGINNING of the parcel hereinafter to be described as follows: thence continue N 03°00'20" W along the last described line, for a distance of 758.53 feet to point, thence departing said West line of Section 15, run N 86°59'55" E for a distance of 250 feet to point, thence run S 03°00'20" E along a line 250 feet easterly of, as measured at right angles to and parallel with said West line of Section 15 for a distance of 758.53 feet, thence departing said parallel line, run S 86°59'55" W for a distance of 250 feet to point the POINT OF BEGINNING.

EXHIBIT B-1

NORTH MIAMI STADIUM PARCEL

Commence at the Southeast corner of Section 16, Township 52 South, Range 42 East, Dade County, Florida, run North 2 degrees 35' 47" West along the East line of said Section 16 for a distance of 110.00 feet; thence run South 87 degrees 27' 48" West for a distance of 60.00 feet to the Point of Beginning of the Parcel of land hereinafter to be described as follows:

Thence run South 87 degrees 27' 48" West for a distance of 694.67 feet to a point; thence run North 2 degrees 32' 12" West for a distance of approximately 160 feet to a point; thence run North 42 degrees 27' 48" East for a distance of approximately 48 feet to a point; thence run North 2 degrees 32' 12" West for a distance of approximately 66 feet to a point; thence run North 27 degrees 27' 48" East for a distance of approximately 205 feet to a point; thence run North 42 degrees 27' 48" East for a distance of approximately 95 feet to a point; thence run North 87 degrees 27' 48" East for a distance of approximately 58 feet to a point; thence run North 25 degrees 27' 48" East for a distance of approximately 60 feet to a point; thence run North 40 degrees 32' 12" West for a distance of approximately 58 feet to a point; thence run North 4 degrees 58' 19" East for a distance of approximately 176.41 feet to a point; thence run North 2 degrees 32' 12" West for a distance of 15 feet to a point; thence run North 87 degrees 27' 48" East for a distance of 284.67 feet to a point; thence run South 02 degrees 35' 47" East for a distance of 758.53 feet to the Point of Beginning.

EXHIBIT C

LEGAL DESCRIPTION OF FUTURE K – 8 PARCEL

A tract of Land in Section 19, Township 52 South, Range 42 East, North Miami, Miami-Dade County, Florida.

Bounded:

Northerly: By the South Right of Way line of "N.E. 137th Street"
Easterly: By the West Right of Way line of "N.E. 9th Avenue"
Southerly: By the North Right of Way line of "N.E. 135th Street"
Westerly: By the East Right of Way line of "N.E. 7th Avenue"

Compromising:

Blocks 49, 50, 53 and 54 IRONS MANOR HIGH PINE ADDITION SECTION A, according to the Plat thereof, recorded in Plat Book 23, at Page 80 of the Public Records of Miami-Dade County, Florida.

Together with:

That portion of "N.E. 136th Street" (formerly known as "N.E. 134th Street, as per said Plat, lying between said East Right of Way line of N.E. 7th Avenue and said West Right of Way line of "N.E. 9th Avenue".

And

That portion of "N.E. 8th Avenue" lying between said South Right of Way line of N.E. 137th Street (formerly known as "Victoria Park Drive", as per said Plat and said North Right of Way line said "N.E. 135th Street" (formerly known as Natural Bridge Road), as per said Plat.

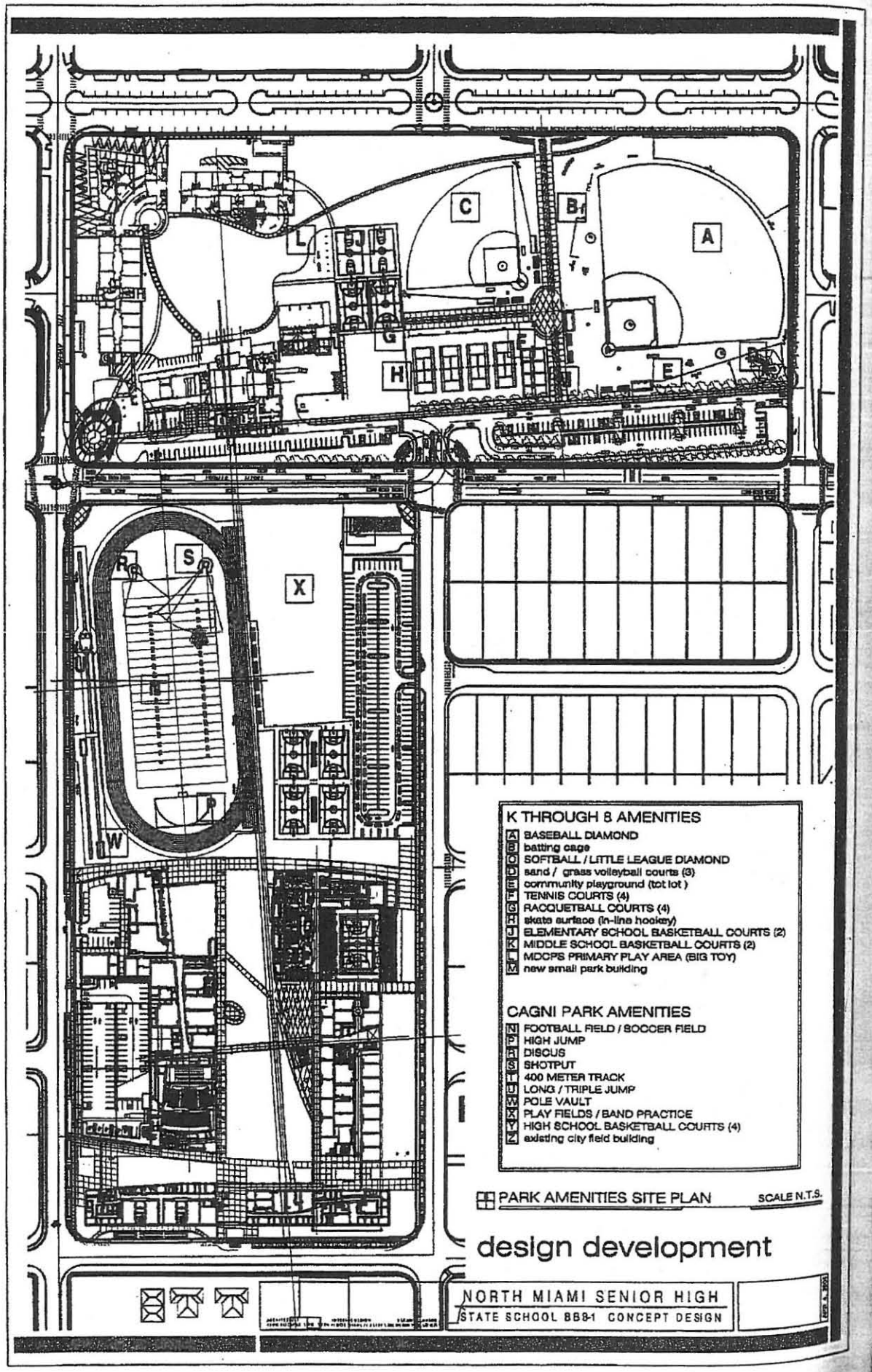
EXHIBIT D

LEGAL DESCRIPTION OF CAGNI PARK PARCEL

The North One Half (N½) of Lots 5 and 6, less the West 30 Feet, the North 35 Feet and the East 30 Feet thereof, Fred C. Miller's "Subdivision of the East One Half of Section 30, Township 52 South, Range 42 East as recorded in Plat Book "B" at Page 21 of the Public Records of Miami-Dade County, Florida. Containing 8.7742 Acres of Land more or less.

EXHIBIT E-1

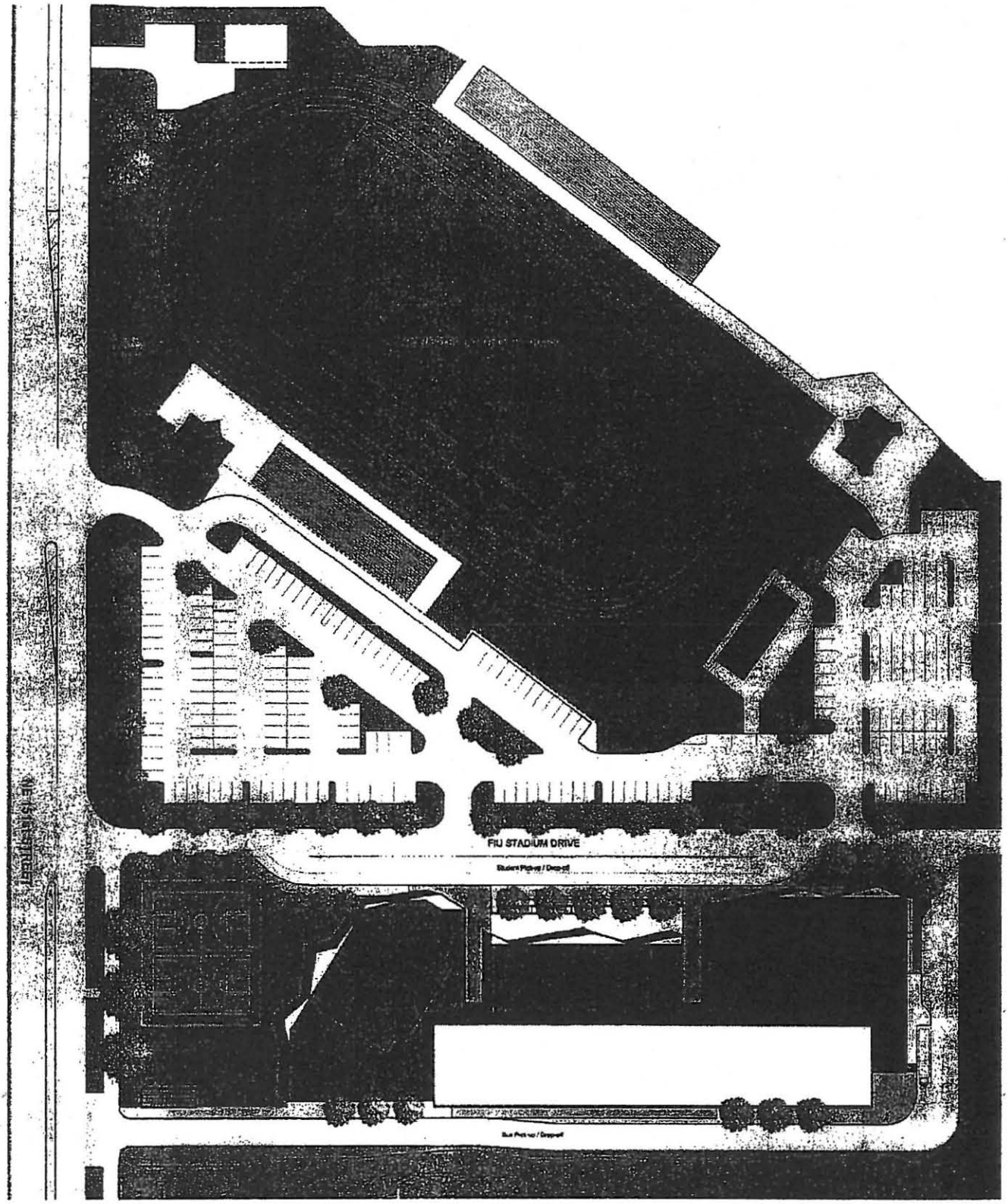
NMHS/K TO 8 CONCEPTUAL LAYOUT PLAN


K THROUGH 8 AMENITIES
A BASEBALL DIAMOND
B batting cage
C SOFTBALL / LITTLE LEAGUE DIAMOND
D sand / grass volleyball courts (3)
E community playground (tot lot)
F TENNIS COURTS (4)
G RACQUETBALL COURTS (4)
H skate surface (in-line hockey)
J ELEMENTARY SCHOOL BASKETBALL COURTS (2)
K MIDDLE SCHOOL BASKETBALL COURTS (2)
L MDCPS PRIMARY PLAY AREA (BIG TOY)
M new small park building
CAGNI PARK AMENITIES
N FOOTBALL FIELD / SOCCER FIELD
P HIGH JUMP
R DISCUS
S SHOTPUT
T 400 METER TRACK
U LONG / TRIPLE JUMP
W POLE VAULT
X PLAY FIELDS / BAND PRACTICE
Y HIGH SCHOOL BASKETBALL COURTS (4)
Z existing city field building
PARK AMENITIES SITE PLAN
SCALE N.T.S.
design development
NORTH MIAMI SENIOR HIGH
STATE SCHOOL BB8-1 CONCEPT DESIGN

MIA :

EXHIBIT E-2

BLHS CONCEPTUAL LAYOUT PLAN



N

OVERALL SITE MASTER PLAN

SCALE: NOT TO SCALE

EXHIBIT F

PROJECT CONSTRUCTION SCHEDULES

[To be attached by the Board pursuant to Section 6.c. of this Interlocal Agreement]

EXHIBIT G

SPECIFICATIONS FOR NORTH MIAMI STADIUM TRACK

MIA 177787147v17 10/27/2008

SECTION 02865

RUNNING TRACK SURFACE

PART 1 GENERAL

1.01 SUMMARY

A. Section Includes: A rubber granular mat system with polyurethane binders over concrete or asphalt.

B. Related Sections:

1. 02545 - Hard Court/Running Track Construction.
2. 03300 - Cast-In-Place Concrete.

1.02 REFERENCES

A. American Society for Testing and Materials (ASTM):

1.	D412-97	Test Method for Tensile and Elongation.
2.	D-624	Tear resistance
3.	G53-84	Test Method for Accelerated Weathering.
4.	E501-94(00)	Standard Specification for Standard Rib Tire for Pavement Skid-Resistance Tests.

1.03 SUBMITTALS

A. Shop Drawings: Concrete/asphalt and subgrade requirements.

B. Product Data: Manufacturers specifications and printed installation and maintenance instructions.

C. Samples: One 4 inch by 4 inch sample of track surface with samples of available colors (except black) for selection.

D. Certification that materials delivered to site comply with specifications and are approved by the manufacturer for use as a track binder.

1.04 QUALITY ASSURANCE

A. United States Tennis Courts and Track Builders Association (USTC&TBA) guidelines.

B. Pre-installation Conference: Track surface manufacturer s representative shall give written or pictorial documents indicating installation requirements.

C. Coordinate with equipment installer the location and type of attachments required to install equipment.

D. Manufacturer's Representative: The manufacturer of the track surface system shall provide a technical representative, that does not represent the track builder, to participate in the acceptance of the asphalt base before the application of the track surface and to observe the installation work. The approval of a particular manufacturer's system shall be contingent on this requirement being met.

E. Track Surface Contractors/Installers.

1. The installer must show proof of having installed a minimum of 30, paved in place, polyurethane base mat surface track systems over the last 3 years.
2. The installer shall provide test results for the polyurethane surface running track systems, from an independent testing laboratory, showing compliance with the ASTM specifications listed.
3. The installing company shall provide proof of being in business continuously under the same name for the past 5 years.
4. The installer shall provide proof of being a member in good standing of the USTC & TBA under the same name for a period of 5 years.
5. The installer must have a Certified Track Builder (CTB) on staff as a full time employee of the company and must provide proof of certification.
6. The installer shall provide documentation of having a minimum "A" rating as established by their bonding company.
7. Show proof that installer's Base Mat (polyurethane binder/rubber) Structural Spray (Polyurethane/EPDM

Rubber) System, as specified, meets the requirements of the IAAF Suitability Test for Synthetic Surfaced Athletic Tracks. Proof shall consist of test results from an independent testing laboratory indicating that the system submitted by the installer has passed all parts of the test.

