ORDINANCE NO. 2012-8

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, for years, the Village of Key Biscayne (the "Village") Village Council 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:

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 3rd day of July, 2012.

PASSED AND ADOPTED on second reading this 10th day of July, 2012.

MAYOR FRANKLIN CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

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 16th 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, due to declining revenues, the Board's capital plan has been significantly impacted; 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 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 the Board in 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 11, 2012 by Board Action # 115,793, and the Village Council authorized execution of the Agreement and related funding and cost sharing at its meetings on July 3, 2012 and July 10, 2012, by Ordinance # 2012-8 and Ordinance #2012-7, 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 on-going allocation of not less than 1,100 grade 6-12 student stations for Village residents who satisfy entry requirements for the MAST Academy at Virginia Key ("MAST"), and a funding mechanism, Cost-Sharing Agreement (as defined below) 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. The Board will construct a new grade 6-12 permanent facility at the M.A.S.T. Academy Campus (MAST) with not less than 1,100 student stations (new 6-12 facility) to provide relief for current overcrowding and expected continued student enrollment growth at the Key Biscayne K-8 facility (K-8), and offer 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 at Virginia Key as well as needed enlargement of the overall MAST Academy population. The student station allocation between middle and senior high school for Key Biscayne students 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 available to Key Biscayne residents for the 6-12 facility will not be diminished from year-to-year.

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 described in Section 8 hereof.

C. The Board will undertake and complete identified renovations at the K-8, as detailed further herein.

D. MAST will consist of three academies: Maritime and Science Technology; Cambridge Science Technology, Engineering, and Mathematics (STEM); and Cambridge Global Studies.

E. Initial 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. The cost of Item C above will be borne solely by the Board.

F. The Board will establish at its cost portable units at MAST to accept qualifying Key Biscayne students entering 8th and 9th grade, beginning in the 2012-2013 school year.

Section 4. <u>The Parties' Responsibilities</u>

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 facility and recreational fields at MAST, generally in conformance with the conceptual site plan included herein in Exhibit "A", and (c) undertake and complete the K-8 renovations (collectively the "<u>Project</u>"), substantially in accordance with the scope, timeline and estimated budgets, and for the purposes, described herein. The Parties agree to collaborate in the design of the Project and specifically as to the new 6-12 building and playing fields, and the Parties also agree to seek input from the current MAST community (the "<u>collaborative effort</u>"). 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, and to complete the Project within the time and in the manner specified herein.

   The K-8 renovations, not including those in progress, 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 8th and 9th 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 middle and high school Key Biscayne students.

3) The Board shall share in the cost of the new 6-12 building and recreational fields, estimated at $20 million, 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 operate 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.

6) In addition, the Board confirms its intent that the K-8 Center will continue as a school offering grades K-8, unless otherwise determined in the future by the Board pursuant to Board policy that includes community involvement.

B. The Village:

1) The Village shall provide upfront funding for the new 6-12 building and recreational fields at MAST, as well for the renovations of the K-8 (other than those on-going), 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. <u>Funding/Financing and Cost Allocations – General Terms and Conditions.</u>

The Parties agree that the Village shall provide one or more upfront financings for the new 6-12 facility and recreational fields at MAST and for the cost of the K-8 renovations, net of the on-going Board-approved renovation work. The principal to be financed by the Village will be in an aggregate amount of up to $22 million plus financing costs of any bonds issued by the Village for this purpose, under one single or more than one debt instruments, based on terms not to exceed 30 years from date of initial disbursement of each funding tranche. The financings in sum shall be substantially as follows, and subject to timely disbursements to the Board on a funding schedule set forth below. Prior to the issuance of any debt by the Village, parameters governing the structure and 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:

a. Funding/financing by the Village in the aggregate principal amount of $22 million plus financing costs of any bonds issued by the Village for this purpose ("<u>Project Debt</u>"), $10 million of which constitutes the Village's contribution, and the balance of which is subject to a funding allocation arrangement, as provided herein.

