

**ORDINANCE NO. 2012 -**

**A CAPITAL PROJECT AUTHORIZING ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT WITH THE SCHOOL BOARD OF MIAMI-DADE COUNTY REGARDING THE FINANCING OF A PERMANENT SECONDARY EDUCATIONAL FACILITY AND RECREATIONAL FIELDS LOCATED AT THE MAST ACADEMY CAMPUS AS WELL AS NECESSARY RENOVATIONS OF THE KEY BISCAYNE K-8 CENTER AT A COST NOT TO EXCEED \$23,000,000; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne (the “Village”) Village Council over the last couple of years has been examining different options for providing additional secondary educational choices and recreational fields for Village residents as well as relief for the overcrowding at the Key Biscayne K-8 Center; and

**WHEREAS**, the Miami-Dade County Public Schools District Staff has approached the Village Staff about a potential partnership with the Village, which would include the financing of a permanent secondary educational facility and recreational fields to be used for Village residents located at the Mast Academy campus as well as necessary renovations of the Key Biscayne K-8 Center at a cost not to exceed \$23,000,000 (the “Project”); and

**WHEREAS**, the Village Council desires to approve the Interlocal Agreement with the School Board of Miami-Dade County, attached as Exhibit “A,” for the Project (the “Interlocal Agreement”) and authorize the Village Manager to execute the same; and

**WHEREAS**, the Village Council hereby declares that the approval of the Interlocal Agreement is a valid public purpose and finds that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS<sup>1</sup>:**

**Section 1. Recitals.** The preceding “Whereas” clauses are ratified and incorporated as the legislative intent of this Ordinance.

**Section 2. Interlocal Agreement Approved.** The Village Council hereby approves the Interlocal Agreement, in substantially the form attached hereto as Exhibit “A,” for the Project at a cost not to exceed \$23,000,000.

**Section 3. Authorization.** The Village Council hereby authorizes the Village Manager to execute the Interlocal Agreement, in substantially the form attached hereto as Exhibit “A,” for the Project at a cost not to exceed \$23,000,000, subject to approval as to form, content, and legal sufficiency by the Village Attorney.

**Section 4. Conflicts.** All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

**Section 5. Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading

PASSED on first reading this \_\_\_\_ day of \_\_\_\_\_, 2012.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
MAYOR FRANKLIN CAPLAN

ATTEST:

<sup>1</sup> Coding: underlined words are additions to existing text, struck through words are deletions from existing text, shaded text reflects changes made from First Reading.

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

# **EXHIBIT "A"**

**MIAMI-DADE COUNTY SCHOOL BOARD  
DRAFT**

**Interlocal Agreement by and between the Village of Key Biscayne, Florida,  
and The School Board of Miami-Dade County, Florida**

**INTERLOCAL AGREEMENT BY AND BETWEEN  
THE VILLAGE OF KEY BISCAYNE, FLORIDA  
AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA  
TO ESTABLISH A FUNDING AND COST SHARING COLLABORATION TO BUILD A  
GRADE 6-12 EDUCATIONAL FACILITY AND RECREATIONAL FIELDS AT THE  
MAST ACADEMY CAMPUS, AND TO UNDERTAKE PHYSICAL IMPROVEMENTS  
AT THE KEY BISCAYNE K-8 CENTER**

**THIS INTERLOCAL AGREEMENT** (“Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_, 2012, by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation, its successors and assigns ( “Village” or “Key Biscayne”) and **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 ( “Board”). The Village and Board are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

**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; and

**WHEREAS**, over the last decade the Village experienced an increase in the number of residents, including those of school age, as reflected in the Census data; and

**WHEREAS**, a review of the number of school age children residing in the Village as of the most recent decennial count vis-à-vis number of students enrolled in public schools shows a wide gap, particularly at the secondary level; and

**WHEREAS**, there is a mutual desire by the Board and the Village to broaden public school options available to Village residents as a way to effectively narrow that gap and capture a large share of the Village’s secondary student population; and

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

**WHEREAS**, the Village and Board now intend to enter into this Agreement setting forth the terms and conditions of a new collaboration to assist in the funding and cost sharing of building new and upgrading certain existing facilities as set forth herein; and

**WHEREAS**, the Village and Board have determined that it shall serve the public interest to enter into this Agreement in order to fully set forth mutually acceptable terms and conditions of this collaborative effort between the Parties; and

**Interlocal Agreement by and between the Village of Key Biscayne, Florida,  
and The School Board of Miami-Dade County, Florida**

**WHEREAS**, the School Board of Miami-Dade County, Florida, authorized the execution of the Agreement at its meeting of June 13, 2012, Board Action #115,757, and at its meeting of July 18, 2012, Board Action # \_\_\_\_\_, and the Village Council authorized execution of the Agreement and \_\_\_\_ at its meetings of June 12, 2012, June XX, 2012 and July X, 2012, via Resolution # 2012-21, Resolution # \_\_\_\_\_ and Ordinance # \_\_\_\_, respectively.

**NOW THEREFORE**, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree to and accept the responsibilities set forth in this Agreement.

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

**Section 2.     Purpose.**       The purpose of the Agreement is to set forth terms and conditions acceptable to the Parties, to accomplish the initiatives enumerated herein, including a funding mechanism, cost sharing and timeline for implementation.

**Section 3.     Description of Projects.** Subject to the terms and provisions of this Agreement, the Village and Board agree to implement the following:

- A. Construct a new grade 6-12 permanent facility at the M.A.S.T. Academy Campus (MAST) with approximately 1,100 student stations (new 6-12 school) to provide relief for current overcrowding and expected continued student enrollment growth at the Key Biscayne K-8 facility (K-8), and offer a public secondary school option for Key Biscayne students, particularly those transitioning to high school. The student station allocation between middle and senior high school shall be approximately 470 student stations for grades 6-8 and approximately 630 student stations for grades 9-12, which may be adjusted by the Board as necessary based on actual Key Biscayne 6-12 applications.
- B. Construct recreational fields at MAST;
- C. Undertake select renovations at the K-8, as detailed further herein;
- D. Establishment by the Board of a Cambridge Curriculum, which shall be available to middle school and high school students attending the new 6-12 facility;
- E. Financing of the improvements listed above in A. through C. by Key Biscayne, as further detailed herein, and cost sharing on a 50/50 basis of the improvements listed above in A. and B.

