

Business Operations  
J.E. Surash, P.E., Chief Business Officer

**SUBJECT: AUTHORIZATION TO ENTER INTO AN INTERLOCAL AGREEMENT WITH MIAMI-DADE COUNTY AND CITY OF HOMESTEAD FOR THE PURPOSE OF CREATING AN EDUCATIONAL FACILITIES BENEFIT DISTRICT IN THE CITY OF HOMESTEAD**

**COMMITTEE: FACILITIES MANAGEMENT**

**Introduction**

Since October 2003, the District has been reviewing a request from the City of Homestead (City) and a local developer, M&H Homestead, Ltd. a/k/a Keys Gate III Land Trust (Developer), to create an Educational Facilities Benefit District (EFBD), intended to help meet the educational needs to be generated by an anticipated 9,200 new residential units, which will be constructed over the next several years within portions of the City. These developments will create an estimated combined demand for approximately 4,740 new student stations. District staff have held numerous meetings with representatives of the Developer, including discussions related to ownership and operational control of the school facilities, use of educational facility impact fees generated by construction of the 9,200 residential units, funding of any Board contribution requirement, building code criteria, impact on the general fund due to reduced FTE, and a host of other related issues. Two Board workshops have also been held to address issues and concerns from Board members.

It should be noted that, with the recent passage of Senate Bill 3000, in the future impact fees arising from new developments could be diverted from the District's capital outlay program. In essence, this Bill will allow impact fees paid in conjunction with new developments to fund construction of charter school facilities intended to mitigate the impact of these developments. In the future, loss of this income stream to the District could compromise the District's ability to issue debt, and hinder the District's ability to pay existing debt service on COPS already issued to construct schools in the current benefit impact districts.

**Background**

In February 2004, the developer offered to create the EFBD under the following terms:

**GOOD CAUSE  
E - 17**

- Construction of three K-8 schools with funding provided by \$180 annual assessments on individual properties within the EFBD, a payment of \$350 per student by the prospective charter school operator, Board contribution of \$250 per student station for the 30 year financing period, and all educational facility impact fees paid to the County in connection with the 9,200 residential units;
- Donation by the developer to the EFBD of three parcels to house the K-8 schools;
- Building the charter schools in accordance with the District's prototype facilities list;
- Building the charter schools to accommodate modular units for future expansion purposes, which would be funded on a 50/50 basis by the EFBD and District;
- Financing and construction by the EFBD of a high school on Board-owned land in Homestead, with the EFBD to seek approval of an additional annual assessment of \$20/residential unit should the Board have insufficient funds to meet its debt service to pay for construction of the school; and
- Guaranteed attendance at the three schools for students residing within the EFBD.

**Additional Information – Current Proposal**

Most recently, the Board held a workshop on May 19, 2004, at which time the Board discussed a number of related issues, which included the following:

1. The need for the EFBD proponents to immediately address concerns raised by the UTD in its written request.
2. Clarification of EFBD governance issues, specifically as to the extent of School Board participation and input.
3. Ownership of the land to be donated by the EFBD proponents as well as ownership of the school facilities that would be built under the EFBD.
4. Operation of the proposed schools, i.e. the EFBD proposal provides for operation of one of the schools as a traditional public school, and operation of the other two schools as charters, with the right of first refusal afforded to the School Board for provision of educational and operational support.
5. The need to meet the School District's goal to achieve diversity under the unitary status provisions, and related impacts on attendance boundary considerations for schools built within and under the provisions of the EFBD.
6. The need to address the impact of the proposed residential development(s) located within the proposed EFBD at the high school level, since all three proposed schools only address projected needs at the elementary and middle school levels.
7. The need to possibly amend the present interlocal agreement with Miami-Dade County governing impact fees, specifically as it relates to the impact of the proposed EFBD on collections and allocation of impact fees within the East Benefit District, within which all proposed EFBD development would fall.

At that time, following extensive discussions, the Board directed staff to revise the agenda item slated for consideration later that day, such that the Superintendent and

School Board Attorney would be authorized to move forward with the formulation of an Interlocal Agreement between all parties. This agreement would address the questions and concerns enumerated above, as well as related financing, educational and operational issues. At the subsequent May 19, 2004 Board meeting, the Board ratified this directive.

The developer has now submitted a revised proposal, described below which also includes an increase in the number of units previously proposed from 9,200 to 10,784 (a proposed increase of 1,584 units). This increase would generate an estimated additional 934 students, beyond the 4,740 previously projected.

