

Facilities Planning and Construction  
Paul J. Phillips, Chief Facilities Officer

**SUBJECT: AUTHORIZATION TO AMEND THE AGREEMENT WITH LUCKY START, LTD., FOR THE CONSTRUCTION OF PRIMARY LEARNING CENTER "U" AS A CONTRIBUTION IN-LIEU-OF IMPACT FEES**

At its September 20, 1995 meeting, the Board authorized the Superintendent to negotiate a Declaration of Restrictions (Declaration) for Applications No. 94-597 and 95-272, for the following: 1) applicant's construction of a Primary Learning Center (PLC) on an approximate two-acre parcel; 2) the dedication of an additional approximate two-acre parcel; and 3) the option to purchase six additional acres at fair market value, within a proposed 703-unit residential development, located at S.W. 157 Avenue and S.W. 96 Street to mitigate the impact of the development. The purchase of the six acres could not be made as an agreement as to price could not be reached with the seller. In addition, pursuant to Board authorization, an Agreement was executed to ensure compliance with the terms and conditions of the Declaration.

The terms and conditions of the Agreement and Declaration provided that the developer construct the PLC in conformance with District-provided architectural plans and specifications, within certain time frames based on the number of residential permits pulled by the development. At the time, adoption of the Educational Facilities Impact Fee Ordinance (Ordinance) was imminent, and the Agreement and Declaration provided for the conveyance of the PLC and the land as a contribution in-lieu-of impact fees; the developer would pay no impact fees to the District for the development; and, the District would owe no reimbursement to the developer for the contribution. At the time of the agreement negotiation, the estimated contribution in-lieu-of impact fee value for a PLC was \$1.5 million plus the fair market value of the land.

The original contribution in-lieu-of impact fee value for a PLC was based on the District's projected costs, since at the time of the enactment of the Ordinance no actual cost data existed for PLC construction. However, at its February 5, 1997 meeting, the Board re-established this value as \$1.8 million plus the fair market value of land, based on the District's actual construction costs. In addition, the Board recognized that the five developer agreements predating the meeting, including Lucky Start Ltd., would need to be individually amended, as appropriate to reflect the difference in value and to include reimbursement provisions. Miami-Dade County accepted the increased value of the PLC as established by the School Board for purposes of the Ordinance on June 25, 1997.

PLC "U" is scheduled to obtain substantial completion by February 15, 2001. At this time, the developer is requesting that the existing agreement be amended to include the reimbursement provision reflecting the increase in the PLC value established on February 5, 1997. In addition, the Ordinance permits reimbursement to the developer for District-approved differences or changes that increase the cost of the facility built by the developer as compared to the facility upon which the contribution in-lieu-of impact fee value is based. As the Ordinance, Declaration and Agreement are silent as to when reimbursements are to be made, the developer is additionally requesting that the amendment establish a time line for payment of the reimbursement amount.

Recommended terms and conditions of the proposed amendment are substantially as follows:

- Based on the Board's February 5, 1997 action, there will be a reimbursement to the developer of \$300,000, reflecting the difference between the original PLC contribution in-lieu-of impact fee value and that which was re-established based on actual construction costs of the District.
- Reimbursement in the amount of \$27,427 will be paid to the developer based on off-site infrastructure and work for PLC "U" required by Miami-Dade County that exceeded that required for PLCs constructed by the District upon which the impact fee value was based. Such requirements include extensive drainage; longer school drives; increased concrete work; additional signs and striping; fire hydrant relocation; and the extension of the parent drop-off beyond the property line.
- The \$300,000 reimbursement noted above will be paid to the developer within 90 days of the execution of the Amendment. A \$27,427 reimbursement will be paid to the developer within 90 days of substantial completion of the PLC.
- Educational Facilities Impact Fee credits will only be authorized up to the original \$1.5 million plus the fair market value of the two approximate two-acre parcels, established as set forth in the Educational Facilities Impact Fee Administrative Manual. The fair market value as established by a District-commissioned appraisal is \$360,000 for each of the two parcels. Any impact fees incurred above this amount by the owner shall be paid pursuant to the terms of the Educational Facilities Impact Fee Ordinance.
- A letter of credit in the amount of \$1,980,000 is currently held by the District to provide security for the construction of the PLC and the impact fees. One approximate two-acre PLC site has been previously conveyed to the District. Upon the conveyance of the PLC and site, the District shall release the letter of credit.
- At the time the District releases the \$1,980,000 letter of credit, the developer shall provide a \$90,000 letter of credit to the District which shall provide the financial guarantees for payment of any warranty/facility compliance issues which the developer fails to resolve. If after 60 days from the date of final occupancy acceptance by the District, all

warranty/compliance issues are not resolved to the satisfaction of the District, the letter of credit may be drawn upon in an amount sufficient to cover all costs related to the correction of any warranty/compliance issues.

- The \$90,000 letter of credit shall be retained by the District for a period of twelve months following the issuance of a Certificate of Final Occupancy for the PLC. At the end of this twelve month period, the District shall release the letter of credit upon receipt of written acknowledgment that the reimbursements and letter of credit, less adjustments made for costs related to the correction of any warranty/compliance issues, represents final payment and releases the School Board from any and all obligations to the owner. If the \$90,000 letter of credit is insufficient to address warranty items and compliance issues, the Owner agrees to reimburse the District any outstanding balance within 60 days of written notification that a balance is due.

The proposed amendment to the Agreement has been reviewed and accepted by Facilities Planning and Construction and has been reviewed by the School Board Attorney's Office. A copy of the amendment will be placed on file in the Citizen's Information Center and the Recording Secretary's Office.

Should an amendment to the Declaration be necessary, it will be processed by the developer through Miami-Dade County.

The General Partners of Lucky Start, Ltd. are; 1) Lucky Start, Inc, whose officers are Mr. Antonio Balestena, Mr. Jorge Fernandez and Mr. Luis Fernandez, 2) Abal Investments, Inc., whose officers are Mr. Antonio Balestena, and 3) Ferben Investments, Inc., whose officers/directors are Mr. Jorge Fernandez, Mr. Fernandez L. Alvarez, Mr. Jorge Fernandez and Ms. Maritza Fernandez.

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida, authorize the Superintendent or his designee to execute an amendment to the Agreement and to support a companion amendment to the Declaration of Restriction with Lucky Start, Ltd., as may be needed, to provide for a reimbursement in an amount not to exceed \$324,427, under terms and conditions set forth above.

SO:lhk