**Section 4.     The Parties Responsibilities**

**A) The Board:**

- 1) The Board shall (a) design and build the new 6-12 school and recreational fields at MAST, generally in conformance with the conceptual site plan included herein in Exhibit "A" and (b) undertake the K-8 renovations (collectively "the Projects"), substantially in accordance with the scope, timeline and estimated budget described herein. To the extent possible, the Parties agree to collaborate in the design of the noted projects and specifically as to the new 6-12 school, the Parties also agree to

**Interlocal Agreement by and between the Village of Key Biscayne, Florida,  
and The School Board of Miami-Dade County, Florida**

seek input from the current MAST community (“the collaborative effort”); the collaborative effort notwithstanding, the Parties agree that the Board retains sole authority to make decisions as may be deemed necessary, to adhere to the timelines and costs outlined herein.

The K-8 renovations shall include the following elements:

- a. New windows;
  - b. Classroom lighting retrofits, flooring and interior painting;
  - c. Classroom technology (interactive boards), including wireless technology;
  - d. New A/C system in classrooms;
  - e. Restroom renovations, including ADA retrofits;
  - f. Cosmetic enhancements, e.g. replacement of second floor railing (Building 2).
- 2) For school year 2012-2013, the Board shall install up to eight portable units at MAST to accommodate 8<sup>th</sup> and 9<sup>th</sup> grade Key Biscayne students. Subsequently, for school years 2013-14 and 2014-15 the Board shall install additional portable units, not to exceed twenty total portable units (all 3 years combined) to accommodate a new slate of incoming 8<sup>th</sup> and 9<sup>th</sup> grade Key Biscayne students.
- 3) The Board shall share in the cost of the new 6-12 school and recreational fields, estimated at \$20 million on a 50/50 basis, and shall reimburse the Village for the cost of the K-8 renovations, estimated at \$2 million; all in accordance with the financial terms and conditions contained herein.

**B) The Village:**

- 1) The Village shall provide upfront funding for the new 6-12 school and recreational fields at MAST, as well for the renovations of the K-8, up to a total amount of \$22 million, pursuant to the terms and conditions outlined herein.
- 2) The Village shall contribute 50% of the cost of the new 6-12 facility and of the recreational fields to be built at MAST, the cost of which is estimated at \$20 million.

**Section 5. Funding/Financing and Cost Sharing – General Terms and Conditions.**

The Parties agree that the Village shall provide one or more upfront financings for the new 6-12 school and recreational fields at MAST and for the cost of the K-8 renovations, estimated at \$22 million, based on terms not to exceed 30 years and deferral of commencement of the Board’s repayment to FY 2020-21, substantially as follows, and subject to timely disbursements to the Board by the Village. Prior to the issuance of any debt by the Village, parameters governing the terms of such financing shall be submitted to the Board Treasurer for approval prior to being incorporated into each authorizing resolution of the Village Council:

**Interlocal Agreement by and between the Village of Key Biscayne, Florida,  
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- a. Initial funding/financing by the Village in the amount of \$20 million, with 50/50 cost sharing for the new 6-12 school and for the recreational fields at MAST;
- b. Initial funding/financing by the Village for the K-8 renovations estimated at \$2 million, with future repayment solely by the Board;
- c. Repayment by the Parties of the debt based on a 30 year schedule where the Village alone will pay down debt for the first 8 years through FY 2019-20, followed by 12 years of joint payments by both parties starting in FY 2020-21, and then a final 10-year repayment period funded solely by the Board, such that at the end of the 30 years the cost sharing totals delineated under Section 5. a. & b. are adhered to. .
- d. Repayment by the Parties of the debt based on a less than 30 year schedule where the Village alone will pay down debt for the first 8 years through FY 2019-20 followed by the remaining years of joint payments by both parties starting in FY 2020-21, such that at the final maturity the cost sharing totals delineated under Section 5. a. & b. are adhered to.
- e. Disbursements by the Village shall be made in amounts and at times to closely reflect the project schedule, and generally to coincide with the three main project stages:
  - i. commissioning of design professional and contractor, K-8 renovations, & beginning recreational fields \$5.5 million (Target October 2012)
  - ii. construction award \$14 million (Target October 2013)
  - iii. installation of FF&E, & completion recreational fields \$2.5 million (Target November 2014)

Until disbursements by the Village are provided in the amounts and by the dates specified above, the Board's responsibilities under Section 4 and this Section 5 applicable to each phase of the project shall not commence.

- f. The above notwithstanding, the Parties agree that should the Board seek voter approval for additional funding to be bonded for capital projects, the Board agrees to include the new 6-12 school and the recreational fields at MAST, and renovations at Key Biscayne K-8 in the authorized project list, the cost of which will be eligible for reimbursement only if the additional funding source is approved by the voters in time for the Board to issue bonds prior to February 2017 to retire any outstanding Village debt. Notwithstanding any other provision hereof, the Parties further agree that any interest paid by the Village prior to the Board retiring the outstanding Village debt shall not be subject to reimbursement by the Board.
- g. The Village acknowledges and agrees that all monetary obligations of the Board under the ILA will be subject to appropriation in the annual budgetary process. The Superintendent shall include in the Superintendent's tentative budget proposal for each fiscal year in which a monetary contribution is scheduled to be made hereunder, sufficient funding for such payments from any legally available funds, subject to appropriation being made therefor by the Board in the final official budget for such fiscal year. If appropriation has not been made by the Board, then the Superintendent shall include in the Superintendent's tentative budget proposal the cumulative monetary contribution owed under this Agreement in the following fiscal year. Any non-appropriation failure to make a

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monetary contribution when scheduled would be disclosed as required under Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, as same may be amended from time to time. Notwithstanding the provisions of Section 10.C. herein, failure of the Board to appropriate sufficient moneys shall not constitute an event of default.

- h. The Board shall have the right but not the obligation to satisfy its payment obligations, in whole or in part, earlier than contemplated, or to otherwise accelerate payment, without incurring pre-payment penalties or other fees.