b. The financing for the new 6-12 facility and recreational fields, estimated at a principal amount of $20 million, will be subject to the Cost Sharing Agreement defined below, resulting ultimately in payment by the Board of $10 million in principal plus interest by the end of the projected 30 year term.

c. The financing by the Village for the K-8 renovations, estimated at $2 million, will also be subject to the Cost Sharing Agreement, resulting ultimately in full payment by the Board of $2 million plus interest by the end of the projected 30 year term.

d. The Project Debt, including financing costs associated with Village-issued bonds, will be repaid based on a 30 year schedule to be serviced by the Village. Under the Cost Sharing Agreement, the Village will provide payments for the first 8 years through FY 2019-20, followed by 12 years of payments by both Parties starting in FY 2020-21, and then a final 10-year period to be funded solely by the Board, such that at the end of the 30 years the 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. Each Board payment to the Village will be due two business days prior to the date on which the Village is obligated to make such payment on the Project Debt. The foregoing funding allocations arrangement for the projects described in a, b, and c between the Village and the Board is referred to as the "Cost Sharing Agreement". The Village's and the Board's respective payment obligations under the Cost Sharing Agreement are referred to as the "Village Payment Obligation" and the "Board Payment Obligation", respectively. The Board agrees to pay the amounts comprising the Board Payment Obligation as and when due pursuant to the Cost Sharing Agreement as provided herein, subject to Section 5.f. and 5.h.

e. If the Project Debt term is less than 30 years, the Village alone will provide payments 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 funding allocation totals delineated under Section 5. a. through d. are adhered to.

f. 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 - $14 million (Target October 2013)
   iii. installation of FF&E & completion of recreational fields - $2.5 million (Target November 2014)

   The Board's responsibilities under Section 4 and Section 5 as applicable to each phase of the Project will be preconditioned upon the Village funding the Project Debt in lump sums per phase and in accordance with the target dates identified above; provided however, that lump sum payments and target dates may be modified by written approval of both Parties.

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 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 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 total principal amount of the then-unpaid Board Payment Obligation. Notwithstanding any other provision in subsection g, 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.

The Board hereby declares the official intent of the Board to reimburse itself or the Village from a portion of the proceeds of the Bond Financing Takeout for expenses incurred with respect to the Project. This paragraph is intended as a declaration of official intent under Treasury Regulation § 1.150-2 to satisfy the requirements of Sections 54A(d)(2)(D)(i) and 54A(d)(2)(D)(ii) of the Internal Revenue Code. The portion of the Bond Financing Takeout intended to finance the Project is expected not to exceed an aggregate principal amount of $12,000,000.

h. The Village acknowledges and agrees that all payment obligations of the Board under this Agreement will be subject to Board 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 in any year, 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 and all succeeding fiscal years until paid in full. Payments that have not been made by the Board within five years of their due date(s) will accrue a late payment charge in amount equal to five percent of the overdue balance. Any failure to make a 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.

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.

i. 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, earlier than contemplated, or to otherwise accelerate payment, without incurring pre-payment penalties or other fees.

Section 6. **Curriculum and Admission Protocol.** MAST will consist of three academies: Maritime and Science Technology; Cambridge STEM; and Cambridge Global Studies which shall operate as one school with the new 6-12 facility shall operate as a "School–within-a-School". 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 School beginning in the 2012-2013 school year.

Admission to the Maritime and Science Technology Academy 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 Maritime Academy of approximately 700 students. No less than 1,100 student stations at the Cambridge academies shall first be available to eligible Key Biscayne residents on a first priority basis, not including any Key Biscayne students admitted to the Maritime Academy through the countywide lottery process. Those student stations are referred to as ("Key Biscayne Priority Seats"). Any changes are to be mutually agreed to in collaboration with both the Village and the Board. In the event there are additional available student stations at the new 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 Maritime Academy after the wait lists have been exhausted will first be offered to eligible Key Biscayne students. The 6-8 component of the new 6-12 facility will implement the middle school Cambridge curriculum.