- District Boundaries. The boundaries of the EFBD shall be all of the property described in Exhibit "A" to the proposed Interlocal Agreement. As contemplated in this Interlocal Agreement, the EFBD will levy assessments on the property within the boundaries of the EFBD to help finance the costs of the construction of educational facilities.
- Governing Board of EFBD. The Governing Board of the EFBD shall be comprised of seven (7) members serving 4-year terms. The membership of the governing board shall include three (3) representatives appointed by the School Board, one (1) representative appointed by the City, one (1) representative appointed by the County, and two (2) representatives appointed by the owners of the majority of the land within the EFBD. The initial representatives of the School Board, the County, and the City shall serve 4-year terms. One (1) of the Landowners' initial representatives shall serve and 4-year term and one (1) of the Landowner's initial representatives shall serve a 2-year term.

Following the initial Board appointments, the Landowners' representatives on the Board shall be elected in accordance with applicable law.

- Facilities Funding and Construction. The EFBD shall construct three (3) K-8 schools on sites donated to the School District by the Landowners. Title to the school sites will be conveyed to the School Board at no cost to the School Board. The timing for the conveyance of each school site will be determined by the terms and requirements of the financing for each of the schools to be built under the auspices of the EFBD. All schools shall be designed and built by the EFBD in accordance with School District approved standards. The School Board shall lease the three sites to the EFBD at nominal charge to facilitate the financing and construction of the facilities by the EFBD. Prior to the assumption of any debt for the financing of the school facilities contemplated in the Interlocal Agreement, the parties will execute one or more funding agreements to set forth the terms and conditions of such indebtedness. Said funding agreement(s) shall address the parties' financing obligations for construction costs and capital maintenance.

The first K-8 school shall be built on that certain parcel of land more particularly described in Exhibit "A" to the Interlocal Agreement as Parcel "A" or on such other parcel of land as may be acceptable to the parties.

- The first K-8 school shall have a design capacity of at least 2,100 student stations. The cost of construction of the first K-8 school shall be borne exclusively by the School Board.
- Each of the second and third K-8 schools shall have a design capacity of up to 2,100 student stations. The cost of the next two (2) schools will be financed by a combination of (a) special assessments levied against the residential property within the boundaries of the EFBD, pursuant to Section 1013.355, Florida Statutes, Chapters 125 and 166, Florida Statutes, and Sections 197.3631, 197.3632, and 197.3635, Florida Statutes; (b) educational facilities impact fees (the "Impact Fees") generated by residential development within the boundaries of the EFBD, as collected by the County under the terms of Chapter 33K of the Code of Miami-Dade County, paid to the School Board pursuant to the Impact Fee Documents (hereinafter defined) and remitted to the EFBD or its designee under the financing documents executed in connection with any indebtedness incurred to finance the construction of the facilities; and (c) lease payments that may be received from charter school operator(s), if any. The parties agree to coordinate the timing for the design and construction of the second and third schools with the expansion of the assessment areas as provided in Section 4 of the Interlocal Agreement. Notwithstanding the requirements of Section 1013.356, Florida Statutes, the School Board shall not be obligated to contribute additional funding for the second and third schools referenced herein. Any construction and capital costs not covered by funds provided in this section, shall be funded exclusively by the EFBD.
- If at any time during the term of this Interlocal Agreement, (i) the School Board is able to secure a site for the construction of a high school, (ii) the boundaries of the EFBD are included within the attendance boundaries of the new high school, and (iii) the School Board secures financing for the new high school, then in that event, the EFBD shall promptly seek authorization to increase the special assessments by an amount not to exceed \$50.00 per dwelling unit and shall cause said assessments to be remitted as received to the School Board for the purpose of helping to finance the construction of the high school for so long as the boundaries of the EFBD remain within the attendance boundaries of the high school and any indebtedness issued to finance the construction of the high school remains outstanding.
- Facilities Operation. The School Board shall have the right to operate all three (3) schools constructed by the EFBD as traditional public schools. However, the School Board may opt not to operate the second and third schools as traditional public schools. In that event, prior to letting a contract for the construction of each of the second and third schools, the School Board shall determine the method for