**Section 6. Curriculum and Admission Protocol.** The Parties agree that the new 6-12 facility will be part of MAST, as it existed on the date of execution by the Parties (“the current MAST”), that the current MAST and the new 6-12 facility shall operate as one school and that the new 6-12 facility shall operate as a School-within-a-School, with curriculum offerings that include the Maritime and Science Technology and a Cambridge curriculum, with the total number of academies, including Maritime and Science Technology, not to exceed three. The selection of the additional academies under Cambridge shall be made by the Board with the input of the Village, on a timely basis to facilitate matriculation into the academies.

Admission to the current MAST will remain open to eligible countywide students based on a lottery system, up to approximately 560, 9-12 students, and approximately 140, 6-8 students, for a total 6-12 countywide enrollment at the current MAST of approximately 700 students.

Admission to the 6-12 facility for new academies shall first be available to eligible Key Biscayne residents. In the event there are additional available student stations at the 6-12 facility after all eligible Key Biscayne students have been admitted, the Parties agree that the remaining student stations may be made available to other eligible students, countywide, based on a lottery system. Similarly, any additional available student stations in the MAST Academy after the wait lists have been exhausted will be offered to eligible Key Biscayne students.

As a School-within-a-School model, MAST Academy will be recommended to the Board for re-naming as “MAST Academy @ Virginia Key High School”, for the Board’s consideration pursuant to applicable Board Policy.

Nothing in this Agreement shall preclude Key Biscayne students from exercising any other school choice option on the same terms and through the process provided by the Board to all other Miami-Dade students.

**Section 7. Proposed Timeline.** The Parties agree to the following implementation schedule, unless otherwise adjusted by mutual agreement, or unless otherwise provided herein, and provided the Village has disbursed the required funds to the Board:

2012-2013

- Install up to 8 portable units (6 classrooms and 2 ancillary units) at MAST to accommodate new incoming 8<sup>th</sup> and 9<sup>th</sup> graders;
- Finalize scope of work for physical plant renewal at the K-8;

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- Commission design professional and contractor for physical plant renewal at the K-8, and for new 6-12 school and recreational fields at MAST;
- Build recreational fields on the east side of MAST for opening around May of 2013 (parking, concession stand and separate, freestanding bathroom facilities to be provided as part of last phase).

2013-2014

- Complete K-8 improvements;
- Install additional portable units at MAST to accommodate 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> graders;
- Award construction contract for K-8 improvements, new 6-12 school and recreational fields.

2014-2015

- Install additional portables for school year 2014-15 to accommodate 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup>;
- Complete construction of new 6-12 school;
- Remove all portable units.

2015-2016: Complete remaining work in the recreational fields.

**Section 8. Joint Use of Recreational Fields at MAST.** The Parties agree to jointly develop a Joint Use Agreement (JUA) for the recreational fields at MAST, which JUA shall set forth periods of use of said fields by each Party as well as terms and conditions relating to their shared maintenance and operation. Generally, the JUA shall provide for use of the fields by students at the MAST campus during school hours and, as may be required, at other times for student related activities, and for use of the fields by the Village at all other times. The JUA shall be in place by May 31, 2013, unless otherwise extended by mutual agreement of the Parties.

**Section 9. Term of Agreement.** The term of the Agreement shall extend to the final scheduled maturity of the debt obligations issued by the Village to fund the projects described in Section 5, or to the date on which the Board fully satisfies its debt payment obligations described in Section 5 of this Agreement, whichever occurs first (Term). The Parties acknowledge that it is the intent of the Board that the curriculum described in Section 6. herein shall survive the Term. This notwithstanding, the Parties also acknowledge that it is within the Board's sole purview to adjust said curriculum to meet then current best practices or any other pertinent educational requirements. The commencement date of this Agreement shall be the date on which the agreement is fully executed ("Commencement Date").

**Section 10. Miscellaneous.**

- A. **Unavoidable Delay.** In the event that either the Board or the Village are unable to meet the deadline for their respective obligations under this Agreement due to any circumstance beyond the control of the Board and/or Village, 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



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- C. **Default.** Except as otherwise provided in **Section 5.g.** herein, an event of default shall be deemed to have occurred by either Party to this Agreement if such Party fails to observe or perform any covenant, condition or agreement of this 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 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 Agreement embodies the entire agreement of the Parties relating to the subject matter hereof, and supersedes all prior written and/or oral understandings or agreements with respect thereto.
- F. **Amendments.** Amendments to the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both Parties.
- G. **Joint Preparation.** This Agreement has been negotiated fully between the Parties as an arms-length transaction. Both Parties participated fully in the preparation of the Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this 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 Agreement may not be assigned, in whole or in part, by any Party without prior written consent of the other Party, which may be granted or withheld in its sole discretion. The Board agreement to collaborate with the Village on the Projects described herein does not extend to the selection of the design professionals, contractors or other parties engaged by the Board in connection with or for the purpose of performing any of the Board's obligations hereunder, as long as the Board adheres to the applicable state and local laws regulating the selection of such parties.
- I. **Third Party Beneficiaries.** This Agreement is solely for the benefit of the Board and the Village and no right or cause of action shall accrue upon or by reason, to

**Interlocal Agreement by and between the Village of Key Biscayne, Florida,  
and The School Board of Miami-Dade County, Florida**

or for the benefit of any third party not a formal party to this Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Board and the Village any right, remedy, or claims under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Board and the Village, 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 Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part of this Agreement not held to be invalid or unenforceable.
- L. Time is of the Essence.** The Parties acknowledge that time is of the essence in the performance of all obligations required hereunder, and all "days" referenced herein, including in any of the attachments, shall be deemed "calendar days" unless otherwise specifically set forth.
- M. Controlling Laws.** This 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 Agreement has been duly authorized by the Board and Village. The Board and the Village have complied with all requirements of law in connection with the execution and delivery of this Agreement and the performance of their respective obligations hereunder. The Board and the Village have full power and authority to comply with the terms and provisions of this instrument.
- O. Heading for Convenience Only.** The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provision of this Agreement.
- P. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgments pages, if any; may be detached from the counterparts and attached to a single copy of this document to physically form one document.