8. The installer's CTB shall be on site at the beginning of the installation of the asphaltic pavement, for the running track, for a period of two days.

F. Track Dimension Determination.

1. The measure line is a theoretical line used to determine the distance of the track. It is located 30 centimeters from the inner painted line of the inner lane.

   a. The distance between the track side of the inside curb and the measure line shall not be less than 16 inches.
   b. The distance between the track side of the outside curb and the lane line shall not be less than 4 inches.

1.05 WARRANTY

A. Manufacturer's minimum 5 year written warranty of track surface to be free from defects in materials and installation.

PART 2 PRODUCTS

2.01 MANUFACTURERS

A. Track Surface:

1. Plexitrac by California Products, Cambridge, MA.
2. Fast Track by Child Safe Products, Amityville, NY.
3. Ameritan by Defargo Sports Surfaces, Georgetown, TX 78628
4. Sport Track 200 by Hellas Sport Surfaces, 12710

Research Blvd., Suite 240, Austin TX 78759

5. Vitriturf by Vitricon, Hauppauge, NY.

2.02 MATERIALS

A. Track Surface:

1. Surfacing shall be 1 to 3mm rubber granules, free of dust and extraneous fiber, metal, and similar substances, and meeting the following gradation:

Mesh	M.M.	Percent Retained
5	4.00	0.0
6	3.36	3.0
10	2.00	50.0
18	1.00	97.0

a. Other sieve sizes may be used to achieve a different surface texture at the discretion of the owner.
b. Rubber supply can vary.

2. Comply with USTC & TBA guidelines for measuring track surface depth.
3. Void Volume: 27 percent maximum.
4. Baselayer: 1/2" minimum thickness, recycled or black styrene-butadiene rubber (SBR) rubber granules with polyurethane binder.
5. Structural Spray/UV Protection: Sprayed pigmented urethane with matching color EPDM rubber granules. Color, red or green, as specified by A/E.
6. Provide water permeable composition.

PART 3 EXECUTION

3.01 INSPECTION

A. Do not proceed with the work of this section until conditions detrimental to the proper and timely completion of the work have been corrected in an acceptable manner.

B. Asphalt Base:

1. Before application of track surface, asphalt base shall be inspected for conformity to slopes as indicated on construction drawings.
2. The surface shall not deviate more than 1/4" in 10 feet when checked with a straight edge in all directions.
3. The asphalt base shall be allowed to cure for at least 2 weeks before the track surface is applied.
4. The asphalt-paving contractor shall be responsible to conduct a "flood test" within 24 hours. If after 20 minutes of drying time there are "birdbaths" that indicate variations in the asphalt surface greater than ¼" in 10 feet, The paving contractor shall rectify those areas with approved materials to the satisfaction of the track builder.
5. Any oil spills (hydraulic, diesel, motor, etc.) must be completely removed and replaced with new asphalt.

C. Perform tensile and thickness testing before lane marking.

3.02 ENVIRONMENTAL CONDITIONS

A. Temperature: A minimum of 50 degrees F. and rising.

B. Weather: Clear with no precipitation during application.

3.03 INSTALLATION

A. Follow manufacturer's printed installation instructions and recommendations.

B. Apply track surface over asphalt, to inside perimeter of concrete curbs, as specified in Section 02865, according to manufacturer's guidelines.

1. Lay out white lane markings as indicated on Construction Documents:
2. Apply 2 coats of specified paint lines 2 inches wide by brush using templates or masking tape, without

splatters and irregularities.

C. Place topsoil and sod to required finish grade elevations.

3.04 CLEANING

A. Upon completion of the work remove all containers, surplus materials, and debris and dispose off site.

B. Remove surplus materials from site. Remove soil, mud, and other foreign matter from track surface.

C. Clean spills and overruns.

D. Leave site in a clean and orderly condition acceptable to the Board.

3.05 PROTECTION

A. Protect track surface from damage until substantial completion, especially from petroleum-based products.

B. Provide a 10-foot wide removable protective mat to be used by maintenance vehicles for crossing the track to the infield without damaging the track surface.

C. Provide a list of herbicides to suppress weed growth adjacent to the track without damaging the track surface.

3.06 FIELD QUALITY CONTROL

A. Site Tests:

1. The track installer shall provide a minimum of 30 test samples in the course of laying down the track surface.
2. Each sample shall be 10 inches square, laid on a 1/2" plywood base adjacent to the track at roughly equal intervals around the perimeter of the track.

B. Inspection:

FLORIDA STATE BOARD OF EDUCATION

CITY OF NORTH MIAMI,

Applicant,

vs.

MIAMI-DADE COUNTY PUBLIC SCHOOL DISTRICT,

Sponsor.

APPEAL OF CITY OF NORTH MIAMI MUNICIPAL CHARTER SCHOOL APPLICATION DENIAL

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NOTICE OF APPEAL AND BACKGROUND

Under the authority of Section 1002.33(3)(a) and 1002.33(15)(c), Florida Statutes (2012), the City of North Miami ("City"), timely filed an application for a Municipal Charter School to the Miami-Dade County Public School Board District ("School Board"), for consideration of a career and technical academy charter school with an emphasis on emergency response, law enforcement and public safety training to prepare students for successful vocational and professional careers upon high school graduation for grades nine (9) through twelve (12), to be located in the western portion of the City of North Miami. (Exhibit 1).

Rather than reviewing the City's application, in accordance with the Section 1002.33(6)(b), the School Board instead rejected the application and failed to apply any evaluation criteria. (Exhibit 2).

The School Board's stated reason for the rejection was based on a non-compete clause in an Inter-Local Agreement (ILA) that the City entered into with the School Board in 2006. (Exhibit 3). The relevant portion of Section 13, page 27, of the ILA provides that:

> The City covenants and agrees that, during the terms of the Ground Leases (as same may be extended), the City shall not seek, approve or accept any charter school within the City that would **compete** with NMHS, BLHS or the K to 8 Educational Center for so long as such facility is operated for school purposes.

In its denial letter, the School Board provided to the City the appeal mechanism outlined in Section 1002.33(6)(c) and State Board Rule 6A-6.0781, F.A.C. if the City chose to appeal the School Board's denial. *Id.* For the reasons set forth in this Appeal, the City submits its Notice of Appeal of the Miami-Dade County School Board denial of the City of North Miami Municipal Charter School application to the Florida State Board of Education.

APPEAL
ARGUMENT I

THE SCHOOL BOARD WAS STATUTORILY REQUIRED TO REVIEW AND CONSIDER THE CITY'S APPLICATION AND COULD NOT FLATLY REJECT THE APPLICATION WITHOUT DUE PROCESS

The state law governing charter schools makes it clear that the School Board as the Sponsor of the application must receive timely applications and review the application using an evaluation instrument developed by the Department of Education. Section 1002.33(6)(b) reads in part:

> A **sponsor shall** receive and **review** all applications for a charter school using an evaluation instrument developed by the Department of Education.

The statute makes clear--there is no legal basis for the School Board to do anything other than what the governing statute specifically mandates. The statute states that the School Board **"shall review"** timely applications **"using an evaluation instrument. . . ."** *Id.* The language is not permissive or optional and

there are no exceptions carved in the statute to allow for any deviation from the requirements outlined by the Florida legislature. There is simply no statutory authority for the School Board to outright reject the City's application without using the evaluation instrument, without considering the criteria required by the statute, and without due process. Consequently, the School Board's refusal to follow the law and review the City's application on its merits was legally improper.

APPEAL
ARGUMENT II

THE NON-COMPETE CLAUSE IN THE INTERLOCAL AGREEMENT IS ILLEGAL, AGAINST THE PUBLIC POLICY OF THE STATE AND CANNOT BE A PROPER BASIS FOR THE DENIAL OF A CHARTER SCHOOL APPLICATION

On October 25, 2006, the City of North Miami and the School Board of Miami-Dade County entered into an Amended and Restated Interlocal Agreement, which addressed the development and construction of new and upgraded educational and recreational facilities located in the City of North Miami. Prior to 2006, the City pursued and received approval for a charter then known as the Biscayne Landing High School. In consideration of the development, construction and improvements of three schools as well as recreational facilities, the City agreed to terminate its charter. (See Exhibit 3, Section 13, page 27). In addition, the City

agreed not to seek, approve or accept any charter school within the City that would **compete** with NMHS, BLHS [now Alonzo and Tracy Mourning High School] or the K to 8 Educational Center for so long as such facility is operated for school purposes. *Id.*

On August 13, 2013, the City applied for a Municipal Charter School, contending that the application does not violate the ILA for the reasons set forth below. First, the City advances that the non-compete clause in the ILA is illegal, unconscionable, unenforceable and therefore cannot be a basis for the denial of a charter school application.

A. THE NON-COMPETE CLAUSE IS DIRECTLY CONTRARY TO THE LANGUAGE, MEANING AND SPIRIT OF SECTION 1002.33, FLORIDA STATUTES

The non-compete clause in section 13 of the ILA on its face completely runs afoul of section 1002.33, which was created by the Florida Legislature to provide parents and students with numerous statutory rights and options for educational choice. In other words, the intent of the statute was to provide for competition, and diversity in choice of educational options. Indeed, part of the guiding principle and stated purpose of the statute is to "[p]rovide rigorous competition within the public school district to stimulate continual improvement in all public schools." *See* Section 1002.33(2)(c)(2), Fla. Stat.

In addition, section 1002.33(15) (a) reads in pertinent part:

> In order to increase business partnerships in education, to reduce school and classroom overcrowding throughout the state, and to offset the high costs for educational facilities construction, the **Legislature intends to encourage** the formation of business partnership schools or satellite learning centers and **municipal-operated schools through charter school status.**

The Legislature has indicated a clear preference for encouraging alternative forms of education through the charter school statute. *School Bd. of Seminole County v. Renaissance Charter School, Inc.* 113 So.3d 72, 76 (Fla. 5th DCA 2013). The City should not and cannot lawfully be prohibited from exercising its rights under the law. No agreement, no matter how well-meaning or seemingly equitable can contradict a clear statutory right. The City does not argue that in exchange for terminating its previously approved charter school, that the School Board did not provide adequate consideration. Nonetheless, the City simply could not have lawfully bargained away certain legal rights, just as a parent could not agree to bargain away a child's right to a free education. Unfortunately for the School Board, the state statute trumps the interlocal agreement.

With respect to the non-compete clause, longstanding Florida public policy and governing principles do not support non-compete clauses. *Cerniglia v. C. & D. Farms, Inc.*, 203 So.2d 1 (Fla. 1967) (holding contract not to compete repugnant to Florida's public policy, therefore unenforceable in Florida). Moreover, there is a general principle of law that provides that any "contract that contravenes an

established interest of society can be found void as against public policy." *Baldwin v. Regions Financial Corp.*, 98 So.3d 1210, 1212 (Fla. 3d DCA 2012). Courts have long held a contract that is prohibited under a constitutional or statutory provision, or prior judicial decision, is void because it violates public policy, where it is clearly injurious to the public good or contravene some established interest of society. *Garfinkel v. Mager*, 57 So.3d 221, 224 (Fla. 5th DCA 2010).

The term "public policy may be said to be the community common sense and common conscience, extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like." *City of Leesburg v. Ware*, 113 Fla. 760, 153 So. 87, 89 (1934); *Neiman v. Galloway*, 704 So.2d 1131 (Fla. 4th DCA 1998).

There is no question that school choice, increased competition as well as the other principles enunciated in the charter school statute advance the public good and serve society's best interests. The non-compete clause in the ILA precluding a municipality, or any entity for that matter, from exercising a legal right is not only violative of the state law that gave rise to charter school, but also subverts general common law principles as against public policy. Consequently, for this reason as well, the City's appeal should be granted. *T.C.B. v. Florida Dept. of Children and Families*, 816 So.2d 194, 196 (Fla. 1st DCA 2002); *Wechsler v. Novak*, 157 Fla. 703, 26 So.2d 884 (1946) (holding that the general right to contract is subject to

limitations that an agreement must not violate federal or state constitutions or state statutes or ordinances of a city or town or some rule of the common law).

APPEAL
ARGUMENT III

EVEN IF PERMISSIBLE, THE NON-COMPETE CLAUSE IN THE INTERLOCAL AGREEMENT DOES NOT PRECLUDE THE CITY FROM APPLYING FOR A CHARTER SCHOOL

Third, even if the non-compete clause was determined to be permissible, a literal interpretation of the clause would lead to absurd results. The City maintains that the clause runs afoul of both the meaning of the statute and the public policy of the State. But, if the State Board decided to interpret the clause, it must do so logically. The clause provides that the City would not seek, approve or accept any charter school within the City that would **compete** with NMHS, BLHS or the K to 8 Educational Center for so long as such facility is operated for school purposes.

The general rule of contract construction and interpretation dictates that contract terms are given their plain meaning. *Pottsburg Utils., Inc. v. Daugharty*, 309 So.2d 199, 201 (Fla. 1st DCA 1975) ("Words in a contract are presumed to have been used with their ordinary and customary meaning."). Merriam Webster's Collegiate Dictionary defines *compete* as "to strive consciously or unconsciously for an objective (as position, profit, or a prize): be in a state of rivalry . . . competing teams . . . companies competing for customers."

First, as illustrated above, the charter school statute encourages competition and increased educational options. Despite that fact, the proposed Charter School would not be competition with the schools mentioned in the ILA. The Charter School would provide a unique curriculum (specializing in police and law enforcement) not offered at any of the area schools. Furthermore, at least a portion of the student population would be derived from an area outside of the boundaries of North Miami Senior and Alonzo and Tracy Mourning High Schools. Finally, with approximately a goal of 500 students, the North Miami Charter School would be a boutique high school compared to the malls of over 2000 students in North Miami Senior High School and Alonzo and Tracy Mourning High School.

Finally, in drafting the Agreement, the parties did indeed contemplate the allowance of a charter school or the language would have simply read "*that the City shall not seek, approve or accept* ***any*** *charter school within the City,*" without the limitation of the word "compete." Had the School Board meant to preclude the City from seeking to establish *any* Charter School in the City, it would have and could have easily done so.

Certainly, the operative word "compete" should mean exactly what it says—nothing more, nothing less. The School Board's overbroad interpretation of the word "compete" simply cannot logically stand. It is clear from the plain meaning

of the language that the School Board and the City's intent was ***not*** to preclude the establishment of any charter school in the City, but rather to preclude the establishment of a charter school that would compete with the other Schools. Because of the unique curriculum, the population, the need for a school in the western portion of the City as well as other factors outlined in the City's application, there is no competition and no prohibition arising from the Agreement. *Riddick v. Suncoast Beauty College, Inc.,* 579 So.2d 855 (Fla. 2d DCA 1991)("A contract which operates in restraint of trade, as this one does, should be strictly construed."). Applying a strict construction to the meaning of "compete" within the sentence mandates that the School Board had the burden to demonstrate that the proposed charter school did compete with the current schools.

A. AN OVERBROAD INTERPRETION OF THE NON-COMPETE CLAUSE WOULD LEAD TO ABSURD RESULTS

The School Board seems to interpret the non-compete clause too broadly and generally. Certainly, the School Board cannot reasonably expect that the City cannot *accept* a charter school in the City of North Miami. In other words, if an entity applied for a charter school and wished to physically locate it in the City limits, the City could not allow such a school to exist under the School Board's interpretation. Presumably, the City would be prohibited from accepting a building permit, certificate of use, certificate of occupancy or any other permit or

application from this entity, even if it already had a pre-approved charter school. Such an interpretation cannot be reasonable and there is no way to literally interpret the clause without this absurdity.