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 entering the Maritime Academy or exercising any other school choice option on the same terms and through the process provided by the Board to all other Miami-Dade students. The provisions of this section 6 with regards to Key Biscayne Priority Seats at MAST shall survive the Term of this Agreement.

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 8th and 9th graders 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 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 8th, 9th and 10th graders;
    - Award construction contract for K-8 improvements, new 6-12 facility and recreational fields.

2014-2015

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

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

Section 8. **Joint Use of Recreational Fields at MAST Campus (JUA).** Effective with the JUA Commencement Date, the Village shall have full control, custody, right and use of the recreational fields and all parking and recreational facilities located thereon, after 5:30 p.m. on regular school days until 11:00 p.m., and on weekends and official school holidays and recess days from 8:00 a.m. until 11:00 p.m. ("Village's Period of Use"). In addition, the Village shall have a right of ingress and egress across designated portions of the MAST campus for the purpose of gaining access to the recreational fields. The Board shall have full control, custody, right and use of the recreational fields and all parking and recreational facilities located thereon, during regular school hours on regular school days through 5:30 p.m. as established through the Board's approved school calendar ("Board's Period of Use").

Annually, the school principal and the Village Manager or his designee shall meet prior to the start of each regular school year to discuss any special events or activities that may require adjustments to the normal schedule. Additionally, should either Party require use of the recreational fields during the other Party's Period of Use, the parties' designated representatives shall use best efforts to accommodate said use. The JUA shall be in place by May 31, 2013. The JUA shall be for an initial term of 30 years with two ten year renewal options, which may be

further extended by mutual agreement of the Parties.

Section 9. Term of Agreement. The term of the Agreement shall extend to (i) the final scheduled maturity of the debt obligations issued by the Village to fund the Project, or (ii) the date on which the Board fully satisfies the Board Payment Obligation described in Section 5 of this Agreement, whichever occurs later ("Term"); provided that if the Board prepays the Board Payment Obligation as described in Paragraph 5(g) and 5(i) prior to the date specified in (i), then the Term shall end on the date of such prepayment. The Parties acknowledge that the curriculum and the provisions regarding Key Biscayne Priority Seats at MAST Academy at Virginia Key described in Section 6. herein shall survive the Term; the Parties however 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.

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
With a Copy to:	School Board Attorney The School Board of Miami-Dade County 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, Suite 220
Key Biscayne, Florida 33149
Fax: (305) 365-5506

With a Copy to:

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134
Attention: Stephen Helfman, Esq.
Fax: (305) 854-2323

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.h.** 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. Upon the occurrence of an Event of Default hereunder, which shall not include failure to make payment of the Board's Payment Obligations as a result of non-appropriation, 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. Any monetary damages awarded upon default hereunder shall be enforceable only out of funds appropriated therefor by the Board.

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 pay its own attorney's fees and costs.

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.

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.

VILLAGE OF KEY BISCAYNE, FLORIDA

By: _____
Name: JOHN C. GILBERT
Title: Village Manager

ATTEST:

By: _____
Name: Jennifer Duque
Title: Interim Village Clerk

TO THE VILLAGE:
APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY: _____
Village Attorney

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

By: _____
Name: ALBERTO M. CARVALHO
Title: Superintendent of Schools

ATTEST:

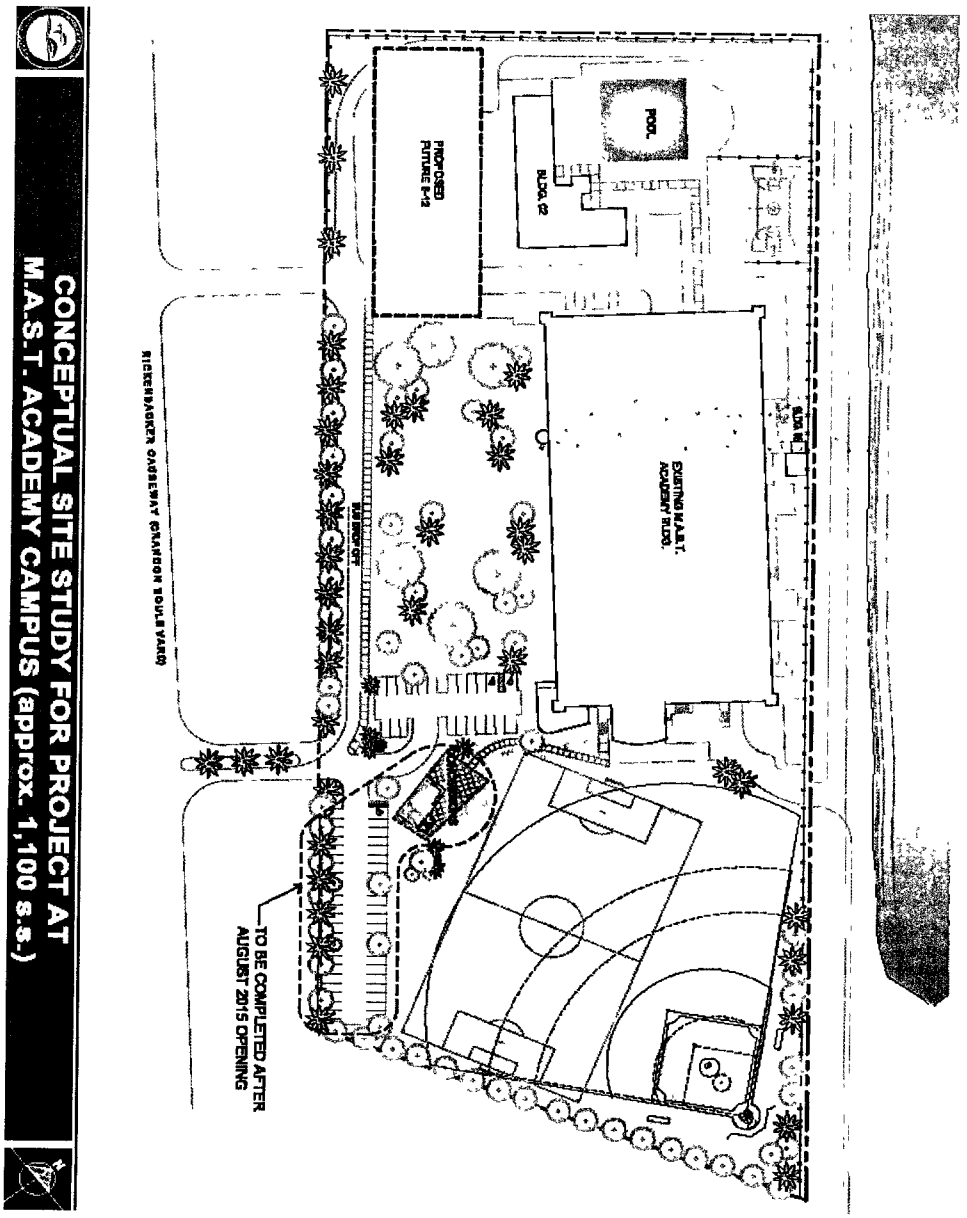
By: _____
Name: Cheryl V. Bazo
Title: Board Recording Secretary

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

BY: _____
School Board Attorney

EXHIBIT "A"

CONCEPTUAL 3SITE PLAN FOR NEW 6-12 FACILITY AND RECREATIONAL FIELDS



CONCERT REVIEW

Boston delivers near perfection

BY HOWARD COHEN
hcohen@MiamiHerald.com

JOH VISCOTT

VETERAN GUITARISTS Boston's founder Tom Scholz left, and Gary Pihl play the distinctive Boston sound on 'Hitch a Ride in this recent photo