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and The School Board of Miami-Dade County, Florida**

**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 Agreement.

**[Execution Pages(s) Follow]**

**IN WITNESS WHEREOF**, the Parties have caused this 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.

**VILLAGE OF KEY BISCAYNE,  
FLORIDA**

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

By: \_\_\_\_\_  
Name: **JOHN GILBERT**  
Title: **Village Manager**

By: \_\_\_\_\_  
Name: **ALBERTO M. CARVALHO**  
Title: **Superintendent of Schools**

**ATTEST:**

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

**BY: \_\_\_\_\_  
Village Attorney**

**BY: \_\_\_\_\_  
School Board Attorney**

**Interlocal Agreement by and between the Village of Key Biscayne, Florida,  
and The School Board of Miami-Dade County, Florida**

**EXHIBIT "A"**

**CONCEPTUAL SITE PLAN FOR NEW 6-12 SCHOOL AND  
RECREATIONAL FIELDS**

**VILLAGE OF KEY BISCAYNE  
DRAFT**

**Interlocal Agreement by and between the Village of Key Biscayne, Florida,  
and The School Board of Miami-Dade County, Florida**

**INTERLOCAL AGREEMENT BY AND BETWEEN  
THE VILLAGE OF KEY BISCAYNE, FLORIDA  
AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA  
TO ESTABLISH A FUNDING AND COST SHARING COLLABORATION TO BUILD A  
GRADE 6-12 EDUCATIONAL FACILITY AND RECREATIONAL FIELDS AT THE  
MAST ACADEMY CAMPUS, AND TO UNDERTAKE PHYSICAL IMPROVEMENTS  
AT THE KEY BISCAYNE K-8 CENTER**

**THIS INTERLOCAL AGREEMENT** (“Agreement”) is entered into as of the \_\_\_\_ day of July, 2012, by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation, its successors and assigns (–“Village” or “Key Biscayne”) and **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 (“Board”). The Village and Board are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

**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; and

**WHEREAS**, over the last decade the Village experienced an increase in the number of residents, including those of school age, as reflected in the Census data; and

**WHEREAS**, a review of the number of school age children residing in the Village as of the most recent decennial count vis-à-vis number of students enrolled in public schools shows a wide gap, particularly at the secondary level; and

WHEREAS, the Board has recognized that the Village is not adequately served by the existing public school options for Village residents for grades 6-12; and

WHEREAS, the current sole boundary high school for the Village, Coral Gables High School, is overcrowded and a greater distance from the Village than is desirable for a local boundary high school; and

WHEREAS, the existing K-8 facility in the Village is overcrowded and in deteriorated physical state; and

WHEREAS, the Board has budgeted sums for deferred maintenance and capital improvement plans for the Key Biscayne K-8 Center, but has been unable to fulfill or advance such plans due to declining revenues, fixed debt obligations, maintenance and capital requirements throughout the Miami-Dade Public Schools district, and year-by-year levels of funding from the State of Florida; and

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WHEREAS, the Board wishes to expand the student population at MAST Academy and expand the curricular and extracurricular opportunities available at MAST Academy; and

**WHEREAS**, there is a mutual desire by the Board and the Village to broaden public school options available to Village residents as a way to effectively narrow ~~that gap and capture a large the gap between the Village's school-age population and the percentage of that population in the public schools, and thus serve a larger~~ share of the Village's secondary student population; and

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

**WHEREAS**, the Village and Board now intend to enter into this Agreement setting forth the terms and conditions of a new collaboration to assist ~~in the Board in "bridging" budgeted but unfunded maintenance and capital items for the Village, and to provide for the funding and cost-~~ sharing of building new and upgrading certain existing facilities, all as set forth herein; and

**WHEREAS**, the Village and Board have determined that it shall serve the public interest to enter into this Agreement in order to fully set forth mutually acceptable terms and conditions of this collaborative effort between the Parties; and

**WHEREAS**, the School Board of Miami-Dade County, Florida, authorized the execution of the Agreement at its meeting of June 13, 2012, ~~by~~ Board Action #115,757, and at its meeting of July 18, 2012, ~~by~~ Board Action # \_\_\_\_\_, and the Village Council authorized execution of the Agreement ~~and \_\_\_\_\_ at its meetings of June 12, 2012, June XX on July 3, 2012 and July X10, 2012, via Resolution # 2012-21, Resolution by Ordinance # \_\_\_\_\_ and Ordinance # \_\_\_\_\_, respectively.~~

**NOW, THEREFORE**, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree to and accept the responsibilities set forth in this Agreement.

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

**Section 2. Purpose.** The purpose of the Agreement is to set forth terms and conditions acceptable to the Parties, to accomplish the initiatives enumerated herein, including the permanent allocation of not less than 1,100 grade 6-12 student stations for Village residents who satisfy entry requirements at the Mast Academy at Virginia Key, and a funding mechanism, cost sharing-sharing arrangement and timeline for implementation.

**Section 3. Description of Projects.** Subject to the terms and provisions of this Agreement, the Village and Board agree to implement the following:

- A. ~~Construct~~ The Board will construct a new grade 6-12 permanent facility at the M.A.S.T. Academy Campus (MAST) with ~~approximately not less than 1,100~~ student stations (including a new 6-12-6-8 school to be located at MAST) to provide relief for current

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overcrowding and expected continued student enrollment growth at the Key Biscayne K-8 facility (K-8), and offer ~~a~~ an additional public secondary school option for Key Biscayne students, particularly those transitioning to high school, and to provide for a new middle school "feeder" for MAST as well as needed enlargement of the overall MAST Academy population. The student station allocation between middle and senior high school shall be approximately 470 student stations for grades 6-8 and approximately 630 student stations for grades 9-12, which may be adjusted by the Board as necessary based on actual Key Biscayne 6-12 applications; provided that the aggregate number of student stations for Key Biscayne residents for the MAST middle school and high school will not be diminished from year-to-year.