A more reasonable interpretation of the clause would be that the City cannot seek to apply for a Charter School that would directly compete with North Miami School and the other schools mentioned in the ILA. This more reasonable interpretation would require an in-depth analysis of the merits of the application to examine factors such as location, curriculum, population, etc., to determine whether there is indeed a rivalry. Such analysis, of course, would not be supported by the statute. But such analysis, did not take place.

APPEAL
ARGUMENT IV

IN ADDITION TO THE REASONS ARTICULATED ABOVE, THE APPEAL MUST BE GRANTED BECAUSE THE SCHOOL BOARD'S STATED REASON DOES NOT CONSTITUTE GOOD CAUSE UNDER THE STATUTE

Finally, because the School Board failed to evaluate the application required by law, and because there is no basis outside of the statute for its failure to review the City's application, there cannot be the requisite good cause for the denial.

Section 1002.33(6)(b)(3)(a) provides that if "an application is denied, the sponsor shall, within 10 calendar days after such denial, articulate in writing the

specific reasons, **based upon good cause**, supporting its denial of the charter application and shall provide the letter of denial and supporting documentation to the applicant and to the Department of Education."

Here, the School Board seemed to determine that "competition" was good cause to deny the City's application. The City maintains that under no scenario could the governing principle that undergirds the charter school legislation be good cause. Such an interpretation is an abrogation of the statute itself. Assuming, *arguendo*, that the legislature did not specifically and intently encourage competition and choice, "competition" could still not be a viable reason to establish good cause in this case because there is no evidence in the record to support that there is competition with the application of (a) a charter school that is relatively small-sized school; (b) with an alternative focus, mission and curriculum then the other schools; (c) seek to target students who cannot, because of school boundaries, attend North Miami High School and Alonzo and Tracy Mourning High School and; (d) which would be located over three and half miles from North Miami High School and six over and a half miles from Alonzo Tracy Mourning High School.

Although good cause is not defined in the statute, courts have not allowed school boards to deny application based on assumptions or conjecture. In *School Bd. of Osceola County v. UCP of Cent. Florida*, 905 So.2d 909, 912 (Fla. 5th DCA

2005), the Fifth District Court of Appeal determined that inadequate charter school capital funding did not constitute the statutory "good cause" that would support the denial of a charter school application. In that case, the Court reasoned that "the Legislature clearly intended the denial of a charter school application to be based on more than projections of future financial impact on other schools or unsupported assumptions on the quality of education that may be provided by under-funded schools." *Id.* at 915.

The District Court rejected the School Board's implication that under the current funding scheme, the creation of new charter schools places existing schools at an increased risk of losing funding in the event the charter school fails and must be taken over by the School District. *Id.*

Similarly, here, the School Board attempts to demonstrate that competition should be a basis for denial but the statute outlines the only considerations which can provide a basis for the proper denial of a charter school application. Where competition, an unconscionable non-compete clause or any other factor cannot be considered by the School Board as a basis for denial, the City in this case, in entitled to an order reversing the School Board's denial.

CONCLUSION

School choice is a fundamental and statutory right demanding respect and great deference. The School Board cannot superficially or thoughtlessly reject a municipality's right to apply for a charter school ordained by the Florida legislature. Because the School Board's instruction to the City that any appeal should be made to the Florida State Board of Education, the State Board does have jurisdiction to decide this appeal and must do so in favor of the City. Should the State Board decide that the non-compete clause cannot be good cause and cannot be considered or be applied against the City, such determination would not have an impact on the remaining portions of the ILA as the severability clause of the ILA allows for one provision to be stricken while remaining portions remain in effect. (See Exhibit 3, Section 16(k), page 32). "Where a contract contains both legal and illegal terms and enforcement of the illegal terms can be refused without nullifying the contract's essential purpose, courts will give effect to those valid portions and ignore the illegal terms." *New Products Corp. v. City of N. Miami*, 241 So.2d 451 (Fla. 3d DCA 1970).

Based on the arguments outlined herein, the City of North Miami respectfully requests that:

(1) The State Board can and must grant the appeal and the application since the School Board waived its rights to review the application by failing to do so under statute, and did not demonstrate good cause for the denial; or

(2) Order the School Board to review the City's Application on its merits and preclude the School Board from denying this or any City of North Miami Charter School Application on the basis of the non-compete clause; or

(3) Should however, the School Board determine that legal issues surrounding the legality of the provision in the ILA prevent such determination, the City requests that the matter be referred to an Administrative Judge appointed by the Division of Administrative Hearings or to the 11th Judicial Circuit Court.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
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By:_____
REGINE M. MONESTIME
CITY ATTORNEY
FLORIDA BAR NO. 97357

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express (FEDEX) on this 15th day of November, 2013 to: **FLORIDA DEPARTMENT OF EDUCATION**, Attention: Agency Clerk, 325 West Gaines Street, Room 1520, Tallahassee, FL 32399-0400 and **MIAMI-DADE COUNTY SCHOOL BOARD**, Attention: School Board Clerk, 1450 N.E. 2nd Avenue, Suite 268B, Miami, FL 33132.

By:_____
REGINE M. MONESTIME
CITY ATTORNEY
FLORIDA BAR NO. 97357

FLORIDA STATE BOARD OF EDUCATION

CITY OF NORTH MIAMI,

Petitioner,

v.

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA,

Respondent.

CASE NO. DOE 2013-2887

SCHOOL BOARD'S RESPONSE AND MOTION TO DISMISS CITY OF NORTH MIAMI MUNICIPAL CHARTER APPLICATION APPEAL

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FLORIDA STATE BOARD OF EDUCATION

CITY OF NORTH MIAMI,

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MIAMI-DADE COUNTY, FLORIDA

Respondent.

_____/

DOE No. 2013-2887

SCHOOL BOARD'S RESPONSE AND MOTION TO DISMISS CITY OF NORTH MIAMI MUNICIPAL CHARTER APPLICATION APPEAL

The School Board of Miami-Dade County, FL, ("School Board") responds and moves to dismiss the City of North Miami's ("City") appeal of the School Board's "denial"[1] of its municipal charter school application because (1) the appeal was untimely filed, (2) the State Board of Education (SBE) has no jurisdiction to override an Interlocal Agreement ("ILA") between local governmental agencies or to adjudicate the parties' rights under the ILA, and (3) the District had good cause to reject the City's proposed charter because it would compete with District schools in violation of the ILA.

BACKGROUND

For at least forty-four (44) years, Florida has established and developed clear public policy strongly favoring intergovernmental cooperation. The Florida Interlocal Cooperation Act of 1969, which is embodied in Chapter 163, F.S., encourages and

[1] The City mischaracterizes its appeal. The School Board did not "deny" or ever vote on the City's charter application. District officials rejected it because it violated the ILA.

supports cooperation between governmental entities in a manner that benefits local communities. Participating governmental entities may enter into binding, enforceable agreements that mutually benefit the citizens governed by each entity and may agree to any provision that they desire. *See* Section 163.01(5)(r), F.S.

The City and the School Board have had a very collaborative partnership and excellent relationship for many years. In fact, these two governmental entities have worked cooperatively to build and operate many schools of all levels in the City. In 2005, pursuant to an agreement between the City and Biscayne Landing Developers (BLD), the City submitted an application to the School Board to develop a charter school on City-owned land. At the same time, BLD approached the School Board about the possibility of Miami-Dade County Public Schools ("District") building a District school on the same City-owned parcel.

Because it was mutually beneficial to City citizens, and after many months of planning and negotiation, the School Board and the City entered into an ILA and accompanying documents, pursuant to Chapter 163.01, F.S. *See* City's Appeal, Exhibit 3. As part of the ILA, the School Board committed to building a new high school (now Alonzo & Tracey Mourning Senior High School) on City-owned land next to the North Miami Stadium and to replace and rebuild North Miami Senior High on the former site of the School Board-owned North Miami Middle school and the former City-owned Cagni Park. The Board also agreed to build a new replacement North Miami Middle School and new elementary school on the site of the former North Miami Senior High School. A new Cagni Park would be built adjacent to the new elementary and middle schools. The School Board investment in these facilities totaled approximately $174 million.

The City initially financed the projects and the District fully repaid the City through issuing Certificates Of Participation ("COPS") and other debt instruments. Since that time, the School Board has completed almost all of the multiple improvements it promised and is in the process of completing the final projects. The School Board remains obligated for significant debt related to these projects for at least two more decades or longer.

For its part, the City agreed to withdraw its charter application and warranted that it would not pursue future applications for charter schools that would compete with the District-owned and operated schools within the City during the term of the ground leases. The ILA is very clear that the City warranted it would not seek, approve or accept any charter school within the City that would compete with any of the District-owned and operated schools within the City for as long as the facilities are operated for school purposes. The City was represented at all times by counsel and freely and voluntarily entered into the ILA which specifically states:

> The City covenants and agrees that, during the terms of the Ground Leases (as same may be extended), the City shall not seek, approve or accept any charter school within the City that would compete with NMHS, BLHS or the K to 8 Educational Center for so long as such facility is operated for school purposes. [2]

See City's Appeal, Exhibit 3, Section 13, p. 27, "Existing/Future Charter Schools."

Despite its promise in the ILA, and with no prior notice to the School Board, on June 24, 2013, the City sent a letter of intent to the District stating that it would be

[2] This provision, however, "shall not restrict the City's ability to seek a charter school contract for the Museum Art School located in the City of North Miami, provided that the City grants the Board the first right and a reasonable opportunity to be the operator of any school contemplated for such facility." City's Appeal, Exhibit 3, Section 13, p. 27)

submitting an application for a municipal charter high school on August 1, 2013, to open in the 2014-2015 school year.[3] (Exhibit 1) In a July 18, 2013 letter, the School Board notified the City that submitting the charter application would violate the ILA. (Exhibit 2)

Even after receiving the School Board's notice, the City nevertheless submitted a charter school application to the School Board on August 1, 2013. *See* City's Appeal, Exhibit 2. In the application, the City proposes to build a charter school high school within the City on City-owned land, serve up to 1300 9-12th grade students who reside within the City limits, and offer a first-responder themed academic program similar to programs currently offered at North Miami Senior High.[4] *See* City's Appeal, Exhibit 2. Because it would be a municipal charter school, City residents must be given preference under the law to enroll in the school and the City would not be able to prohibit City residents from applying or enrolling if they otherwise meet requirements. Section 1002.33(10)(e)3, (15)(c), F.S. Since approximately 1800 City students currently attend the two District high schools in the City, the proposed charter school would directly compete with District operated high schools in clear and obvious violation of the ILA.

Both before and after the City filed its application, District officials and staff met with City staff and City Council members on numerous occasions in which the District offered to expand and enhance the existing programs at North Miami Senior High to include an articulation program to a postsecondary institution and to address other

[3] Two of the City's Council current members were members of the Council in 2006 and voted to support the ILA.

[4] Although the City's appeal states that the proposed charter school would have only 500 students (p.10), the application itself proposes up to 1300.

stated City concerns. The City, however, declined to withdraw its charter application even though it was well aware that it could violate the ILA.

The School Board has entered dozens of interlocal agreements with municipalities and other entities in Miami-Dade County to provide new and upgraded school and recreational facilities and educational opportunities for thousands of students. In order to protect and uphold the integrity and implementation of all the School Board's ILAs, including this one, which was entered into in good faith by both parties, the District determined that it had no choice but to reject the City's application. On October 18, 2013, District officials notified the City that the application was being rejected based on the ILA. (Exhibit 3). The City received the notification by e-mail on October 18, 2013. (Exhibit 4) Pursuant to Section 1002.33(6), F.S., the City had thirty (30) days from receipt of the letter to file an appeal of the School Board's failure to act on the application.

On November 18, 2013, however, thirty-one (31) days after the City received the School Board's notice of rejection, the Florida State Board of Education ("SBE") received an appeal of the School Board's "denial" of the application. (Exhibit 5) The City's appeal argues: (1) that the School Board was statutorily required to review and consider the City's application; (2) that the "non-compete clause" is "illegal, against public policy and not the proper basis for denial of a charter application;" (3) even if permissible, the "non-compete" does not prohibit the City from seeking a charter school; and (4) the School Board's stated reason for denial does not constitute good cause under Florida Statutes. *See* City Appeal, p. 2. The City's requested relief from the SBE includes (1) approving the application with no further action by the School Board, (2)

requiring the School Board to review the application, or (3) referring the issue to a more appropriate legal forum. *See* City Appeal, p. 17.

On December 11, 2013, a School Board agenda item proposed to authorize the School Board Attorney to pursue any and all legal action against the City to enforce the terms of the ILA. (Exhibit 6) In an attempt to resolve the issue amicably, and for the mutual benefit of the entities and City residents, however, the item was withdrawn prior to a vote by the School Board. The parties agreed to stay this appeal in order to seek resolution. (Exhibit 7) On December 12, 2013, the state issued an Order staying the proceedings until March, 2014. (Exhibit 8)

District officials held multiple meetings with Council members and offered to assist in building a high school onto an existing K-8 in the geographic area that the City proposes to build a charter school and to establish desired magnet programs in the school. Because the K-8 is already scheduled to be renovated and rebuilt, the cost to the City would be minimal. (Exhibit 9) The City, however, responded that it is not interested in the School Board proposal and has not withdrawn its charter application or voluntarily dismissed this appeal. (Exhibit 10) Unfortunately, the School Board has no other option at this point but to defend the appeal and may be required to engage in what will likely be very costly and lengthy litigation against its long time education partner.

As shown below, the City's appeal must be dismissed because (1) the appeal was filed after the jurisdictional thirty (30) days, (2) the SBE has no legal authority to override a valid and enforceable ILA between the parties or to adjudicate the rights of the parties under the ILA, and (3) the District had good cause to reject the City's

proposed charter because it would compete with District schools in the City in violation of the ILA.

MEMORANDUM OF LAW

A. The Appeal Must be Dismissed as Untimely.

Section 1002.33(6)(c), F.S., states that an applicant may appeal a school board's failure to act on an application "*no later than* 30 calendar days after receipt of the sponsor's decision or failure to act." [5] The Court in School Board v. Universal Educational Services, 990 So.2d 1210 (Fla. 5th DCA 2008), in ruling that an application was untimely because it was filed after thirty (30) days, made it quite clear that this language is jurisdictional. Additionally, Rule 6A-6.0781(1), F.A.C., specifically states that the appeal must be filed "within thirty (30) days" after receipt and "the State Board of Education does not have jurisdiction to hear late-filed appeals." There is no language in the statute or rule allowing for late filing if the thirtieth day is a weekend or holiday.[6] Accordingly, the City's appeal filed on the thirty-first (31) day after receipt must be dismissed as untimely.

B. The SBE Has No Legal Authority to Override an ILA Between Local Governmental Entities or to Adjudicate the Rights of the Parties Under the ILA.