Calling a live album "live" is often a misnomer in popular music Almost all of the popular live albums — *Frampton Comes Alive!, Eagles Live*, Garth Brooks' *Double Live* — were heavily doctored in the studio with overdubs, rerecorded instrumental parts and resung vocals to sound painstakingly close to the recorded versions

Three songs into Boston's opening date of its 2012 tour at Hard Rock Live near Hollywood on Thursday night, just after a flawless re-creation of the 1978 classic-rock staple *Feelin' Satisfied*, the notion of having to resort to such deceptive trickery seemed unnecessary for musicians and sound engineers of this caliber. Boston's front-of-house sound was crystaline, full-bodied, warm and powerful, so close to perfect, you could suggest that all Boston has to do to craft its first killer live album right now is to get onstage and simply hit the record button

Boston mastermind Tom Scholz, the group's founder, guitarist, keyboardist and primary songwriter, laughed backstage at that suggestion after the 105-minute concert "They'd hear all my mistakes," he quipped

If there were any faults in the opening night's performance they mostly were reflected in the concert's haphazard video presentation. The large screen behind the band only sporadically flashed images, none of them particularly interesting, save a few shots of the distinctive Boston guitar spaceship logo.

The concert's pace in the latter third also flagged a bit with a three-part *Third Stage* combo of *My Destination/New World/To Be a Man* Ditto the surprising inclusion of the mid-tempo *Used to Bad News* as the penultimate encore The more rousing *Don't Be Afraid*, from the same *Don't Look Back* album, would have maintained the peak Boston had built by that point.

But these are minor quibbles Boston, working as a six-piece with vets Scholz and guitarist-keyboardist Gary Pihl, now includes new co-vocalist/rhythm guitarist David Victor swapping leads with lead singer Tommy DeCarlo on *Peace of Mind* and *Amanda*. Muscular drummer Curly Smith has returned to the lineup to anchor the sturdy rhythm section with Tracy Ferrie.

Four years ago when DeCarlo performed on his first tour with the group after Scholz was tipped to his YouTube videos, he had the requisite high tenor voice to replace the late Brad Delp He also had the charming back story — Home Depot employee and Boston fan gets to front his favorite band. But on this tour, a slimmer DeCarlo seemed much more ingrained in the band and secure in his position as the focal element onstage. He effortlessly hit the high notes on *More Than a Feeling* and energetically worked the near full-house like a pro.

Aside from the aforementioned gripes about a song choice or two, the set list was inspired. One of the problems with having an album as all-encompassing as its 1976 eponymous debut is that it tends to overshadow the other work. Though the band played most of *Boston* Thursday, the group also showcased two superior pieces from the overlooked 1994 *Walk On* album. The driving rocker *Surrender to Me* has a chorus hook as indelible as Boston's greatest hits and went over well with the audience Also impressive, the complex, classical music-inspired *Walk On/Get Organ-Ized/Walk On (Some More)* medley found Scholz, still lean, youthful and clad for the basketball court, coaxing alarm sounds from a smoking organ. The song's various, layered parts built in intensity and dynamics and felt like the giddy tail end of a carnival's Himalaya ride, when the merry-go-round is spinning at its peak, the music's blaring and the intoxicating feeling is like no other

Follow @HowardCohen on Twitter

Village of Key Biscayne

Office of the Village Clerk

PUBLIC NOTICE

Notice is hereby given that the following ordinances will be considered on Second Reading by the Village Council of the Village of Key Biscayne at a Special Meeting to be held on Tuesday, July 10 2012 at 7 00 p m., in the Council Chamber located at 560 Crandon Boulevard, Key Biscayne, Florida.