Construct recreational fields at MAST;

- B. The Board will construct recreational fields at MAST for shared and exclusive use by the MAST students and the Village for its youth sports and recreational programs, with scheduling priorities and maintenance sharing as to be provided in a Joint Use Agreement to be completed prior to and as a condition to the first disbursement of the Project Debt (defined below).
- C. ~~Undertake select~~ The Board will undertake and complete identified renovations at the K-8, as detailed further herein;.
- D. ~~Establishment by the~~ The Board ~~of a~~ will establish a continuing Cambridge Curriculum, which shall be available to middle school and high school students attending the new 6-12 facility; as a separate "academy" option within existing MAST.
- E. ~~Financing~~ The Village will provide bridge financing of the improvements and programming listed above in A. through C. by Key Biscayne ~~D.~~, as further detailed herein, and cost-sharing with the proviso that the Parties will cost-share on a 50/50 basis of for the improvements listed above in A. and B., and that the Board will repay to the Village 100% of the costs associated with C. above, such that the Village and the Board will each bear 50% of the facility costs incurred for A and B, and the Board will bear 100% of the facility costs for C.
- F. The Board will establish at its cost portable units at MAST to accept qualifying Key Biscayne students entering 8<sup>th</sup> and 9<sup>th</sup> grade, beginning in the 2012-2013 school year.

**Section 4. The Parties' Responsibilities**

A. The Board:

- 1) The Board shall (a) install portables and commence the program described herein for the beginning of the 2012-2013 school year, and (b) design and build the new 6-12 school facility and recreational fields at MAST, generally in conformance with the conceptual site plan included herein in Exhibit "A", and (bc) undertake and complete the K-8 renovations (collectively "the Projects"), substantially in accordance with the scope, timeline and estimated budget-budgets, and for the purposes, described

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herein. ~~To the extent possible, the~~ The Parties agree to collaborate in the design of the ~~noted projects~~ Project and specifically as to the new 6-12 ~~school~~ building and playing fields, and the Parties also agree to seek input from the current MAST community (~~the~~ ~~the~~ "collaborative effort"); ~~the~~. The collaborative effort notwithstanding, the Parties agree that the Board retains sole authority to make decisions as may be deemed necessary, ~~to~~ to adhere to the timelines and costs outlined herein, and to complete the Project within the time and in the manner specified herein.

The K-8 renovations (apart from those already committed to for completion before the new school year) shall include the following elements:

- a. New windows;
  - b. Classroom lighting retrofits, flooring and interior painting;
  - c. Classroom technology (interactive boards), including wireless technology;
  - d. New A/C system in classrooms;
  - e. Restroom renovations, including ADA retrofits;
  - f. Cosmetic enhancements, e.g. replacement of second floor railing (Building 2).
- 2) For school year 2012-2013, the Board shall install up to eight portable units at MAST to accommodate 8<sup>th</sup> and 9<sup>th</sup> grade Key Biscayne students. Subsequently, for school years 2013-14 and 2014-15 the Board shall install additional portable units, not to exceed twenty total portable units (all 3 years combined) to accommodate a new slate of incoming 8<sup>th</sup> ~~middle~~ and 9<sup>th</sup> ~~grade~~ high school Key Biscayne students. The allocation of Key Biscayne students among the middle and high school grades within the portable units will be determined by the Board in collaboration with the Village, year-by-year until the permanent facility is opened.
- 3) The Board shall share in the cost of the new 6-12 ~~school~~ building and recreational fields, estimated at \$20 million, ~~on~~ on a 50/50 basis, and shall reimburse the Village for the ~~entire~~ cost of the K-8 renovations, estimated at \$2 million; all in accordance with the financial terms and conditions contained herein.
- 4) The Parties agree that the Board will procure all goods and services contemplated by this Agreement in accordance with the Board's adopted procurement rules and procedures.
- 5) In consideration of the Village's financing commitments, the Board will maintain the public middle and high school at MAST Academy at Virginia Key, with the newly established Cambridge Curriculum, for the continuing benefit of the district-wide and Key Biscayne specific populations, in a manner that does not violate applicable classroom size and school-crowding standards; provided that if the Board closes the MAST facility on Virginia Key as a public school, the Board will first ensure that the Key Biscayne population at MAST (at least 1,100 student stations) will be located on a priority basis at an alternative public school location not greater than 10 miles distance from the Village's northern boundary.

B. The Village:

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- 1) The Village shall provide upfront funding for the new 6-12 ~~school building~~ and recreational fields at MAST, as well for the renovations of the K-8 ~~(other than those already committed to be performed by the Board)~~, up to a total amount of \$22 million, pursuant to the terms and conditions outlined herein.
- 2) The Village shall contribute 50% of the cost of the new 6-12 facility and of the recreational fields to be built at MAST, the cost of which is estimated at \$20 million.

**Section 5. Funding/Financing and Cost ~~Sharing~~ Allocations – General Terms and Conditions.**

The Parties agree that the Village shall provide one or more upfront financings for the new 6-12 school and recreational fields at MAST and for the cost of the K-8 renovations, ~~estimated at (other than those already committed to be performed by the Board). The principal to be financed by the Village will be in an aggregate amount of up to \$22 million, to be structured in the Village's discretion under one single or more than one debt instruments, based on terms not to exceed 30 years and from date of initial disbursement of each funding tranche, and providing for deferral of commencement of the Board's repayment obligations to FY 2020-21, —. The financings in sum shall be~~ substantially as follows, and subject to timely disbursements to the Board ~~by the Village on a funding schedule to be developed based on an approved timeline.~~ Prior to the issuance of any debt by the Village, parameters governing the terms of such financing shall be submitted to the Board Treasurer for approval prior to being incorporated into each authorizing resolution of the Village Council; ~~provided that the Board Treasurer will respond promptly (and in any event within three business days) and that financing terms substantially consistent with the terms summarized herein will be presumptively approved:~~

~~Initial funding/financing by the Village in the amount of \$20 million, with 50/50 cost sharing for the new 6-12 school and for the recreational fields at MAST;~~