Under Chapter 163, it is clearly the public policy of this state to encourage governmental entities to enter into interlocal agreements and share resources for the benefit of the community. The SBE has no authority to interfere with such an

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[5] Rule 6A-6.0781, F.A.C., provides that the District's Notice may be sent by email if the parties agree to this method of delivery. In this case, the City acknowledged that it would receive District communication about its application via email. (Exhibit D)

[6] The State Board of Education clerk's office indicated that the Florida Rules of Civil Procedure ("FRCP") allow circuit court appeals to be late filed if the deadline falls on a weekend or holiday. However, the FRCP do not apply to this administrative proceeding. Both the SBE rule governing application denials and the case law expressly prohibit late-filed appeals.

agreement, particularly where both parties acknowledge that there are more appropriate cooperative and legal forums for these controversies to be resolved. *See* City's Appeal, p. 16.

Furthermore, pursuant to Section 1002.33(6), F.S., the SBE only has jurisdiction to review a school board's denial of a charter application or failure to review the application within the statutorily specified timelines. It does not have jurisdiction to review a School Board's rejection of an application based on an unrelated agreement between the parties. This dispute centers on an ILA provision freely and voluntarily entered into, for significant consideration, that the City apparently regrets and wishes to disavow by claiming it is now "illegal," "unenforceable" and "against public policy." This is a particularly audacious argument to be making after the School Board has almost completed its obligations under the ILA to provide multiple new educational and recreational facilities in the City.

To the contrary, the Florida Supreme Court has long recognized that any party "may waive any right to which it is legally entitled, whether secured by contract, conferred by statute, or guaranteed by the constitution." Waiver is defined as the "intentional relinquishment, express or implied, of a known right." *DK Arena, Inc., v. EB Acquisitions I. LLC.,* 112 So. 3d 85, (Fla. 2013) citing *Gilman v. Burtzloff*, 22 So. 2d 263 (Fla. 1945)(quoting *Bellaire Securities Corp., v. Brown*, 168 So. 625(Fla. 1936). Furthermore, a waiver "operates to 'estop' one from asserting that upon which he otherwise might have relied." *See DK Arena*, at p. 97.

Here, the City freely and voluntarily waived its statutory right to pursue a charter

school application in the future in exchange for significant consideration provided by the School Board. In order to prevent a serious injustice not only to the School Board but also to the North Miami community, the City is now legally estopped from disavowing that agreement for the sole reason that it no longer wants to bound by it. To allow this provision to be nullified would render interlocal agreements and Chapter 163 essentially meaningless, a result that would fly directly in the face of longstanding Florida public policy favoring cooperative agreements between governmental entities. Moreover, only the Legislature or a court of competent jurisdiction can make a determination that the disputed provision should be voided.

C. **The District Had Good Cause to Reject the City's Proposed Charter School Because It Would Compete with District Schools in the City in Violation of the ILA.**

The City makes much of the fact that the ILA language says the City is only prohibited from seeking a charter school that would "compete" with District-operated schools and rather brazenly asserts that this charter school would not "compete." However, the application clearly states that the school will give enrollment preference to students residing within the City and "will be open to any age/grade appropriate student residing within the boundaries of the City of North Miami." Pursuant to Section 1002.33, F.S., the school cannot deny enrollment to any City resident and cannot discriminate. That means that the City would not be able to deny enrollment to the approximately 1800 students living in the City who currently attend both North Miami Senior High and Alonzo & Tracy Mourning Senior High should they choose to apply to the charter school. It is certainly reasonable to assume that at least a few current students at these schools could or would seek enrollment at the proposed municipal charter. For this

reason, there is no need to analyze the application in order to conclude that the municipal charter school would compete with the District-operated schools. Indeed, it is difficult to conceive of any type of municipal charter school that would NOT compete with District-operated schools in the City.

Furthermore, the City insists that the proposed school would not "compete" with District-operated schools because it will offer a "unique" curriculum specializing in police and law enforcement. Obviously, the opposite is true. A school offering a bona-fide new and different program would in fact create competition with District-operated schools that do not offer the program. The truth is, however, that the City does not have to violate the ILA by establishing a municipal charter school in order to offer this "unique" law enforcement program since the School Board has offered to add the program to the existing first responder program at North Miami Senior High and to expand its current program there, including articulation from these programs to postsecondary institutions.

While the City also claims that there is a "need" for a high school in the westernmost portion of the City, the District-operated high schools have available seat capacity, are excellent schools and offer multiple academic and career opportunities to City students. In addition, many City students attend other magnet and charter schools throughout the County. There is no shortage of educational choice options available to City students and the City has not produced any evidence whatsoever that there is any need or even demand for additional public school seats in the City.

Finally, the requirement to find "good cause" to deny a charter school application does not apply here since the School Board did not deny the application but rejected it since it violates the ILA. However, even if it did apply, the charter school statute, Section

1002.33, F.S., does not define "good cause." The School Board entered into the 2006 ILA in good faith and in reliance on the City's promise that it would not itself seek a charter school that would compete with District-operated schools that the School Board built at very significant cost. That alone is good cause for the School Board to reject the City's application and for the SBE to dismiss the City's appeal

WHEREFORE, the School Board respectfully requests that the City's appeal be (1) dismissed for lack of jurisdiction (a) because it is untimely, and/or (b) because the SBE has no authority to override the ILA or to adjudicate the rights of the parties under the ILA, and/or (2) denied because the District had good cause to reject the application based on the ILA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of this Response and Motion to Dismiss and Appendix of Exhibits was sent via overnight federal express to Regine M. Monestime, Esq., City

Attorney, City of North Miami, 776 NE 125th St., North Miami, FL 33161 on February 27, 2013.

By: _____
Melinda L. McNichols, Esq.

1002.33 Charter schools.—

(1) AUTHORIZATION.—Charter schools shall be part of the state's program of public education. All charter schools in Florida are public schools. A charter school may be formed by creating a new school or converting an existing public school to charter status. A charter school may operate a virtual charter school pursuant to s. 1002.45(1)(d) to provide full-time online instruction to eligible students, pursuant to s. 1002.455, in kindergarten through grade 12. A charter school must amend its charter or submit a new application pursuant to subsection (6) to become a virtual charter school. A virtual charter school is subject to the requirements of this section; however, a virtual charter school is exempt from subsections (18) and (19), subparagraphs (20)(a)2., 4., 5., and 7., paragraph (20)(c), and s. 1003.03. A public school may not use the term charter in its name unless it has been approved under this section.

(2) GUIDING PRINCIPLES; PURPOSE.—

(a) Charter schools in Florida shall be guided by the following principles:

1. Meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state's public school system.

2. Promote enhanced academic success and financial efficiency by aligning responsibility with accountability.

3. Provide parents with sufficient information on whether their child is reading at grade level and whether the child gains at least a year's worth of learning for every year spent in the charter school.

(b) Charter schools shall fulfill the following purposes:

1. Improve student learning and academic achievement.

2. Increase learning opportunities for all students, with special emphasis on low-performing students and reading.

3. Encourage the use of innovative learning methods.

4. Require the measurement of learning outcomes.

(c) Charter schools may fulfill the following purposes:

1. Create innovative measurement tools.

2. Provide rigorous competition within the public school district to stimulate continual improvement in all public schools.

3. Expand the capacity of the public school system.

4. Mitigate the educational impact created by the development of new residential dwelling units.

5. Create new professional opportunities for teachers, including ownership of the learning program at the school site.

(3) APPLICATION FOR CHARTER STATUS.—

(a) An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under the laws of this state.

(b) An application for a conversion charter school shall be made by the district school board, the principal, teachers, parents, and/or the school advisory council at an existing public school that has been in operation for at least 2 years prior to the application to convert. A public school-within-a-school that is designated as a school by the district school board may also submit an application to convert to charter status. An application submitted proposing to convert an existing public school to a charter school shall demonstrate the support of at least 50 percent of the teachers employed at the school and 50 percent of the parents voting whose children are enrolled at the school, provided that a majority of the parents eligible to vote participate in the ballot process, according to rules adopted by the State Board of Education. A district school board denying an application for a conversion charter school shall provide notice of denial to the applicants in writing within 10 days after the meeting at which the district school board denied the application. The notice must articulate in writing the specific reasons for denial and must provide documentation supporting those reasons. A private school, parochial school, or home education program shall not be eligible for charter school status.

(4) UNLAWFUL REPRISAL.—

(a) No district school board, or district school board employee who has control over personnel actions, shall take unlawful reprisal against another district school board employee because that employee is either directly or indirectly involved with an application to establish a charter school. As used in this subsection, the term "unlawful reprisal" means an action taken by a district school board or a school system employee against an employee who is directly or indirectly involved in a lawful application to establish a charter school, which occurs as a direct result of that involvement, and which results in one or more of the following: disciplinary or corrective action; adverse transfer or

reassignment, whether temporary or permanent; suspension, demotion, or dismissal; an unfavorable performance evaluation; a reduction in pay, benefits, or rewards; elimination of the employee's position absent of a reduction in workforce as a result of lack of moneys or work; or other adverse significant changes in duties or responsibilities that are inconsistent with the employee's salary or employment classification. The following procedures shall apply to an alleged unlawful reprisal that occurs as a consequence of an employee's direct or indirect involvement with an application to establish a charter school:

1. Within 60 days after the date upon which a reprisal prohibited by this subsection is alleged to have occurred, an employee may file a complaint with the Department of Education.

2. Within 3 working days after receiving a complaint under this section, the Department of Education shall acknowledge receipt of the complaint and provide copies of the complaint and any other relevant preliminary information available to each of the other parties named in the complaint, which parties shall each acknowledge receipt of such copies to the complainant.

3. If the Department of Education determines that the complaint demonstrates reasonable cause to suspect that an unlawful reprisal has occurred, the Department of Education shall conduct an investigation to produce a fact-finding report.

4. Within 90 days after receiving the complaint, the Department of Education shall provide the district school superintendent of the complainant's district and the complainant with a fact-finding report that may include recommendations to the parties or a proposed resolution of the complaint. The fact-finding report shall be presumed admissible in any subsequent or related administrative or judicial review.

5. If the Department of Education determines that reasonable grounds exist to believe that an unlawful reprisal has occurred, is occurring, or is to be taken, and is unable to conciliate a complaint within 60 days after receipt of the fact-finding report, the Department of Education shall terminate the investigation. Upon termination of any investigation, the Department of Education shall notify the complainant and the district school superintendent of the termination of the investigation, providing a summary of relevant facts found during the investigation and the reasons for terminating the investigation. A written statement under this paragraph is presumed admissible as evidence in any judicial or administrative proceeding.

6. The Department of Education shall either contract with the Division of Administrative Hearings under s. 120.65, or otherwise provide for a complaint for which the Department of Education determines reasonable grounds exist to believe that an unlawful reprisal has occurred, is occurring, or is to be taken, and is unable to conciliate, to be heard by a panel of impartial persons. Upon hearing the complaint, the panel shall make findings of fact and conclusions of law for a final decision by the Department of Education.

It shall be an affirmative defense to any action brought pursuant to this section that the adverse action was predicated upon grounds other than, and would have been taken absent, the employee's exercise of rights protected by this section.

(b) In any action brought under this section for which it is determined reasonable grounds exist to believe that an unlawful reprisal has occurred, is occurring, or is to be taken, the relief shall include the following:

1. Reinstatement of the employee to the same position held before the unlawful reprisal was commenced, or to an equivalent position, or payment of reasonable front pay as alternative relief.

2. Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.

3. Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the unlawful reprisal.

4. Payment of reasonable costs, including attorney's fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.

5. Issuance of an injunction, if appropriate, by a court of competent jurisdiction.

6. Temporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome of the complaint, if it is determined that the action was not made in bad faith or for a wrongful purpose, and did not occur after a district school board's initiation of a personnel action against the employee that includes documentation of the employee's violation of a disciplinary standard or performance deficiency.

(5) SPONSOR; DUTIES.—

(a) Sponsoring entities.—

1. A district school board may sponsor a charter school in the county over which the district school board has jurisdiction.

2. A state university may grant a charter to a lab school created under s. 1002.32 and shall be considered to be the school's sponsor. Such school shall be considered a charter lab school.

(b) Sponsor duties.—

1.a. The sponsor shall monitor and review the charter school in its progress toward the goals established in the charter.

b. The sponsor shall monitor the revenues and expenditures of the charter school and perform the duties provided in s. 1002.345.

c. The sponsor may approve a charter for a charter school before the applicant has identified space, equipment, or personnel, if the applicant indicates approval is necessary for it to raise working funds.

d. The sponsor shall not apply its policies to a charter school unless mutually agreed to by both the sponsor and the charter school. If the sponsor subsequently amends any agreed-upon sponsor policy, the version of the policy in effect at the time of the execution of the charter, or any subsequent modification thereof, shall remain in effect and the sponsor may not hold the charter school responsible for any provision of a newly revised policy until the revised policy is mutually agreed upon.

e. The sponsor shall ensure that the charter is innovative and consistent with the state education goals established by s. 1000.03(5).

f. The sponsor shall ensure that the charter school participates in the state's education accountability system. If a charter school falls short of performance measures included in the approved charter, the sponsor shall report such shortcomings to the Department of Education.

g. The sponsor shall not be liable for civil damages under state law for personal injury, property damage, or death resulting from an act or omission of an officer, employee, agent, or governing body of the charter school.

h. The sponsor shall not be liable for civil damages under state law for any employment actions taken by an officer, employee, agent, or governing body of the charter school.

i. The sponsor's duties to monitor the charter school shall not constitute the basis for a private cause of action.

j. The sponsor shall not impose additional reporting requirements on a charter school without providing reasonable and specific justification in writing to the charter school.

k. The sponsor shall submit an annual report to the Department of Education in a web-based format to be determined by the department.

(I) The report shall include the following information:

(A) The number of draft applications received on or before May 1 and each applicant's contact information.

(B) The number of final applications received on or before August 1 and each applicant's contact information.

(C) The date each application was approved, denied, or withdrawn.

(D) The date each final contract was executed.

(II) Beginning August 31, 2013, and each year thereafter, the sponsor shall submit to the department the information for the applications submitted the previous year.

(III) The department shall compile an annual report, by district, and post the report on its website by November 1 of each year.

2. Immunity for the sponsor of a charter school under subparagraph 1. applies only with respect to acts or omissions not under the sponsor's direct authority as described in this section.

3. This paragraph does not waive a district school board's sovereign immunity.

4. A Florida College System institution may work with the school district or school districts in its designated service area to develop charter schools that offer secondary education. These charter schools must include an option for students to receive an associate degree upon high school graduation. If a Florida College System institution operates an approved teacher preparation program under s. 1004.04 or s. 1004.85, the institution may operate no more than one charter school that serves students in kindergarten through grade 12. In kindergarten through grade 8, the charter school shall implement innovative blended learning instructional models in which, for a given course, a student learns in part through online delivery of content and instruction with some element of student control

over time, place, path, or pace and in part at a supervised brick-and-mortar location away from home. A student in a blended learning course must be a full-time student of the charter school and receive the online instruction in a classroom setting at the charter school. District school boards shall cooperate with and assist the Florida College System institution on the charter application. Florida College System institution applications for charter schools are not subject to the time deadlines outlined in subsection (6) and may be approved by the district school board at any time during the year. Florida College System institutions may not report FTE for any students who receive FTE funding through the Florida Education Finance Program.

5. A school district may enter into nonexclusive interlocal agreements with federal and state agencies, counties, municipalities, and other governmental entities that operate within the geographical borders of the school district to act on behalf of such governmental entities in the inspection, issuance, and other necessary activities for all necessary permits, licenses, and other permissions that a charter school needs in order for development, construction, or operation. A charter school may use, but may not be required to use, a school district for these services. The interlocal agreement must include, but need not be limited to, the identification of fees that charter schools will be charged for such services. The fees must consist of the governmental entity's fees plus a fee for the school district to recover no more than actual costs for providing such services. These services and fees are not included within the services to be provided pursuant to subsection (20).