the operation of each school. The EFBD shall hold a public hearing to solicit comments from all of the interested parties, including the EFBD residents and landowners, on the proposed method of operation for each of the two schools and shall forward said comments to the School Board. In making the decision, the School Board shall, in accordance with its rules and regulations, hold a public meeting to solicit and receive the input of all interested parties, including residents within the EFBD, and shall consider the comments received by the EFBD during the public hearing. Further, the School Board shall explore all available alternatives for the operation of the schools, including, without limitation, traditional public schools, charter schools, municipal charter schools, or "Saturn" schools. In the event the School Board decides that either or both schools should be operated as charter schools, the EFBD shall solicit proposals from charter school companies to operate either or both schools and shall thereafter select an operator for each or both of the second and third schools, all in accordance with the applicable State laws, rules and regulations governing the procurement of such services. Once the EFBD selects a charter school operator or operators, the EFBD shall submit a charter application to the School Board for review and approval in accordance with State law and Board rules. To the extent permitted by applicable law, nothing in the Interlocal Agreement shall limit the ability of the School Board to operate the second and third schools as charter schools through an agreement with a third party sponsor, such as the EFBD, the City of Homestead or a not-for-profit foundation.

Any contract for the operation of the schools as a charter school shall be subject to review and renewal every five (5) years.

- School Attendance Zone. As provided in Section 1013.357, Florida Statutes, it is the intent of the parties that the student population at the EFBD facilities shall, to the greatest extent possible, reflect the racial, ethnic, and socioeconomic balance of the School District. As such, to the extent allowed by state and federal law, so long as the EFBD levies special assessments to finance the cost of construction of educational facilities, the School Board shall utilize its established ABC procedures to establish school attendance zones which shall always include all assessed property within the EFBD, but which may allow students residing within a reasonable distance of the EFBD facilities to attend such facilities.

The terms and conditions of the foregoing proposal are outlined in the proposed Interlocal Agreement. A draft of the Interlocal Agreement is attached to this item. In addition, Exhibit "A" is attached to this item. The terms of the proposed Interlocal Agreement also address the issues raised by the Board on May 19, 2004, as follows:

- Representatives of the landowners met with Mr. Mark Richard to address the UTD's questions and also delivered written answers to the questions raised. A copy of the letter to Mr. Richard is attached to this item.

- The Interlocal Agreement spells out the rights and duties of each party, regarding the governance of the EFBD.
- All three (3) sites will be owned by the School District. The facilities will either be owned outright by the District or will revert back to the School District.
- The School Board will determine the method of operation for all schools.
- As provided by the EFBD statute, students residing outside of the EFBD will be able to attend EFBD facilities.
- The Interlocal Agreement provides that if certain conditions are met, the EFBD will seek approval to levy an additional assessment to help finance the cost of the construction of a senior high school.
- Any changes or amendments that are required to the present Impact Fee Interlocal Agreement will be presented to the County, which must also consent to the creation of the EFBD.

The developer has also advised that should the Board fail to take action in this regard at its meeting of June 16, 2004, the offer described above will be withdrawn.

This item does not appear in the published agenda. There is good cause to vary from the agenda in order to authorize entering into an Interlocal Agreement with Miami-Dade County and the City of Homestead for the purpose of creating an Educational Facilities Benefit District in the City of Homestead, at the Board meeting of June 16, 2004, so as to avoid the developer withdrawing his offer.

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida, authorize the Superintendent to execute an Interlocal Agreement with Miami-Dade County and the City of Homestead for the purpose of creating an Educational Benefit District in the City of Homestead, under terms and conditions substantially as detailed above.

MAL:lh  
Attachments

**INTERLOCAL AGREEMENT  
BETWEEN  
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA,  
MIAMI-DADE COUNTY, AND THE CITY OF HOMESTEAD  
RELATING TO THE HOMESTEAD EDUCATIONAL FACILITIES BENEFIT DISTRICT**

This Interlocal Agreement is entered into between The School Board of Miami-Dade County, Florida, a public body corporate and politic existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as the "School Board,"

and

Miami-Dade County, Florida, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as the "County,"

and

the City of Homestead, Florida, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as the "City."

**RECITALS**

**WHEREAS**, Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," authorizes local government units to enter into interlocal agreements for the mutual benefit of governmental units;

**WHEREAS**, the School Board, the County, the City and various other municipalities have entered into an "Interlocal Agreement for Public School Facility Planning in Miami-Dade County, dated February 24, 2003 (the "2003 Interlocal Agreement");

**WHEREAS**, Sections 166.021 and 125.01, Florida Statutes, authorize the County and the City to exercise any power for municipal purposes, except when expressly prohibited by law;

**WHEREAS**, Section 1013.355, Florida Statutes, authorizes the creation of an Educational Facilities Benefit District (the "EFBD") as a dependent special district pursuant to Chapter 189, Florida Statutes, to serve as an alternative method for constructing and maintaining public educational facilities;