- a. ~~Funding/financing by the Village in the aggregate amount of \$22 million ("Project Debt"), \$10 million of which constitutes a "grant" by the Village in consideration of and conditioned upon Project implementation, and the balance of which is subject to a debt service allocation arrangement and ultimate repayment by the Board, as provided herein.~~
- b. ~~The financing for the new 6-12 facility and recreational fields, estimated at \$20 million, will be subject to the Cost Sharing Agreement defined below, resulting ultimately in \$10 million principal repayment by the Board by the end of the projected 30 year term).~~
- c. ~~Initial funding/The financing by the Village for the K-8 renovations, estimated at \$2 million, with future repayment solely by the Board; will also be subject to the Cost Sharing Agreement, resulting ultimately in full principal repayment by the Board by the end of the projected 30 year term).~~
- d. ~~Repayment by the Parties of the debt The Project Debt, including financing costs associated with Village-issued bonds, will be repaid based on a 30 year schedule where the Village alone will pay down debt service debt under a mutually~~

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~~agreeable amortization schedule, for the first 8 years through FY 2019-20, followed by 12 years of joint payments by both parties Parties starting in FY 2020-21, and then a final 10-year repayment period funded solely by the Board, such that at the end of the 30 years the cost sharing totals delineated under Section 5. a. & b. are adhered to. Parties have each paid 50% of the costs of the new 6-12 building and recreational fields at MAST and the Board has paid 100% of the K-8 renovation costs. The foregoing cost allocations between the Village and the Board is referred to as the "Cost Sharing Agreement". The Village's and the Board's respective payment and/or reimbursement obligations under the Cost Sharing Arrangement are referred to as the "Village Payment Obligation" and the "Board Payment Obligation", respectively.~~

- e. ~~Repayment by the Parties of the debt based on a less than 30 year schedule where If the Project Debt term is less than 30 years, the Village alone will pay down debt for the first 8 years through FY 2019-20 followed by the remaining years of joint payments by both parties starting in FY 2020-21, such that at the final maturity the cost sharing-allocation totals delineated under Section 5. a. & b. are adhered to.~~
- f. ~~Disbursements-Funding procurement and disbursements~~ by the Village shall be made in amounts and at times to closely reflect the project schedule, and generally to coincide with the three main project stages:
- i. commissioning of design professional and contractor, K-8 renovations, & beginning recreational fields - \$5.5 million (Target October 2012)
  - ii. construction award ~~and commencement-~~ \$14 million (Target October 2013)
  - iii. installation of FF&E, ~~& completion recreational fields -~~ \$2.5 million (Target November 2014)

~~Until disbursements by the Village are provided in the amounts and by the dates specified above, the Board's responsibilities under Section 4 and this Section 5 applicable to each phase of the project shall not commence.~~

~~The Board's responsibilities Section 4 and Section 5 as applicable to each phase of the Project will be conditioned upon the Village funding the Project Debt, in lump sums per phase and in accordance with the target dates identified above, or in a series of disbursements based on the Project budget and timeline, as reasonably and customarily provided for in a construction loan context.~~

- g. The above notwithstanding, the Parties agree that should the Board seek voter approval for additional funding to be bonded for capital projects, the Board agrees to include the new 6-12 ~~school building~~ and the recreational fields at MAST, and renovations at Key Biscayne K-8, in the authorized project list, the cost of which will be eligible for ~~early reimbursement to the Village despite the foregoing cost allocation and repayment schedule,~~ only if the additional funding source is approved by the voters in time for the Board to issue bonds prior to ~~February 2017 to retire any outstanding Village debt~~ the date legally permissible under federal tax laws for reimbursement of costs already paid. At consummation of the additional bond financing as contemplated above (referred to as a "Bond Financing Takeout"), the Board will prepay to the Village the entire amount of the Board Payment Obligation projected through the end of the 30 year term (with

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adjustment for prepayment as may be required or allowed pursuant to the debt instruments). Notwithstanding any other provision hereof, the Parties further agree that ~~any the Board Payment Obligation amount payable pursuant to a Bond Financing Takeout prior to deadline for reimbursement of costs incurred under applicable tax laws shall not include any portion of the interest paid by the Village prior to the Board retiring the outstanding Village debt shall not be subject to reimbursement by the Board. funding under the Bond Financing Takeout. Otherwise, the Board will pay its portion of interest commensurate with the Cost Sharing Agreement specified above.~~

- h. The Village acknowledges and agrees that ~~all monetary obligations of the Board under the H.A.'s payment of its portion of the debt service in any year will be subject to appropriation of the required debt service amount in the annual budgetary process.~~

The Superintendent shall include in the Superintendent's tentative budget proposal for each fiscal year in which a ~~monetary contribution Board Payment Obligation~~ is scheduled to be made hereunder, ~~sufficient funding for such payments from any legally available funds to enable the Board to make the payments required to be made by it hereunder in the ensuing fiscal year, subject to appropriation being made therefor by the Board in the final official budget for such fiscal year. If appropriation has not been made by the Board, then the Superintendent shall include in the Superintendent's tentative budget proposal the cumulative monetary contribution owed under this Agreement in the following fiscal year. Any non-appropriation failure to make a monetary contribution when scheduled would be disclosed as required in the final official budget for the Board for each such fiscal year. The Board's financial reporting and audits for each of the first 8 years (i.e., the years in which the Village services the entire Project debt alone) will show the Project Debt and the Board's Payment Obligations in the out years, to better ensure that year-by-year budgeting will anticipate the annual and cumulative Board Payment Obligations commencing in 2020.~~

If in any year or series of years, whether or not consecutive, the monies appropriated by the Board are insufficient to pay to the Village the entire amount of the Board's Payment Obligation due in a given year (for any year or years, a "Shortfall"), the Board shall nevertheless pay to the Village as much of that year's Board Payment Obligation as is possible based on the partial appropriation, and the Superintendent shall include in the Superintendent's tentative budget proposal for the following year the amount of the resulting Shortfall and the cumulative amount of the Board's Payment Obligation for the following fiscal year. All Shortfalls shall accumulate and be added to the Board's Payment Obligation for the next year. If any Shortfall remains at the end of the term of the Project Debt, the accumulated Shortfalls shall be included within the aggregate of the Board's Payment Obligation remaining due at the end of the term, and such total amount shall be payable in full by the Board to the Village at the end of the term.