(6) APPLICATION PROCESS AND REVIEW.—Charter school applications are subject to the following requirements:

(a) A person or entity wishing to open a charter school shall prepare and submit an application on a model application form prepared by the Department of Education which:

1. Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.

2. Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.

3. Contains goals and objectives for improving student learning and measuring that improvement. These goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction.

4. Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level. A sponsor shall deny a charter if the school does not propose a reading curriculum that is consistent with effective teaching strategies that are grounded in scientifically based reading research.

5. Contains an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends.

6. Documents that the applicant has participated in the training required in subparagraph (f)2. A sponsor may require an applicant to provide additional information as an addendum to the charter school application described in this paragraph.

7. For the establishment of a virtual charter school, documents that the applicant has contracted with a provider of virtual instruction services pursuant to s. 1002.45(1)(d).

(b) A sponsor shall receive and review all applications for a charter school using an evaluation instrument developed by the Department of Education. A sponsor shall receive and consider charter school applications received on or before August 1 of each calendar year for charter schools to be opened at the beginning of the school district's next school year, or to be opened at a time agreed to by the applicant and the sponsor. A sponsor may not refuse to receive a charter school application submitted before August 1 and may receive an application submitted later than August 1 if it chooses. In order to facilitate greater collaboration in the application process, an applicant may submit a draft charter school application on or before May 1 with an application fee of $500. If a draft application is timely submitted, the sponsor shall review and provide feedback as to material deficiencies in the application by July 1. The applicant shall then have until August 1 to resubmit a revised and final application. The sponsor may approve the draft application. A sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of a final application upon the promise of future payment of any kind. Before

approving or denying any final application, the sponsor shall allow the applicant, upon receipt of written notification, at least 7 calendar days to make technical or nonsubstantive corrections and clarifications, including, but not limited to, corrections of grammatical, typographical, and like errors or missing signatures, if such errors are identified by the sponsor as cause to deny the final application.

1. In order to facilitate an accurate budget projection process, a sponsor shall be held harmless for FTE students who are not included in the FTE projection due to approval of charter school applications after the FTE projection deadline. In a further effort to facilitate an accurate budget projection, within 15 calendar days after receipt of a charter school application, a sponsor shall report to the Department of Education the name of the applicant entity, the proposed charter school location, and its projected FTE.

2. In order to ensure fiscal responsibility, an application for a charter school shall include a full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

3.a. A sponsor shall by a majority vote approve or deny an application no later than 60 calendar days after the application is received, unless the sponsor and the applicant mutually agree in writing to temporarily postpone the vote to a specific date, at which time the sponsor shall by a majority vote approve or deny the application. If the sponsor fails to act on the application, an applicant may appeal to the State Board of Education as provided in paragraph (c). If an application is denied, the sponsor shall, within 10 calendar days after such denial, articulate in writing the specific reasons, based upon good cause, supporting its denial of the charter application and shall provide the letter of denial and supporting documentation to the applicant and to the Department of Education.

b. An application submitted by a high-performing charter school identified pursuant to s. 1002.331 may be denied by the sponsor only if the sponsor demonstrates by clear and convincing evidence that:

(I) The application does not materially comply with the requirements in paragraph (a);

(II) The charter school proposed in the application does not materially comply with the requirements in paragraphs (9)(a)-(f);

(III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;

(IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or

(V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.

Material noncompliance is a failure to follow requirements or a violation of prohibitions applicable to charter school applications, which failure is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance. An applicant is considered to be replicating a high-performing charter school if the proposed school is substantially similar to at least one of the applicant's high-performing charter schools and the organization or individuals involved in the establishment and operation of the proposed school are significantly involved in the operation of replicated schools.

c. If the sponsor denies an application submitted by a high-performing charter school, the sponsor must, within 10 calendar days after such denial, state in writing the specific reasons, based upon the criteria in sub-subparagraph b., supporting its denial of the application and must provide the letter of denial and supporting documentation to the applicant and to the Department of Education. The applicant may appeal the sponsor's denial of the application directly to the State Board of Education pursuant to sub-subparagraph (c)3.b.

4. For budget projection purposes, the sponsor shall report to the Department of Education the approval or denial of a charter application within 10 calendar days after such approval or denial. In the event of approval, the report to the Department of Education shall include the final projected FTE for the approved charter school.

5. Upon approval of a charter application, the initial startup shall commence with the beginning of the public school calendar for the district in which the charter is granted unless the sponsor allows a waiver of this subparagraph for good cause.

(c)1. An applicant may appeal any denial of that applicant's application or failure to act on an application to the State Board of Education no later than 30 calendar days after receipt of the sponsor's

decision or failure to act and shall notify the sponsor of its appeal. Any response of the sponsor shall be submitted to the State Board of Education within 30 calendar days after notification of the appeal. Upon receipt of notification from the State Board of Education that a charter school applicant is filing an appeal, the Commissioner of Education shall convene a meeting of the Charter School Appeal Commission to study and make recommendations to the State Board of Education regarding its pending decision about the appeal. The commission shall forward its recommendation to the state board at least 7 calendar days before the date on which the appeal is to be heard. An appeal regarding the denial of an application submitted by a high-performing charter school pursuant to s. 1002.331 shall be conducted by the State Board of Education in accordance with this paragraph, except that the commission shall not convene to make recommendations regarding the appeal. However, the Commissioner of Education shall review the appeal and make a recommendation to the state board.

2. The Charter School Appeal Commission or, in the case of an appeal regarding an application submitted by a high-performing charter school, the State Board of Education may reject an appeal submission for failure to comply with procedural rules governing the appeals process. The rejection shall describe the submission errors. The appellant shall have 15 calendar days after notice of rejection in which to resubmit an appeal that meets the requirements set forth in State Board of Education rule. An appeal submitted subsequent to such rejection is considered timely if the original appeal was filed within 30 calendar days after receipt of notice of the specific reasons for the sponsor's denial of the charter application.

3.a. The State Board of Education shall by majority vote accept or reject the decision of the sponsor no later than 90 calendar days after an appeal is filed in accordance with State Board of Education rule. The State Board of Education shall remand the application to the sponsor with its written decision that the sponsor approve or deny the application. The sponsor shall implement the decision of the State Board of Education. The decision of the State Board of Education is not subject to the provisions of the Administrative Procedure Act, chapter 120.

b. If an appeal concerns an application submitted by a high-performing charter school identified pursuant to s. 1002.331, the State Board of Education shall determine whether the sponsor has shown, by clear and convincing evidence, that:

(I) The application does not materially comply with the requirements in paragraph (a);

(II) The charter school proposed in the application does not materially comply with the requirements in paragraphs (9)(a)-(f);

(III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;

(IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or

(V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.

The State Board of Education shall approve or reject the sponsor's denial of an application no later than 90 calendar days after an appeal is filed in accordance with State Board of Education rule. The State Board of Education shall remand the application to the sponsor with its written decision that the sponsor approve or deny the application. The sponsor shall implement the decision of the State Board of Education. The decision of the State Board of Education is not subject to the Administrative Procedure Act, chapter 120.

(d) The sponsor shall act upon the decision of the State Board of Education within 30 calendar days after it is received. The State Board of Education's decision is a final action subject to judicial review in the district court of appeal.

(e)1. A Charter School Appeal Commission is established to assist the commissioner and the State Board of Education with a fair and impartial review of appeals by applicants whose charter applications have been denied, whose charter contracts have not been renewed, or whose charter contracts have been terminated by their sponsors.

2. The Charter School Appeal Commission may receive copies of the appeal documents forwarded to the State Board of Education, review the documents, gather other applicable information regarding the appeal, and make a written recommendation to the commissioner. The recommendation must state whether the appeal should be upheld or denied and include the reasons for the recommendation being offered. The commissioner shall forward the recommendation to the State Board of Education no later

than 7 calendar days prior to the date on which the appeal is to be heard. The state board must consider the commission's recommendation in making its decision, but is not bound by the recommendation. The decision of the Charter School Appeal Commission is not subject to the provisions of the Administrative Procedure Act, chapter 120.

3. The commissioner shall appoint a number of members to the Charter School Appeal Commission sufficient to ensure that no potential conflict of interest exists for any commission appeal decision. Members shall serve without compensation but may be reimbursed for travel and per diem expenses in conjunction with their service. Of the members hearing the appeal, one-half must represent currently operating charter schools and one-half must represent sponsors. The commissioner or a named designee shall chair the Charter School Appeal Commission.

4. The chair shall convene meetings of the commission and shall ensure that the written recommendations are completed and forwarded in a timely manner. In cases where the commission cannot reach a decision, the chair shall make the written recommendation with justification, noting that the decision was rendered by the chair.

5. Commission members shall thoroughly review the materials presented to them from the appellant and the sponsor. The commission may request information to clarify the documentation presented to it. In the course of its review, the commission may facilitate the postponement of an appeal in those cases where additional time and communication may negate the need for a formal appeal and both parties agree, in writing, to postpone the appeal to the State Board of Education. A new date certain for the appeal shall then be set based upon the rules and procedures of the State Board of Education. Commission members shall provide a written recommendation to the state board as to whether the appeal should be upheld or denied. A fact-based justification for the recommendation must be included. The chair must ensure that the written recommendation is submitted to the State Board of Education members no later than 7 calendar days prior to the date on which the appeal is to be heard. Both parties in the case shall also be provided a copy of the recommendation.

(f)1. The Department of Education shall provide or arrange for training and technical assistance to charter schools in developing and adjusting business plans and accounting for costs and income. Training and technical assistance shall also address, at a minimum, state and federal grant and student performance accountability reporting requirements and provide assistance in identifying and applying for the types and amounts of state and federal financial assistance the charter school may be eligible to receive. The department may provide other technical assistance to an applicant upon written request.

2. A charter school applicant must participate in the training provided by the Department of Education after approval of an application but at least 30 calendar days before the first day of classes at the charter school. However, a sponsor may require the charter school applicant to attend training provided by the sponsor in lieu of the department's training if the sponsor's training standards meet or exceed the standards developed by the department. In such case, the sponsor may not require the charter school applicant to attend the training within 30 calendar days before the first day of classes at the charter school. The training must include instruction in accurate financial planning and good business practices. If the applicant is a management company or a nonprofit organization, the charter school principal and the chief financial officer or his or her equivalent must also participate in the training. A sponsor may not require a high-performing charter school or high-performing charter school system applicant to participate in the training described in this subparagraph more than once.

(g) In considering charter applications for a lab school, a state university shall consult with the district school board of the county in which the lab school is located. The decision of a state university may be appealed pursuant to the procedure established in this subsection.

(h) The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contractual agreement, called a charter. The sponsor may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals. The sponsor has 30 days after approval of the application to provide an initial proposed charter contract to the charter school. The applicant and the sponsor have 40 days thereafter to negotiate and notice the charter contract for final approval by the sponsor unless both parties agree to an extension. The proposed charter contract shall be provided to the charter school at least 7 calendar days prior to the date of the meeting at which the charter is scheduled to be voted upon by the sponsor. The Department of Education shall provide mediation services for any dispute regarding this section subsequent to the approval of a charter application and for any dispute relating to the approved charter, except disputes regarding charter school application denials. If the Commissioner of Education determines that the dispute cannot be settled through mediation, the dispute may be

appealed to an administrative law judge appointed by the Division of Administrative Hearings. The administrative law judge has final order authority to rule on issues of equitable treatment of the charter school as a public school, whether proposed provisions of the charter violate the intended flexibility granted charter schools by statute, or on any other matter regarding this section except a charter school application denial, a charter termination, or a charter nonrenewal and shall award the prevailing party reasonable attorney's fees and costs incurred to be paid by the losing party. The costs of the administrative hearing shall be paid by the party whom the administrative law judge rules against.

(7) CHARTER.—The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing board of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

1. The school's mission, the students to be served, and the ages and grades to be included.

2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards.

a. The charter shall ensure that reading is a primary focus of the curriculum and that resources are provided to identify and provide specialized instruction for students who are reading below grade level. The curriculum and instructional strategies for reading must be consistent with the Next Generation Sunshine State Standards and grounded in scientifically based reading research.

b. In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses consisting of both traditional classroom and online instructional techniques. Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Students in a blended learning course must be full-time students of the charter school and receive the online instruction in a classroom setting at the charter school. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a minimum, such instructional personnel must hold an active state or school district adjunct certification under s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description of:

a. How the baseline student academic achievement levels and prior rates of academic progress will be established.

b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.

c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

The district school board is required to provide academic student performance data to charter schools for each of their students coming from the district school system, as well as rates of academic progress of comparable student populations in the district school system.

4. The methods used to identify the educational strengths and needs of students and how well educational goals and performance standards are met by students attending the charter school. The methods shall provide a means for the charter school to ensure accountability to its constituents by analyzing student performance data and by evaluating the effectiveness and efficiency of its major educational programs. Students in charter schools shall, at a minimum, participate in the statewide assessment program created under s. 1008.22.

5. In secondary charter schools, a method for determining that a student has satisfied the requirements for graduation in s. 1003.428 or s. 1003.4282.

6. A method for resolving conflicts between the governing board of the charter school and the sponsor.

7. The admissions procedures and dismissal procedures, including the school's code of student conduct.

8. The ways by which the school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and shall be compared with information provided in the annual report of the charter school.

11. A description of procedures that identify various risks and provide for a comprehensive approach to reduce the impact of losses; plans to ensure the safety and security of students and staff; plans to identify, minimize, and protect others from violent or disruptive student behavior; and the manner in which the school will be insured, including whether or not the school will be required to have liability insurance, and, if so, the terms and conditions thereof and the amounts of coverage.

12. The term of the charter which shall provide for cancellation of the charter if insufficient progress has been made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 4 or 5 years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the district school board. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 15-year charter, subject to approval by the district school board. Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only according to the provisions set forth in subsection (8).

13. The facilities to be used and their location. The sponsor may not require a charter school to have a certificate of occupancy or a temporary certificate of occupancy for such a facility earlier than 15 calendar days before the first day of school.

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

15. The governance structure of the school, including the status of the charter school as a public or private employer as required in paragraph (12)(i).

16. A timetable for implementing the charter which addresses the implementation of each element thereof and the date by which the charter shall be awarded in order to meet this timetable.

17. In the case of an existing public school that is being converted to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach in the charter school after conversion in accordance with the existing collective bargaining agreement or district school board rule in the absence of a collective bargaining agreement. However, alternative arrangements shall not be required for current teachers who choose not to teach in a charter lab school, except as authorized by the employment policies of the state university which grants the charter to the lab school.

18. Full disclosure of the identity of all relatives employed by the charter school who are related to the charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority. For the purpose of this subparagraph, the term "relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

19. Implementation of the activities authorized under s. 1002.331 by the charter school when it satisfies the eligibility requirements for a high-performing charter school. A high-performing charter

school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable.

(b)1. A charter may be renewed provided that a program review demonstrates that the criteria in paragraph (a) have been successfully accomplished and that none of the grounds for nonrenewal established by paragraph (8)(a) has been documented. In order to facilitate long-term financing for charter school construction, charter schools operating for a minimum of 3 years and demonstrating exemplary academic programming and fiscal management are eligible for a 15-year charter renewal. Such long-term charter is subject to annual review and may be terminated during the term of the charter.