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA AUTHORIZING THE ISSUANCE OF NOT EXCEEDING $23 000 000 OF SCHOOL IMPROVEMENT REVENUE BONDS OF THE VILLAGE OF KEY BISCAYNE, FLORIDA FOR THE PURPOSE OF PROVIDING A PORTION OF 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, PROVIDING FOR SUPPLEMENTAL RESOLUTIONS SETTING FORTH THE DETAILS OF SAID BONDS, AND PROVIDING AN EFFECTIVE DATE.

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.

The proposed Ordinances may be inspected by the public at the Office of the Village Clerk Interested parties may appear at the Public Hearing and be heard with respect to the proposed Ordinances Any person wishing to address the Village Council on any item at this Public Hearing is asked to register with the Village Clerk prior to that item being heard

In accordance with the Americans With Disabilities Act of 1990 all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the Office of the Village Clerk, 88 West McIntyre Street, Suite 220, Key Biscayne, Florida 33149, telephone number (305) 365 5506 not later than two business days prior to such proceeding

Should any person desire to appeal any decision of the Village Council with respect to any matter to be considered at this meeting, that person shall insure that a verbatim record of the proceedings is made including all testimony and evidence upon which any appeal may be based (FS 286 0105)

Comments of any interested party relative to this matter may be submitted in writing and or presented in person at the public hearing.

Conchita H Alvarez, MMC

Village Clerk

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PUBLIC NOTICE

Housing & Commercial Loan Committee Meeting July 30, 2012, at 9:00 A.M.

Community Development

The City of Miami Housing & Commercial Loan Committee (HCLC) will conduct a public meeting at City Hall, Commission Chambers, 3500 Pan American Drive, Miami, FL 33133 on July 30, 2012, at 9 AM, to discuss items related to general business, policies, and to provide the public an opportunity to comment on funding amendments affecting the City's annual Action Plan for U S HUD & other city funded programs The proposed amendments and respective descriptions can be found at www.miamigov.com/communitydevelopment

The approval by the HCLC, related to the proposed amendment(s), authorizes the City Manager to draft/amend the appropriate City of Miami annual Action Plan Certain item(s) may be available for public comment and review for a period of no less than 30 days The review and comment period begins on June 30, 2012 and ends on July 30, 2012. The proposed amendment(s) will be presented to the HCLC for approval on July 30, 2012. Draft copies will be available at the City of Miami, DCD, located at 444 SW 2nd Avenue, 2FL, Miami, FL 33130 Comments to amendment(s) must be submitted in writing to the DCD address, Attn Monica Bosano, and must be received no later than July 30, 2012 Interested individuals are encouraged to attend this meeting The meeting site is accessible to the handicapped Requests for special accommodation(s) may be directed at 305-416-2080 no later than 3 business days prior to the meeting day (AD#18856)

STRAITS OF FLORIDA

Cuba-Florida record target of swimmer

Associated Press

RAMON ESPINOSA/AP

READY TO GO: Penny Palfrey smiles before beginning her swim in Havana on Friday

HAVANA — Marathon swimmer Penny Palfrey powered through the Straits of Florida on Friday as she attempted a record 103-mile unassisted swim from Cuba to Florida that tests the limits of human endurance and the will of the high seas.

Slathered with sunblock and lubricant to prevent chafing, the British-born Australian bade farewell to onlookers, dived headfirst into the calm, bath-water-warm seas off Havana and began stroking slowly northward with a kayaker as escort.

"There's a lot of work that's gone into this over the past year," Palfrey said, thanking her husband, her team and Cuban officials who helped facilitate the trip "It's all coming together, and so exciting to finally get to this point where we can get started."