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The Village acknowledges and agrees that the Board's appropriation of funds to pay the Board's Payment Obligation will occur on a year-by-year basis.

Any non-appropriation failure by the Board or other failure to pay the full amount Board's Payment Obligation at any time when scheduled, or at the end of the Project Debt term, will cause the Board to disclose its non-payment as required under outstanding bond indentures and under Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, as same may be amended from time to time. Notwithstanding the provisions of Section 10.C. herein, failure of the Board to appropriate sufficient moneys shall not constitute an event of default.

Notwithstanding the provisions of Section 10.C. herein, an event of default by the Board shall not be deemed to have occurred if the Board fails for any two consecutive fiscal years or for any five years in total to appropriate sufficient moneys to enable the Board to pay the full amount of the then-scheduled Board Payment Obligation. If on the other hand, the Board fails to pay the then-scheduled Board Payment Obligation during any period exceeding two consecutive fiscal years or five years in total, at the Village's election, after 60 days' notice, the Village may pursue remedies as provided below.

The Parties acknowledge and agree that the Board has determined to take advantage of the Village's financing and the Cost Sharing Agreement specified herein for the entire 30 year term, and that if the Board fails to appropriate sufficient moneys to pay the Board's then-scheduled Payment Obligation, the non-payment will be deemed to be an election by the Board to accelerate payment of the entire outstanding amount of the Board's Payment Obligation then due and owing to the Village. In that event, the unamortized and unpaid balance of the Board's Payment Obligation to the Village will bear interest at the rate of 12% per annum, until paid; provided that the Board's obligation to pay interest under the terms of the debt financing and to the Village will not exceed the highest permissible rate of interest under applicable law. If the Board fails to complete its obligations in fulfillment of the Project, the Village will have rights to specific performance, reimbursement and damages, and all rights and remedies for contract breach hereunder, under law and at equity.

Notwithstanding the foregoing, the Village recognizes and agrees that the Board's Payment Obligations then due and owing are not supported by a pledge of ad valorem taxes or any taxing authority held by the Board, and, subject to limitations imposed under Article VII of the Florida Constitution and applicable laws and precedents as in effect from time to time, the Village will have no right to compel by judicial process the Board's levy of ad valorem taxes to pay the Board's indebtedness to the Village.

- i. The Subject to the foregoing provisions, the Board shall have the right but not the obligation to satisfy its payment obligations to the Village, in whole or in part,

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earlier than contemplated, or to otherwise accelerate payment, without incurring pre-payment penalties or other fees; provided that the Board's Payment Obligations will include its proportionate share, consistent with the Cost Sharing Agreement, or any prepayment penalties, yield maintenance fees or other charges imposed by the terms of the debt financing.

- i. All payments to be made by the Board to or for the benefit of the Village may be made by the Board's direct payment to the debt provider as and when due (and in any event by not later than the date on which the required payment would be delinquent), with simultaneous notice of such timely payment being given to the Village, or the Board may tender its payment to the Village in time for the Village to pay the debt provider in full and on a timely basis.

**Section 6. Curriculum and Admission Protocol.** The Parties agree that the new 6-12 facility will be part of MAST, as it existed on the date of execution by the Parties ("the current MAST"), that the current MAST and the new 6-12 facility shall operate as one school and that the new 6-12 facility shall operate as a ~~School within a School~~ "School within a School", with curriculum offerings that include the Maritime and Science Technology and a Cambridge Academy curriculum, with the total number of academies not to exceed three (without joint approval by the Board and the Village), including Maritime and Science Technology, not to exceed three and one or more programs under the Cambridge Academy. The selection of the additional academies or programs under Cambridge shall be made by the Board with the input of the Village, on a timely basis to facilitate matriculation into the ~~academies~~ School beginning in the 2012-2013 school year.

Admission to ~~the current MAST~~ MAST (with the exception of Key Biscayne Priority Seats, defined below) will remain open to eligible countywide students based on a lottery system, up to approximately 560, 9-12 students, and approximately 140, 6-8 students, for a total 6-12 countywide enrollment at the current MAST of approximately 700 students.

~~Admission to the 6-12 facility for new academies~~ Of the total MAST student population, not less than 1,100 student stations shall first be available to eligible Key Biscayne residents. Those student stations are referred to as ("Key Biscayne Priority Seats"). In the event there are additional available student stations at the new 6-12 facility after all eligible Key Biscayne students have been admitted to MAST, the Parties agree that the remaining student stations may be made available to other eligible students, countywide, based on a lottery system. Similarly, any additional available student stations in the MAST Academy at MAST generally, after filling the Key Biscayne Priority Seats and after the wait lists have been exhausted, will be offered to eligible Key Biscayne students on a first-come, first-served basis.

The Key Biscayne Priority Seats will be available to eligible Key Biscayne students on a first priority basis irrevocably.

As a School-within-a-School model, MAST Academy will be recommended to the Board for re-naming as "MAST Academy @ Virginia Key ~~High School~~", for the Board's consideration pursuant to applicable Board Policy.

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Nothing in this Agreement shall preclude Key Biscayne students from exercising any other school choice option on the same terms and through the process provided by the Board to all other Miami-Dade students or to Key Biscayne students particularly, if particular arrangements are made in the future.

**Section 7. Proposed Timeline.** The Parties agree to the following implementation schedule, unless otherwise adjusted by mutual agreement, or unless otherwise provided herein, and provided the Village has disbursed the required funds to the Board:

2012-2013

- Install up to 8 portable units (6 classrooms and 2 ancillary units) at MAST to accommodate new incoming 8<sup>th</sup> and 9<sup>th</sup> graders in time for the beginning of the 2012-2013 school year;
- Complete currently approved classroom reconfiguration, maintenance and cosmetic work at the K-8 in time for the beginning of the 2012-2013 school year;
  - Finalize scope of work for physical plant renewal at the K-8;
  - Commission design professional and contractor for physical plant renewal at the K-8, and for new 6-12 school facility and recreational fields at MAST;
  - Build recreational fields on the east side of MAST for opening around May of 2013 (parking, concession stand and separate, freestanding bathroom facilities to be provided as part of last phase).