2. The 15-year charter renewal that may be granted pursuant to subparagraph 1. shall be granted to a charter school that has received a school grade of "A" or "B" pursuant to s. 1008.34 in 3 of the past 4 years and is not in a state of financial emergency or deficit position as defined by this section. Such long-term charter is subject to annual review and may be terminated during the term of the charter pursuant to subsection (8).

(c) A charter may be modified during its initial term or any renewal term upon the recommendation of the sponsor or the charter school's governing board and the approval of both parties to the agreement. Modification may include, but is not limited to, consolidation of multiple charters into a single charter if the charters are operated under the same governing board and physically located on the same campus, regardless of the renewal cycle.

(d)1. Each charter school's governing board must appoint a representative to facilitate parental involvement, provide access to information, assist parents and others with questions and concerns, and resolve disputes. The representative must reside in the school district in which the charter school is located and may be a governing board member, charter school employee, or individual contracted to represent the governing board. If the governing board oversees multiple charter schools in the same school district, the governing board must appoint a separate individual representative for each charter school in the district. The representative's contact information must be provided annually in writing to parents and posted prominently on the charter school's website if a website is maintained by the school. The sponsor may not require that governing board members reside in the school district in which the charter school is located if the charter school complies with this paragraph.

2. Each charter school's governing board must hold at least two public meetings per school year in the school district. The meetings must be noticed, open, and accessible to the public, and attendees must be provided an opportunity to receive information and provide input regarding the charter school's operations. The appointed representative and charter school principal or director, or his or her equivalent, must be physically present at each meeting.

(8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—

(a) The sponsor shall make student academic achievement for all students the most important factor when determining whether to renew or terminate the charter. The sponsor may also choose not to renew or may terminate the charter for any of the following grounds:

1. Failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance stated in the charter.

2. Failure to meet generally accepted standards of fiscal management.

3. Violation of law.

4. Other good cause shown.

(b) At least 90 days prior to renewing or terminating a charter, the sponsor shall notify the governing board of the school of the proposed action in writing. The notice shall state in reasonable detail the grounds for the proposed action and stipulate that the school's governing board may, within 14 calendar days after receiving the notice, request a hearing. The hearing shall be conducted at the sponsor's election in accordance with one of the following procedures:

1. A direct hearing conducted by the sponsor within 60 days after receipt of the request for a hearing. The hearing shall be conducted in accordance with ss. 120.569 and 120.57. The sponsor shall decide upon nonrenewal or termination by a majority vote. The sponsor's decision shall be a final order; or

2. A hearing conducted by an administrative law judge assigned by the Division of Administrative Hearings. The hearing shall be conducted within 60 days after receipt of the request for a hearing and in accordance with chapter 120. The administrative law judge's recommended order shall be submitted

to the sponsor. A majority vote by the sponsor shall be required to adopt or modify the administrative law judge's recommended order. The sponsor shall issue a final order.

(c) The final order shall state the specific reasons for the sponsor's decision. The sponsor shall provide its final order to the charter school's governing board and the Department of Education no later than 10 calendar days after its issuance. The charter school's governing board may, within 30 calendar days after receiving the sponsor's final order, appeal the decision pursuant to s. 120.68.

(d) A charter may be terminated immediately if the sponsor sets forth in writing the particular facts and circumstances indicating that an immediate and serious danger to the health, safety, or welfare of the charter school's students exists. The sponsor's determination is subject to the procedures set forth in paragraphs (b) and (c), except that the hearing may take place after the charter has been terminated. The sponsor shall notify in writing the charter school's governing board, the charter school principal, and the department if a charter is terminated immediately. The sponsor shall clearly identify the specific issues that resulted in the immediate termination and provide evidence of prior notification of issues resulting in the immediate termination when appropriate. Upon receiving written notice from the sponsor, the charter school's governing board has 10 calendar days to request a hearing. A requested hearing must be expedited and the final order must be issued within 60 days after the date of request. The sponsor shall assume operation of the charter school throughout the pendency of the hearing under paragraphs (b) and (c) unless the continued operation of the charter school would materially threaten the health, safety, or welfare of the students. Failure by the sponsor to assume and continue operation of the charter school shall result in the awarding of reasonable costs and attorney's fees to the charter school if the charter school prevails on appeal.

(e) When a charter is not renewed or is terminated, the school shall be dissolved under the provisions of law under which the school was organized, and any unencumbered public funds, except for capital outlay funds and federal charter school program grant funds, from the charter school shall revert to the sponsor. Capital outlay funds provided pursuant to s. 1013.62 and federal charter school program grant funds that are unencumbered shall revert to the department to be redistributed among eligible charter schools. In the event a charter school is dissolved or is otherwise terminated, all district school board property and improvements, furnishings, and equipment purchased with public funds shall automatically revert to full ownership by the district school board, subject to complete satisfaction of any lawful liens or encumbrances. Any unencumbered public funds from the charter school, district school board property and improvements, furnishings, and equipment purchased with public funds, or financial or other records pertaining to the charter school, in the possession of any person, entity, or holding company, other than the charter school, shall be held in trust upon the district school board's request, until any appeal status is resolved.

(f) If a charter is not renewed or is terminated, the charter school is responsible for all debts of the charter school. The district may not assume the debt from any contract made between the governing body of the school and a third party, except for a debt that is previously detailed and agreed upon in writing by both the district and the governing body of the school and that may not reasonably be assumed to have been satisfied by the district.

(g) If a charter is not renewed or is terminated, a student who attended the school may apply to, and shall be enrolled in, another public school. Normal application deadlines shall be disregarded under such circumstances.

(9) CHARTER SCHOOL REQUIREMENTS.—

(a) A charter school shall be nonsectarian in its programs, admission policies, employment practices, and operations.

(b) A charter school shall admit students as provided in subsection (10).

(c) A charter school shall be accountable to its sponsor for performance as provided in subsection (7).

(d) A charter school shall not charge tuition or registration fees, except those fees normally charged by other public schools. However, a charter lab school may charge a student activity and service fee as authorized by s. 1002.32(5).

(e) A charter school shall meet all applicable state and local health, safety, and civil rights requirements.

(f) A charter school shall not violate the antidiscrimination provisions of s. 1000.05.

(g)1. In order to provide financial information that is comparable to that reported for other public schools, charter schools are to maintain all financial records that constitute their accounting system:

a. In accordance with the accounts and codes prescribed in the most recent issuance of the publication titled “Financial and Program Cost Accounting and Reporting for Florida Schools”; or

b. At the discretion of the charter school’s governing board, a charter school may elect to follow generally accepted accounting standards for not-for-profit organizations, but must reformat this information for reporting according to this paragraph.

2. Charter schools shall provide annual financial report and program cost report information in the state-required formats for inclusion in district reporting in compliance with s. 1011.60(1). Charter schools that are operated by a municipality or are a component unit of a parent nonprofit organization may use the accounting system of the municipality or the parent but must reformat this information for reporting according to this paragraph.

3. A charter school shall provide the sponsor with a concise, uniform, monthly financial statement summary sheet that contains a balance sheet and a statement of revenue, expenditures, and changes in fund balance. The balance sheet and the statement of revenue, expenditures, and changes in fund balance shall be in the governmental funds format prescribed by the Governmental Accounting Standards Board. A high-performing charter school pursuant to s. 1002.331 may provide a quarterly financial statement in the same format and requirements as the uniform monthly financial statement summary sheet.

4. A charter school shall maintain and provide financial information as required in this paragraph. The financial statement required in subparagraph 3. must be in a form prescribed by the Department of Education.

(h) The governing board of the charter school shall annually adopt and maintain an operating budget.

(i) The governing body of the charter school shall exercise continuing oversight over charter school operations.

(j) The governing body of the charter school shall be responsible for:

1. Ensuring that the charter school has retained the services of a certified public accountant or auditor for the annual financial audit, pursuant to s. 1002.345(2), who shall submit the report to the governing body.

2. Reviewing and approving the audit report, including audit findings and recommendations for the financial recovery plan.

3.a. Performing the duties in s. 1002.345, including monitoring a corrective action plan.

b. Monitoring a financial recovery plan in order to ensure compliance.

4. Participating in governance training approved by the department which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.

(k) The governing body of the charter school shall report its progress annually to its sponsor, which shall forward the report to the Commissioner of Education at the same time as other annual school accountability reports. The Department of Education shall develop a uniform, online annual accountability report to be completed by charter schools. This report shall be easy to utilize and contain demographic information, student performance data, and financial accountability information. A charter school shall not be required to provide information and data that is duplicative and already in the possession of the department. The Department of Education shall include in its compilation a notation if a school failed to file its report by the deadline established by the department. The report shall include at least the following components:

1. Student achievement performance data, including the information required for the annual school report and the education accountability system governed by ss. 1008.31 and 1008.345. Charter schools are subject to the same accountability requirements as other public schools, including reports of student achievement information that links baseline student data to the school’s performance projections identified in the charter. The charter school shall identify reasons for any difference between projected and actual student performance.

2. Financial status of the charter school which must include revenues and expenditures at a level of detail that allows for analysis of the charter school’s ability to meet financial obligations and timely repayment of debt.

3. Documentation of the facilities in current use and any planned facilities for use by the charter school for instruction of students, administrative functions, or investment purposes.

4. Descriptive information about the charter school’s personnel, including salary and benefit levels of charter school employees, the proportion of instructional personnel who hold professional or temporary certificates, and the proportion of instructional personnel teaching in-field or out-of-field.

(l) A charter school shall not levy taxes or issue bonds secured by tax revenues.

(m) A charter school shall provide instruction for at least the number of days required by law for other public schools and may provide instruction for additional days.

(n)1. The director and a representative of the governing board of a charter school that has earned a grade of "D" or "F" pursuant to s. 1008.34(2) shall appear before the sponsor to present information concerning each contract component having noted deficiencies. The director and a representative of the governing board shall submit to the sponsor for approval a school improvement plan to raise student achievement. Upon approval by the sponsor, the charter school shall begin implementation of the school improvement plan. The department shall offer technical assistance and training to the charter school and its governing board and establish guidelines for developing, submitting, and approving such plans.

2.a. If a charter school earns three consecutive grades of "D," two consecutive grades of "D" followed by a grade of "F," or two nonconsecutive grades of "F" within a 3-year period, the charter school governing board shall choose one of the following corrective actions:

(I) Contract for educational services to be provided directly to students, instructional personnel, and school administrators, as prescribed in state board rule;

(II) Contract with an outside entity that has a demonstrated record of effectiveness to operate the school;

(III) Reorganize the school under a new director or principal who is authorized to hire new staff; or

(IV) Voluntarily close the charter school.

b. The charter school must implement the corrective action in the school year following receipt of a third consecutive grade of "D," a grade of "F" following two consecutive grades of "D," or a second nonconsecutive grade of "F" within a 3-year period.

c. The sponsor may annually waive a corrective action if it determines that the charter school is likely to improve a letter grade if additional time is provided to implement the intervention and support strategies prescribed by the school improvement plan. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" is subject to subparagraph 4.

d. A charter school is no longer required to implement a corrective action if it improves by at least one letter grade. However, the charter school must continue to implement strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 5.

e. A charter school implementing a corrective action that does not improve by at least one letter grade after 2 full school years of implementing the corrective action must select a different corrective action. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action, unless the sponsor determines that the charter school is likely to improve a letter grade if additional time is provided to implement the existing corrective action. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" while implementing a corrective action is subject to subparagraph 4.

3. A charter school with a grade of "D" or "F" that improves by at least one letter grade must continue to implement the strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 5.

4. The sponsor shall terminate a charter if the charter school earns two consecutive grades of "F" unless:

a. The charter school is established to turn around the performance of a district public school pursuant to s. 1008.33(4)(b)3. Such charter schools shall be governed by s. 1008.33;

b. The charter school serves a student population the majority of which resides in a school zone served by a district public school that earned a grade of "F" in the year before the charter school opened and the charter school earns at least a grade of "D" in its third year of operation. The exception provided under this sub-subparagraph does not apply to a charter school in its fourth year of operation and thereafter; or

c. The state board grants the charter school a waiver of termination. The charter school must request the waiver within 15 days after the department's official release of school grades. The state board may waive termination if the charter school demonstrates that the learning gains of its students on statewide assessments are comparable to or better than the learning gains of similarly situated students enrolled in nearby district public schools. The waiver is valid for 1 year and may only be

granted once. Charter schools that have been in operation for more than 5 years are not eligible for a waiver under this sub-subparagraph.

5. The director and a representative of the governing board of a graded charter school that has implemented a school improvement plan under this paragraph shall appear before the sponsor at least once a year to present information regarding the progress of intervention and support strategies implemented by the school pursuant to the school improvement plan and corrective actions, if applicable. The sponsor shall communicate at the meeting, and in writing to the director, the services provided to the school to help the school address its deficiencies.

6. Notwithstanding any provision of this paragraph except sub-subparagraphs 4.a.-c., the sponsor may terminate the charter at any time pursuant to subsection (8).

(o)1. Upon initial notification of nonrenewal, closure, or termination of its charter, a charter school may not expend more than $10,000 per expenditure without prior written approval from the sponsor unless such expenditure was included within the annual budget submitted to the sponsor pursuant to the charter contract, is for reasonable attorney fees and costs during the pendency of any appeal, or is for reasonable fees and costs to conduct an independent audit.

2. An independent audit shall be completed within 30 days after notice of nonrenewal, closure, or termination to account for all public funds and assets.

3. A provision in a charter contract that contains an acceleration clause requiring the expenditure of funds based upon closure or upon notification of nonrenewal or termination is void and unenforceable.

4. A charter school may not enter into a contract with an employee that exceeds the term of the school's charter contract with its sponsor.

5. A violation of this paragraph triggers a reversion or clawback power by the sponsor allowing for collection of an amount equal to or less than the accelerated amount that exceeds normal expenditures. The reversion or clawback plus legal fees and costs shall be levied against the person or entity receiving the accelerated amount.

(p) Each charter school shall maintain a website that enables the public to obtain information regarding the school; the school's academic performance; the names of the governing board members; the programs at the school; any management companies, service providers, or education management corporations associated with the school; the school's annual budget and its annual independent fiscal audit; the school's grade pursuant to s. 1008.34; and, on a quarterly basis, the minutes of governing board meetings.

(10) ELIGIBLE STUDENTS.—

(a) A charter school shall be open to any student covered in an interdistrict agreement or residing in the school district in which the charter school is located; however, in the case of a charter lab school, the charter lab school shall be open to any student eligible to attend the lab school as provided in s. 1002.32 or who resides in the school district in which the charter lab school is located. Any eligible student shall be allowed interdistrict transfer to attend a charter school when based on good cause. Good cause shall include, but is not limited to, geographic proximity to a charter school in a neighboring school district.

(b) The charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In such case, all applicants shall have an equal chance of being admitted through a random selection process.

(c) When a public school converts to charter status, enrollment preference shall be given to students who would have otherwise attended that public school. The district school board shall consult and negotiate with the conversion charter school every 3 years to determine whether realignment of the conversion charter school's attendance zone is appropriate in order to ensure that students residing closest to the charter school are provided with an enrollment preference.

(d) A charter school may give enrollment preference to the following student populations:

1. Students who are siblings of a student enrolled in the charter school.

2. Students who are the children of a member of the governing board of the charter school.

3. Students who are the children of an employee of the charter school.

4. Students who are the children of:

a. An employee of the business partner of a charter school-in-the-workplace established under paragraph (15)(b) or a resident of the municipality in which such charter school is located; or

b. A resident of a municipality that operates a charter school-in-a-municipality pursuant to paragraph (15)(c).