A member of Palfrey's crew was tweeting to fans, while a web page updated her location every 10 minutes or so based on data from a GPS device worn by the swimmer The site showed her making steady northward progress through the Straits of Florida, where the Gulf of Mexico and the Atlantic Ocean meet

"Swimming strong Great conditions Some jellies, but not bad," read one tweet

As she hit 10 hours in the water, Palfrey had traveled about 18 miles from Cuba, said Andrea Woodburn, who was managing Palfrey's Twitter and Facebook accounts. Woodburn said the evening forecast called for thunderstorms and some gusty winds, but otherwise Palfry's weather expert reported the "situation is about as good as it gets in the Straits"

Palfrey will have to fight through physical and mental fatigue while fending off dehydration, hypothermia and dangerous marine life. She estimates that it would take 40 to 50 hours to make the crossing, and the currents would determine where in Florida she came onshore.

If Palfrey succeeds, she'll go into the record books as the first woman to swim the Straits without the aid of a shark cage. Instead, she's relying on equipment that surrounds her with an electrical field to deter the predators.

Australian Susie Maroney made the crossing in 1997 at age 22, but with a shark cage American Diana Nyad made two unsuccessful cageless attempts last year on either side of her 62nd birthday, but had to call them off due to a debilitating asthma attack and painful Portuguese man-of-war stings She plans to try again this summer

Palfrey, a 49-year-old mother and grandmother, is more than a decade younger than Nyad

She was wearing a regular sporting swimsuit instead of a wetsuit, and planned to put on a porous, non-buoyant Lycra bodysuit that provides cover down to the wrists and ankles whenever jellyfish may be a threat

Palfrey is no stranger to jellyfish stings, which forced her to abort two past swims in Hawaii.

MIRAMAR POLICE

Officer accused of telling teen to strip

• POLICE, FROM 1B

could look for bruising or other evidence of sexual activity

In fear, the affidavit said, she complied.

The girl told police she thought it "was the right thing to do" because he was an officer.

Her 19-year-friend turned away, unable to watch, according to the affidavit.

He told police he heard the man tell the girl, "I need you to spread your legs wider so I can see"

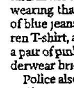
The officer then used a flashlight to "inspect" her and told her to pull down her blouse so he could check for bruising, according to the police report.

Then he returned the driver's license to the boy and told them, "Go home."

The teens got into the front seats of the car, "cried, hugged and drove off," the affidavit said.

The youngsters said they didn't tell anybody at first because they were afraid and intimidated. But then the girl told her older sister, who insisted their mother be told.

When questioned by police, the girl said the man who'd ordered her to remove her clothing had a gold badge and his last name began with the letter "R." She also said that she knew she could identify the man if she saw him again. Officials did not release the teens' identities



DE LOS RIOS

Investigators had the girl turn in the clothes she was wearing that day — a pair of blue jeans, a Ralph Lauren T-shirt, a beige bra, and a pair of pink and black underwear briefs.

Police also asked for surveillance video from the CVS Caremark near where the teens had parked. Although the quality of the video was not clear enough to identify De Los Rios, police say the body language was consistent with the victim's and witness' statements.

De Los Rios' gold badge was also paper bagged.

The 18-year veteran of the department has been on administrative leave since the complaint was filed in January Miramar police launched a criminal investigation along with the Broward state attorney's office.

A warrant for De Los Rios' arrest was issued Friday. He later turned himself in to police.

"He is now suspended without pay, pending the outcome of the investigation," Miramar police spokeswoman Tania Rues

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MIAMI-DADE-FLORIDA

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Before the undersigned authority personally appeared:

STEPHANIE DELGADO

Who on oath says that he/she is

CUSTODIAN OF RECORDS

of The Miami Herald, a daily newspaper published at Miami in Miami-Dade County, Florida; that the attached copy of advertisement was published in said newspaper in the issues of:

June 30, 2012

Affiant further says that the said The Miami Herald is a newspaper published at Miami, in the said Miami-Dade County, Florida and that the said newspaper has heretofore been continuously published in said Miami-Dade County, Florida each day and has been entered as second class mail matter at the post office in Miami, in said Miami-Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspapers(s).

Sworn to and subscribed before me this
2nd day of July, 2012

My Commission
Expires: _____August 1, 2014_____
Silvia Sendra

Notary

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