2013-2014

- Complete K-8 improvements;
- Install additional portable units at MAST to accommodate 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> graders;
- Award construction contract for K-8 improvements, new 6-12 school and recreational fields.

2014-2015

- Install additional portables for school year 2014-15 to accommodate 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup>;
- Complete construction of new 6-12 school;
- Remove all portable units.

2015-2016: Complete remaining work in the recreational fields.

**Section 8. Joint Use of Recreational Fields at MAST.** The Parties agree to jointly develop a Joint Use Agreement (JUA) for the recreational fields at MAST, which JUA shall set forth periods of use of said fields by each Party as well as terms and conditions relating to their shared maintenance and operation. Generally, the JUA shall provide for use of the fields by students at the MAST campus during school hours and, as may be required, at other times for student-related activities; that do not conflict with Village use, and for use of the fields by the Village for its recreational and youth sports programs at all other times. The JUA shall (including at night).

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The JUA shall provide that the shared use agreements for all fields will be perpetual and exclusive to MAST and the Village, and will allocate time of use and responsibilities substantially as summarized above, and be in place by May 31, 2013, unless otherwise extended by mutual agreement of the Parties.

**Section 9. Term of Agreement.** The term of the Agreement shall extend to the final scheduled maturity of the debt obligations issued by the Village to fund the projects described in Section 5, or to the date on which the Board fully satisfies its debt payment obligations described in Section 5 of this Agreement, whichever occurs first (~~Term~~). ~~The Parties acknowledge that it is the intent of the Board that the curriculum~~ “Term”). ~~The provisions hereof regarding Key Biscayne Priority Seats at MAST Academy at Virginia Key and the curriculum solutions for MAST described in Section 6~~ herein shall survive the Term and remain applicable indefinitely, unless otherwise agreed by the Village and the Board. This notwithstanding, the Parties ~~also~~ acknowledge that it is within the Board’s sole purview to adjust said curriculum to meet then current best practices or any other pertinent educational requirements. The commencement date of this Agreement shall be the date on which the agreement is fully executed and approved by the Board and the Village (“Commencement Date”). A memorandum of this agreement will be recorded in the public records of Miami-Dade County, Florida.

**Section 10. Miscellaneous.**

**A. Unavoidable Delay.** In the event that either the Board or the Village are unable to meet the deadline for their respective obligations under this Agreement due to any circumstance beyond the control of the Board and/or Village, 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. Each party shall be responsible for any additional costs arising out of the delay, and affecting their respective obligations under this Agreement. 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, financial emergencies and the like.

**B. Notices.** All notices, request, consents, and other communications under this Agreement (“Notices”) shall be in writing and shall be personally delivered, mailed by First Class Mail, postage prepaid, sent by overnight delivery service or by electronic mail 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
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With a Copy to:	School Board Attorney The School Board of Miami-Dade County
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1450 N.E. Second Avenue, Room 430  
Miami, Florida 33132  
Fax: (305) 995-1412

If to the Village:

Village Manager  
Village of Key Biscayne  
88 W. McIntyre Street  
Key Biscayne, Florida 33149  
Fax: (305)

With a Copy to:

Attorney  
Boulevard, Suite 700

Village of Key Biscayne Village  
2525 Ponce de Leon  
Coral Gables, Florida 33134  
Village Attorney (?)  
Fax: (305)

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 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 Village may deliver Notice on behalf of the Board and the Village, 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.** Except as otherwise provided in **Section 5.g.** herein, an event of default shall be deemed to have occurred by either Party to this Agreement if such Party fails to observe or perform any covenant, condition or agreement of this 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.

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- D. Enforcement of Agreement.** In the event that either Party is required to enforce this 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 Agreement embodies the entire agreement of the Parties relating to the subject matter hereof, and supersedes all prior written and/or oral understandings or agreements with respect thereto.
- F. Amendments.** Amendments to the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both Parties.
- G. Joint Preparation.** This Agreement has been negotiated fully between the Parties as an arms-length transaction. Both Parties participated fully in the preparation of the Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this 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 Agreement may not be assigned, in whole or in part, by any Party without prior written consent of the other Party, which may be granted or withheld in its sole discretion. The Board agreement to collaborate with the Village on the Projects described herein does not extend to the selection of the design professionals, contractors or other parties engaged by the Board in connection with or for the purpose of performing any of the Board's obligations hereunder, as long as the Board adheres to the applicable state and local laws regulating the selection of such parties.
- I. Third Party Beneficiaries.** This Agreement is solely for the benefit of the Board and the Village 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 Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Board and the Village any right, remedy, or claims under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Board and the Village, 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.

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- K. Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part of this Agreement not held to be invalid or unenforceable.
- L. Time is of the Essence.** The Parties acknowledge that time is of the essence in the performance of all obligations required hereunder, and all “days” referenced herein, including in any of the attachments, shall be deemed “calendar days” unless otherwise specifically set forth.
- M. Controlling Laws.** This 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 Agreement has been duly authorized by the Board and Village. The Board and the Village have complied with all requirements of law in connection with the execution and delivery of this Agreement and the performance of their respective obligations hereunder. The Board and the Village have full power and authority to comply with the terms and provisions of this instrument.
- O. Heading for Convenience Only.** The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provision of this Agreement.
- P. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and 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 Agreement.

**[Execution Pages(s) Follow]**

**IN WITNESS WHEREOF**, the Parties have caused this 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.

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and The School Board of Miami-Dade County, Florida**

**VILLAGE OF KEY BISCAYNE,  
FLORIDA**

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

By: \_\_\_\_\_  
Name: JOHN GILBERT  
Title: Village Manager

By: \_\_\_\_\_  
Name: ALBERTO M. CARVALHO  
Title: Superintendent of Schools

**ATTEST:**

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

**BY: \_\_\_\_\_  
Village Attorney**

**BY: \_\_\_\_\_  
School Board Attorney**

**Interlocal Agreement by and between the Village of Key Biscayne, Florida,  
and The School Board of Miami-Dade County, Florida**

**EXHIBIT "A"**

**CONCEPTUAL SITE PLAN FOR NEW 6-12 SCHOOL AND  
RECREATIONAL FIELDS**