5. Students who have successfully completed a voluntary prekindergarten education program under ss. 1002.51-1002.79 provided by the charter school or the charter school's governing board during the previous year.

6. Students who are the children of an active duty member of any branch of the United States Armed Forces.

(e) A charter school may limit the enrollment process only to target the following student populations:

1. Students within specific age groups or grade levels.

2. Students considered at risk of dropping out of school or academic failure. Such students shall include exceptional education students.

3. Students enrolling in a charter school-in-the-workplace or charter school-in-a-municipality established pursuant to subsection (15).

4. Students residing within a reasonable distance of the charter school, as described in paragraph (20)(c). Such students shall be subject to a random lottery and to the racial/ethnic balance provisions described in subparagraph (7)(a)8. or any federal provisions that require a school to achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

5. Students who meet reasonable academic, artistic, or other eligibility standards established by the charter school and included in the charter school application and charter or, in the case of existing charter schools, standards that are consistent with the school's mission and purpose. Such standards shall be in accordance with current state law and practice in public schools and may not discriminate against otherwise qualified individuals.

6. Students articulating from one charter school to another pursuant to an articulation agreement between the charter schools that has been approved by the sponsor.

7. Students living in a development in which a business entity provides the school facility and related property having an appraised value of at least $10 million to be used as a charter school for the development. Students living in the development shall be entitled to 50 percent of the student stations in the charter school. The students who are eligible for enrollment are subject to a random lottery, the racial/ethnic balance provisions, or any federal provisions, as described in subparagraph 4. The remainder of the student stations shall be filled in accordance with subparagraph 4.

(f) Students with disabilities and students served in English for Speakers of Other Languages programs shall have an equal opportunity of being selected for enrollment in a charter school.

(g) A student may withdraw from a charter school at any time and enroll in another public school as determined by district school board rule.

(h) The capacity of the charter school shall be determined annually by the governing board, in conjunction with the sponsor, of the charter school in consideration of the factors identified in this subsection unless the charter school is designated as a high-performing charter school pursuant to s. 1002.331. A sponsor may not require a charter school to waive the provisions of s. 1002.331 or require a student enrollment cap that prohibits a high-performing charter school from increasing enrollment in accordance with s. 1002.331(2) as a condition of approval or renewal of a charter.

(i) The capacity of a high-performing charter school identified pursuant to s. 1002.331 shall be determined annually by the governing board of the charter school. The governing board shall notify the sponsor of any increase in enrollment by March 1 of the school year preceding the increase. A sponsor may not require a charter school to identify the names of students to be enrolled or to enroll those students before the start of the school year as a condition of approval or renewal of a charter.

(11) PARTICIPATION IN INTERSCHOLASTIC EXTRACURRICULAR ACTIVITIES.—A charter school student is eligible to participate in an interscholastic extracurricular activity at the public school to which the student would be otherwise assigned to attend pursuant to s. 1006.15(3)(d).

(12) EMPLOYEES OF CHARTER SCHOOLS.—

(a) A charter school shall select its own employees. A charter school may contract with its sponsor for the services of personnel employed by the sponsor.

(b) Charter school employees shall have the option to bargain collectively. Employees may collectively bargain as a separate unit or as part of the existing district collective bargaining unit as determined by the structure of the charter school.

(c) The employees of a conversion charter school shall remain public employees for all purposes, unless such employees choose not to do so.

(d) The teachers at a charter school may choose to be part of a professional group that subcontracts with the charter school to operate the instructional program under the auspices of a partnership or cooperative that they collectively own. Under this arrangement, the teachers would not be public employees.

(e) Employees of a school district may take leave to accept employment in a charter school upon the approval of the district school board. While employed by the charter school and on leave that is approved by the district school board, the employee may retain seniority accrued in that school district and may continue to be covered by the benefit programs of that school district, if the charter school and the district school board agree to this arrangement and its financing. School districts shall not require resignations of teachers desiring to teach in a charter school. This paragraph shall not prohibit a district school board from approving alternative leave arrangements consistent with chapter 1012.

(f) Teachers employed by or under contract to a charter school shall be certified as required by chapter 1012. A charter school governing board may employ or contract with skilled selected noncertified personnel to provide instructional services or to assist instructional staff members as education paraprofessionals in the same manner as defined in chapter 1012, and as provided by State Board of Education rule for charter school governing boards. A charter school may not knowingly employ an individual to provide instructional services or to serve as an education paraprofessional if the individual's certification or licensure as an educator is suspended or revoked by this or any other state. A charter school may not knowingly employ an individual who has resigned from a school district in lieu of disciplinary action with respect to child welfare or safety, or who has been dismissed for just cause by any school district with respect to child welfare or safety. The qualifications of teachers shall be disclosed to parents.

(g)1. A charter school shall employ or contract with employees who have undergone background screening as provided in s. 1012.32. Members of the governing board of the charter school shall also undergo background screening in a manner similar to that provided in s. 1012.32.

2. A charter school shall disqualify instructional personnel and school administrators, as defined in s. 1012.01, from employment in any position that requires direct contact with students if the personnel or administrators are ineligible for such employment under s. 1012.315.

3. The governing board of a charter school shall adopt policies establishing standards of ethical conduct for instructional personnel and school administrators. The policies must require all instructional personnel and school administrators, as defined in s. 1012.01, to complete training on the standards; establish the duty of instructional personnel and school administrators to report, and procedures for reporting, alleged misconduct by other instructional personnel and school administrators which affects the health, safety, or welfare of a student; and include an explanation of the liability protections provided under ss. 39.203 and 768.095. A charter school, or any of its employees, may not enter into a confidentiality agreement regarding terminated or dismissed instructional personnel or school administrators, or personnel or administrators who resign in lieu of termination, based in whole or in part on misconduct that affects the health, safety, or welfare of a student, and may not provide instructional personnel or school administrators with employment references or discuss the personnel's or administrators' performance with prospective employers in another educational setting, without disclosing the personnel's or administrators' misconduct. Any part of an agreement or contract that has the purpose or effect of concealing misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student is void, is contrary to public policy, and may not be enforced.

4. Before employing instructional personnel or school administrators in any position that requires direct contact with students, a charter school shall conduct employment history checks of each of the personnel's or administrators' previous employers, screen the instructional personnel or school administrators through use of the educator screening tools described in s. 1001.10(5), and document the findings. If unable to contact a previous employer, the charter school must document efforts to contact the employer.

5. The sponsor of a charter school that knowingly fails to comply with this paragraph shall terminate the charter under subsection (8).

(h) For the purposes of tort liability, the governing body and employees of a charter school shall be governed by s. 768.28.

(i) A charter school shall organize as, or be operated by, a nonprofit organization. A charter school may be operated by a municipality or other public entity as provided for by law. As such, the charter school may be either a private or a public employer. As a public employer, a charter school may

participate in the Florida Retirement System upon application and approval as a “covered group” under s. 121.021(34). If a charter school participates in the Florida Retirement System, the charter school employees shall be compulsory members of the Florida Retirement System. As either a private or a public employer, a charter school may contract for services with an individual or group of individuals who are organized as a partnership or a cooperative. Individuals or groups of individuals who contract their services to the charter school are not public employees.

(13) CHARTER SCHOOL COOPERATIVES.—Charter schools may enter into cooperative agreements to form charter school cooperative organizations that may provide the following services: charter school planning and development, direct instructional services, and contracts with charter school governing boards to provide personnel administrative services, payroll services, human resource management, evaluation and assessment services, teacher preparation, and professional development.

(14) CHARTER SCHOOL FINANCIAL ARRANGEMENTS; INDEMNIFICATION OF THE STATE AND SCHOOL DISTRICT; CREDIT OR TAXING POWER NOT TO BE PLEDGED.—Any arrangement entered into to borrow or otherwise secure funds for a charter school authorized in this section from a source other than the state or a school district shall indemnify the state and the school district from any and all liability, including, but not limited to, financial responsibility for the payment of the principal or interest. Any loans, bonds, or other financial agreements are not obligations of the state or the school district but are obligations of the charter school authority and are payable solely from the sources of funds pledged by such agreement. The credit or taxing power of the state or the school district shall not be pledged and no debts shall be payable out of any moneys except those of the legal entity in possession of a valid charter approved by a district school board pursuant to this section.

(15) CHARTER SCHOOLS-IN-THE-WORKPLACE; CHARTER SCHOOLS-IN-A-MUNICIPALITY.—

(a) In order to increase business partnerships in education, to reduce school and classroom overcrowding throughout the state, and to offset the high costs for educational facilities construction, the Legislature intends to encourage the formation of business partnership schools or satellite learning centers and municipal-operated schools through charter school status.

(b) A charter school-in-the-workplace may be established when a business partner provides the school facility to be used; enrolls students based upon a random lottery that involves all of the children of employees of that business or corporation who are seeking enrollment, as provided for in subsection (10); and enrolls students according to the racial/ethnic balance provisions described in subparagraph (7)(a)8. Any portion of a facility used for a public charter school shall be exempt from ad valorem taxes, as provided for in s. 1013.54, for the duration of its use as a public school.

(c) A charter school-in-a-municipality designation may be granted to a municipality that possesses a charter; enrolls students based upon a random lottery that involves all of the children of the residents of that municipality who are seeking enrollment, as provided for in subsection (10); and enrolls students according to the racial/ethnic balance provisions described in subparagraph (7)(a)8. When a municipality has submitted charter applications for the establishment of a charter school feeder pattern, consisting of elementary, middle, and senior high schools, and each individual charter application is approved by the district school board, such schools shall then be designated as one charter school for all purposes listed pursuant to this section. Any portion of the land and facility used for a public charter school shall be exempt from ad valorem taxes, as provided for in s. 1013.54, for the duration of its use as a public school.

(d) As used in this subsection, the terms “business partner” or “municipality” may include more than one business or municipality to form a charter school-in-the-workplace or charter school-in-a-municipality.

(16) EXEMPTION FROM STATUTES.—

(a) A charter school shall operate in accordance with its charter and shall be exempt from all statutes in chapters 1000-1013. However, a charter school shall be in compliance with the following statutes in chapters 1000-1013:

1. Those statutes specifically applying to charter schools, including this section.
2. Those statutes pertaining to the student assessment program and school grading system.
3. Those statutes pertaining to the provision of services to students with disabilities.
4. Those statutes pertaining to civil rights, including s. 1000.05, relating to discrimination.
5. Those statutes pertaining to student health, safety, and welfare.

(b) Additionally, a charter school shall be in compliance with the following statutes:

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

3. Section 1003.03, relating to the maximum class size, except that the calculation for compliance pursuant to s. 1003.03 shall be the average at the school level.

4. Section 1012.22(1)(c), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011.

7. Section 1012.34, relating to the substantive requirements for performance evaluations for instructional personnel and school administrators.

(c) For purposes of subparagraphs (b)4.-7.:

1. The duties assigned to a district school superintendent apply to charter school administrative personnel, as defined in s. 1012.01(3)(a) and (b), and the charter school governing board shall designate at least one administrative person to be responsible for such duties.

2. The duties assigned to a district school board apply to a charter school governing board.

3. A charter school may hire instructional personnel and other employees on an at-will basis.

4. Notwithstanding any provision to the contrary, instructional personnel and other employees on contract may be suspended or dismissed any time during the term of the contract without cause.

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(a) Each charter school shall report its student enrollment to the sponsor as required in s. 1011.62, and in accordance with the definitions in s. 1011.61. The sponsor shall include each charter school's enrollment in the district's report of student enrollment. All charter schools submitting student record information required by the Department of Education shall comply with the Department of Education's guidelines for electronic data formats for such data, and all districts shall accept electronic data that complies with the Department of Education's electronic format.

(b) The basis for the agreement for funding students enrolled in a charter school shall be the sum of the school district's operating funds from the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy; divided by total funded weighted full-time equivalent students in the school district; multiplied by the weighted full-time equivalent students for the charter school. Charter schools whose students or programs meet the eligibility criteria in law shall be entitled to their proportionate share of categorical program funds included in the total funds available in the Florida Education Finance Program by the Legislature, including transportation. Total funding for each charter school shall be recalculated during the year to reflect the revised calculations under the Florida Education Finance Program by the state and the actual weighted full-time equivalent students reported by the charter school during the full-time equivalent student survey periods designated by the Commissioner of Education.

(c) If the district school board is providing programs or services to students funded by federal funds, any eligible students enrolled in charter schools in the school district shall be provided federal funds for the same level of service provided students in the schools operated by the district school board. Pursuant to provisions of 20 U.S.C. 8061 s. 10306, all charter schools shall receive all federal funding for which the school is otherwise eligible, including Title I funding, not later than 5 months after the charter school first opens and within 5 months after any subsequent expansion of enrollment. Unless otherwise mutually agreed to by the charter school and its sponsor, and consistent with state and federal rules and regulations governing the use and disbursement of federal funds, the sponsor shall reimburse the charter school on a monthly basis for all invoices submitted by the charter school for federal funds available to the sponsor for the benefit of the charter school, the charter school's students, and the charter school's students as public school students in the school district. Such federal funds include, but are not limited to, Title I, Title II, and Individuals with Disabilities Education Act (IDEA) funds. To receive timely reimbursement for an invoice, the charter school must submit the invoice to the sponsor at least 30 days before the monthly date of reimbursement set by the sponsor. In order to be reimbursed, any expenditures made by the charter school must comply with all applicable state rules and federal regulations, including, but not limited to, the applicable federal Office of Management and Budget Circulars; the federal Education Department General Administrative Regulations; and program-specific statutes, rules, and regulations. Such funds may not be made available to the charter school until a plan is submitted to the sponsor for approval of the use of the

funds in accordance with applicable federal requirements. The sponsor has 30 days to review and approve any plan submitted pursuant to this paragraph.

(d) Charter schools shall be included by the Department of Education and the district school board in requests for federal stimulus funds in the same manner as district school board-operated public schools, including Title I and IDEA funds and shall be entitled to receive such funds. Charter schools are eligible to participate in federal competitive grants that are available as part of the federal stimulus funds.

(e) District school boards shall make timely and efficient payment and reimbursement to charter schools, including processing paperwork required to access special state and federal funding for which they may be eligible. The district school board may distribute funds to a charter school for up to 3 months based on the projected full-time equivalent student membership of the charter school. Thereafter, the results of full-time equivalent student membership surveys shall be used in adjusting the amount of funds distributed monthly to the charter school for the remainder of the fiscal year. The payment shall be issued no later than 10 working days after the district school board receives a distribution of state or federal funds. If a warrant for payment is not issued within 10 working days after receipt of funding by the district school board, the school district shall pay to the charter school, in addition to the amount of the scheduled disbursement, interest at a rate of 1 percent per month calculated on a daily basis on the unpaid balance from the expiration of the 10 working days until such time as the warrant is issued.

(f) Funding for a virtual charter school shall be as provided in s. 1002.45(7).

(18) FACILITIES.—

(a) A startup charter school shall utilize facilities which comply with the Florida Building Code pursuant to chapter 553 except for the State Requirements for Educational Facilities. Conversion charter schools shall utilize facilities that comply with the State Requirements for Educational Facilities provided that the school district and the charter school have entered into a mutual management plan for the reasonable maintenance of such facilities. The mutual management plan shall contain a provision by which the district school board agrees to maintain charter school facilities in the same manner as its other public schools within the district. Charter schools, with the exception of conversion charter schools, are not required to comply, but may choose to comply, with the State Requirements for Educational Facilities of the Florida Building Code adopted pursuant to s. 1013.37. The local governing authority shall not adopt or impose any local building requirements or site-development restrictions, such as parking and site-size criteria, that are addressed by and more stringent than those found in the State Requirements for Educational Facilities of the Florida Building Code. Beginning July 1, 2011, a local governing authority must treat charter schools equitably in comparison to similar requirements, restrictions, and processes imposed upon public schools that are not charter schools. The agency having jurisdiction for inspection of a facility and issuance of a certificate of occupancy or use shall be the local municipality or, if in an unincorporated area, the county governing authority.

(b) A charter school shall use facilities that comply with the Florida Fire Prevention Code, pursuant to s. 633.208, as adopted by the authority in whose jurisdiction the facility is located as provided in paragraph (a).

(c) Any facility, or portion thereof, used to house a charter school whose charter has been approved by the sponsor and the governing board, pursuant to subsection (7), shall be exempt from ad valorem taxes pursuant to s. 196.1983. Library, community service, museum, performing arts, theatre, cinema, church, Florida College System institution, college, and university facilities may provide space to charter schools within their facilities under their preexisting zoning and land use designations.

(d) Charter school facilities are exempt from assessments of fees for building permits, except as provided in s. 553.80; fees for building and occupational licenses; impact fees or exactions; service availability fees; and assessments for special benefits.

(e) If a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school receiving property from the school district may not sell or dispose of such property without written permission of the school district. Similarly, for an existing public school converting to charter status, no rental or leasing fee for the existing facility or for the property normally inventoried to the conversion school may be charged by the district school board to the parents and teachers organizing the charter school. The charter school shall agree to reasonable maintenance provisions in order to maintain the facility in a manner similar to district school board standards. The Public Education Capital Outlay maintenance funds or any other

maintenance funds generated by the facility operated as a conversion school shall remain with the conversion school.

(f) To the extent that charter school facilities are specifically created to mitigate the educational impact created by the development of new residential dwelling units, pursuant to subparagraph (2)(c)4., some of or all of the educational impact fees required to be paid in connection with the new residential dwelling units may be designated instead for the construction of the charter school facilities that will mitigate the student station impact. Such facilities shall be built to the State Requirements for Educational Facilities and shall be owned by a public or nonprofit entity. The local school district retains the right to monitor and inspect such facilities to ensure compliance with the State Requirements for Educational Facilities. If a facility ceases to be used for public educational purposes, either the facility shall revert to the school district subject to any debt owed on the facility, or the owner of the facility shall have the option to refund all educational impact fees utilized for the facility to the school district. The district and the owner of the facility may contractually agree to another arrangement for the facilities if the facilities cease to be used for educational purposes. The owner of property planned or approved for new residential dwelling units and the entity levying educational impact fees shall enter into an agreement that designates the educational impact fees that will be allocated for the charter school student stations and that ensures the timely construction of the charter school student stations concurrent with the expected occupancy of the residential units. The application for use of educational impact fees shall include an approved charter school application. To assist the school district in forecasting student station needs, the entity levying the impact fees shall notify the affected district of any agreements it has approved for the purpose of mitigating student station impact from the new residential dwelling units.

(g) Each school district shall annually provide to the Department of Education as part of its 5-year work plan the number of existing vacant classrooms in each school that the district does not intend to use or does not project will be needed for educational purposes for the following school year. The department may recommend that a district make such space available to an appropriate charter school.

(19) CAPITAL OUTLAY FUNDING.—Charter schools are eligible for capital outlay funds pursuant to s. 1013.62. Capital outlay funds authorized in ss. 1011.71(2) and 1013.62 which have been shared with a charter school-in-the-workplace prior to July 1, 2010, are deemed to have met the authorized expenditure requirements for such funds.

(20) SERVICES.—

(a)1. A sponsor shall provide certain administrative and educational services to charter schools. These services shall include contract management services; full-time equivalent and data reporting services; exceptional student education administration services; services related to eligibility and reporting duties required to ensure that school lunch services under the federal lunch program, consistent with the needs of the charter school, are provided by the school district at the request of the charter school, that any funds due to the charter school under the federal lunch program be paid to the charter school as soon as the charter school begins serving food under the federal lunch program, and that the charter school is paid at the same time and in the same manner under the federal lunch program as other public schools serviced by the sponsor or the school district; test administration services, including payment of the costs of state-required or district-required student assessments; processing of teacher certificate data services; and information services, including equal access to student information systems that are used by public schools in the district in which the charter school is located. Student performance data for each student in a charter school, including, but not limited to, FCAT scores, standardized test scores, previous public school student report cards, and student performance measures, shall be provided by the sponsor to a charter school in the same manner provided to other public schools in the district.

2. A total administrative fee for the provision of such services shall be calculated based upon up to 5 percent of the available funds defined in paragraph (17)(b) for all students, except that when 75 percent or more of the students enrolled in the charter school are exceptional students as defined in s. 1003.01(3), the 5 percent of those available funds shall be calculated based on unweighted full-time equivalent students. However, a sponsor may only withhold up to a 5-percent administrative fee for enrollment for up to and including 250 students. For charter schools with a population of 251 or more students, the difference between the total administrative fee calculation and the amount of the administrative fee withheld may only be used for capital outlay purposes specified in s. 1013.62(2).

3. For high-performing charter schools, as defined in ch. 2011-232, a sponsor may withhold a total administrative fee of up to 2 percent for enrollment up to and including 250 students per school.

4. In addition, a sponsor may withhold only up to a 5-percent administrative fee for enrollment for up to and including 500 students within a system of charter schools which meets all of the following:

a. Includes both conversion charter schools and nonconversion charter schools;

b. Has all schools located in the same county;

c. Has a total enrollment exceeding the total enrollment of at least one school district in the state;

d. Has the same governing board; and

e. Does not contract with a for-profit service provider for management of school operations.

5. The difference between the total administrative fee calculation and the amount of the administrative fee withheld pursuant to subparagraph 4. may be used for instructional and administrative purposes as well as for capital outlay purposes specified in s. 1013.62(2).

6. For a high-performing charter school system that also meets the requirements in subparagraph 4., a sponsor may withhold a 2-percent administrative fee for enrollments up to and including 500 students per system.

7. Sponsors shall not charge charter schools any additional fees or surcharges for administrative and educational services in addition to the maximum 5-percent administrative fee withheld pursuant to this paragraph.

8. The sponsor of a virtual charter school may withhold a fee of up to 5 percent. The funds shall be used to cover the cost of services provided under subparagraph 1. and for the school district's local instructional improvement system pursuant to s. 1006.281 or other technological tools that are required to access electronic and digital instructional materials.

(b) If goods and services are made available to the charter school through the contract with the school district, they shall be provided to the charter school at a rate no greater than the district's actual cost unless mutually agreed upon by the charter school and the sponsor in a contract negotiated separately from the charter. When mediation has failed to resolve disputes over contracted services or contractual matters not included in the charter, an appeal may be made for a dispute resolution hearing before the Charter School Appeal Commission. To maximize the use of state funds, school districts shall allow charter schools to participate in the sponsor's bulk purchasing program if applicable.

(c) Transportation of charter school students shall be provided by the charter school consistent with the requirements of subpart I.E. of chapter 1006 and s. 1012.45. The governing body of the charter school may provide transportation through an agreement or contract with the district school board, a private provider, or parents. The charter school and the sponsor shall cooperate in making arrangements that ensure that transportation is not a barrier to equal access for all students residing within a reasonable distance of the charter school as determined in its charter.

(21) PUBLIC INFORMATION ON CHARTER SCHOOLS.—

(a) The Department of Education shall provide information to the public, directly and through sponsors, on how to form and operate a charter school and how to enroll in a charter school once it is created. This information shall include a model application form, standard charter contract, standard evaluation instrument, and standard charter renewal contract, which shall include the information specified in subsection (7) and shall be developed by consulting and negotiating with both school districts and charter schools before implementation. The charter and charter renewal contracts shall be used by charter school sponsors.

(b)1. The Department of Education shall report student assessment data pursuant to s. 1008.34(3)(c) which is reported to schools that receive a school grade or student assessment data pursuant to s. 1008.341(3) which is reported to alternative schools that receive a school improvement rating to each charter school that:

a. Does not receive a school grade pursuant to s. 1008.34 or a school improvement rating pursuant to s. 1008.341; and

b. Serves at least 10 students who are tested on the statewide assessment test pursuant to s. 1008.22.

2. The charter school shall report the information in subparagraph 1. to each parent of a student at the charter school, the parent of a child on a waiting list for the charter school, the district in which the charter school is located, and the governing board of the charter school. This paragraph does not abrogate the provisions of s. 1002.22, relating to student records, or the requirements of 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy Act.

3.a. Pursuant to this paragraph, the Department of Education shall compare the charter school student performance data for each charter school in subparagraph 1. with the student performance data in traditional public schools in the district in which the charter school is located and other charter

schools in the state. For alternative charter schools, the department shall compare the student performance data described in this paragraph with all alternative schools in the state. The comparative data shall be provided by the following grade groupings:

(I) Grades 3 through 5;

(II) Grades 6 through 8; and

(III) Grades 9 through 11.

b. Each charter school shall provide the information specified in this paragraph on its Internet website and also provide notice to the public at large in a manner provided by the rules of the State Board of Education. The State Board of Education shall adopt rules to administer the notice requirements of this subparagraph pursuant to ss. 120.536(1) and 120.54. The website shall include, through links or actual content, other information related to school performance.

(22) FACILITIES SHARED BY CHARTER SCHOOLS.—

(a) If a charter school moves out of a facility that is shared with another charter school having a separate Master School Identification Number, the charter school must provide for an audit of all equipment, educational materials and supplies, curriculum materials, and other items purchased or developed with federal charter school program grant funds, and such items must be transferred to the charter school's new location. The audit report must be submitted to the Department of Education within 60 days after completion.

(b) A charter school may not transfer an enrolled student to another charter school having a separate Master School Identification Number without first obtaining the written approval of the student's parent.

(23) ANALYSIS OF CHARTER SCHOOL PERFORMANCE.—Upon receipt of the annual report required by paragraph (9)(k), the Department of Education shall provide to the State Board of Education, the Commissioner of Education, the Governor, the President of the Senate, and the Speaker of the House of Representatives an analysis and comparison of the overall performance of charter school students, to include all students whose scores are counted as part of the statewide assessment program, versus comparable public school students in the district as determined by the statewide assessment program currently administered in the school district, and other assessments administered pursuant to s. 1008.22(3).

(24) RESTRICTION ON EMPLOYMENT OF RELATIVES.—

(a) This subsection applies to charter school personnel in a charter school operated by a private entity. As used in this subsection, the term:

1. "Charter school personnel" means a charter school owner, president, chairperson of the governing board of directors, superintendent, governing board member, principal, assistant principal, or any other person employed by the charter school who has equivalent decisionmaking authority and in whom is vested the authority, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in a charter school, including the authority as a member of a governing body of a charter school to vote on the appointment, employment, promotion, or advancement of individuals.

2. "Relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) Charter school personnel may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the charter school in which the personnel are serving or over which the personnel exercises jurisdiction or control any individual who is a relative. An individual may not be appointed, employed, promoted, or advanced in or to a position in a charter school if such appointment, employment, promotion, or advancement has been advocated by charter school personnel who serve in or exercise jurisdiction or control over the charter school and who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by the governing board of which a relative of the individual is a member.

(c) The approval of budgets does not constitute "jurisdiction or control" for the purposes of this subsection.

Charter school personnel in schools operated by a municipality or other public entity are subject to s. 112.3135.

[1](25) LOCAL EDUCATIONAL AGENCY STATUS FOR CERTAIN CHARTER SCHOOL SYSTEMS.—A charter school system shall be designated a local educational agency for the purpose of receiving federal funds, the same as though the charter school system were a school district, if the governing board of the charter school system has adopted and filed a resolution with its sponsoring district school board and the Department of Education in which the governing board of the charter school system accepts the full responsibility for all local education agency requirements and the charter school system meets all of the following:

(a) Includes both conversion charter schools and nonconversion charter schools;

(b) Has all schools located in the same county;

(c) Has a total enrollment exceeding the total enrollment of at least one school district in the state;

(d) Has the same governing board; and

(e) Does not contract with a for-profit service provider for management of school operations.

Such designation does not apply to other provisions unless specifically provided in law.

(26) STANDARDS OF CONDUCT AND FINANCIAL DISCLOSURE.—

(a) A member of a governing board of a charter school, including a charter school operated by a private entity, is subject to ss. 112.313(2), (3), (7), and (12) and 112.3143(3).

(b) A member of a governing board of a charter school operated by a municipality or other public entity is subject to s. 112.3145, which relates to the disclosure of financial interests.

(c) An employee of the charter school, or his or her spouse, or an employee of a charter management organization, or his or her spouse, may not be a member of the governing board of the charter school.

(27) RULEMAKING.—The Department of Education, after consultation with school districts and charter school directors, shall recommend that the State Board of Education adopt rules to implement specific subsections of this section. Such rules shall require minimum paperwork and shall not limit charter school flexibility authorized by statute. The State Board of Education shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to implement a charter model application form, standard evaluation instrument, and standard charter and charter renewal contracts in accordance with this section.

History.—s. 98, ch. 2002-387; s. 23, ch. 2003-391; s. 1, ch. 2003-393; ss. 35, 78, ch. 2004-41; s. 3, ch. 2004-295; s. 1, ch. 2004-354; s. 1, ch. 2006-190; s. 2, ch. 2006-302; s. 5, ch. 2007-234; s. 14, ch. 2008-108; s. 4, ch. 2008-142; s. 1, ch. 2008-204; s. 7, ch. 2009-214; s. 24, ch. 2010-70; s. 6, ch. 2010-154; s. 6, ch. 2011-1; s. 27, ch. 2011-5; s. 13, ch. 2011-37; s. 8, ch. 2011-55; s. 2, ch. 2011-137; ss. 3, 5, ch. 2011-232; s. 93, ch. 2012-5; s. 6, ch. 2012-133; s. 2, ch. 2012-194; s. 5, ch. 2013-27; s. 42, ch. 2013-35; s. 156, ch. 2013-183; s. 2, ch. 2013-236; ss. 1, 2, ch. 2013-250.

[1]Note.—As created by s. 8, ch. 2011-55. For a description of multiple acts in the same session affecting a statutory provision, see preface to the Florida Statutes, “Statutory Construction.” Substantially similar material was created as subsection (26) by s. 3, ch. 2011-232, and redesignated as subsection (25) by the editors, and that version reads:

(25) LOCAL EDUCATIONAL AGENCY STATUS FOR CERTAIN CHARTER SCHOOL SYSTEMS.—A charter school system shall be designated a local educational agency solely for the purpose of receiving federal funds, in the same manner as if the charter school system were a school district, if the governing board of the charter school system has adopted and filed a resolution with its sponsoring district school board and the Department of Education in which the governing board accepts full responsibility for all local educational agency requirements and if the charter school system meets all of the following:

(a) Includes both conversion charter schools and nonconversion charter schools;

(b) Has all schools located in the same county;

(c) Has a total enrollment exceeding the total enrollment of at least one school district in the state;

(d) Has the same governing board; and

(e) Does not contract with a for-profit service provider for management of school operations.

Such designation does not apply to other provisions of law unless specifically provided by law.