**WHEREAS**, Section 1013.356, Florida Statutes, provides for the financing of such EFBD;

**WHEREAS**, the parties to this Interlocal Agreement recognize that the City is one of the fastest growing areas in the County, where it is projected that approximately

10,000 new public school students will be generated by approved development within the City's boundaries in the next seven to ten years;

**WHEREAS**, the boundaries of the EFBD are located entirely within the City;

**WHEREAS**, under the County's Charter, all special districts, including the EFBD, located in the County must be created by County Ordinance, notwithstanding that such special district may lie entirely within a municipality in the County;

**WHEREAS**, the parties to this Interlocal Agreement have expressed a desire to enter into this Interlocal Agreement in order to authorize the establishment of the EFBD as a means of sharing with the specially benefited landowners (the "Landowners") within the EFBD the cost of constructing and maintaining public educational facilities necessary to accommodate new growth and development within certain areas of the City;

**WHEREAS**, the Landowners have consented to the creation and use of an EFBD for the financing of the construction and maintenance of public educational facilities within the EFBD;

**WHEREAS**, the School Board, the County, and the City have determined that it is necessary and appropriate to create the EFBD and to clarify various obligations for future cooperation between the School Board and the EFBD related to the financing, construction and maintenance of public educational facilities within the EFBD;

**WHEREAS**, the School Board, the County, and the City have determined that it shall serve the public interest to enter into this Interlocal Agreement;

**NOW, THEREFORE**, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the parties agree as follows:

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

Section 2. Purpose. The purpose of this Interlocal Agreement is to consent to and authorize the creation of the EFBD in the City of Homestead, pursuant to Section 1013.355, Florida Statutes, in order to facilitate the financing of the construction and maintenance of public educational facilities within the EFBD.

Section 3. Enabling Ordinance. The City and the County agree to adopt such resolutions and ordinances as may be necessary to create the EFBD. Said ordinance shall include all of the provisions contained within Section 189.4041, Florida Statutes, for the creation of a dependent special district. The EFBD shall be created upon the execution of this Interlocal Agreement by the School Board, the County, and the City, the adoption of a resolution of support by the City and the enactment of an ordinance by the County establishing the EFBD.



Section 4. District Boundaries. The boundaries of the EFBD shall be all of that property legally described in Exhibit "A" attached hereto. As contemplated in this Interlocal Agreement, the EFBD will levy assessments on the property within the boundaries of the EFBD to help finance the costs of the construction of educational facilities. The assessments will be timed with the progress of residential development within the boundaries of the EFBD. As such, the EFBD may levy the assessments in one or more phases. Similarly, the timing for the commencement of the design and construction of the educational facilities to be built by the EFBD will be tied to the expansion of the assessment phases. The exact boundaries of each phase will be determined at the time of the execution of a funding agreement for the financing of each educational facility to be constructed and financed by the EFBD. The initial phase ("Phase I") shall be all of that property described in Exhibit "A" attached hereto. Thereafter, as residential development within the EFBD progresses, the assessments shall be expanded in two (2) phases. Phase II shall be all of that property described in Exhibit "A" attached hereto. Phase III shall be all of that property described in Exhibit "A" attached hereto. The exact boundaries of the phases will be subject to change as development within the EFBD progresses. By January 1 of each year, the Landowners shall provide the EFBD and the School Board with an annual report of all residential construction activity (by building permit and certificate of occupancy) undertaken during the preceding year and an estimate of projected activity for the next calendar year. Based on the information provided, the EFBD will determine the timing for the expansion of the assessment. Within ten (10) days of the expansion of the assessment to a new phase, the EFBD shall notify the School Board of the EFBD's intent to expand the assessment area and to initiate the design and construction of the next school facility.

Upon petition by the affected landowners, the boundaries of the EFBD may be expanded, from time to time, to include additional property in the City of Homestead within the boundaries of the EFBD. Said expansion(s) shall be subject to the consent of the parties to this Interlocal Agreement, which shall not be unreasonably withheld, and the enactment of an ordinance by the County.

Section 5. Governing Board of EFBD. The Governing Board of the EFBD (the "Board") shall be comprised of seven (7) members serving 4-year terms. The membership of the governing board shall include three (3) representatives appointed by the School Board, one (1) representative appointed by the City, one (1) representative appointed by the County, and two (2) representatives appointed by the owners of the majority of the land within the EFBD. The initial representatives of the School Board, the County, and the City shall serve 4-year terms. One (1) of the Landowners' initial representatives shall serve a 4-year term and one (1) of the Landowner's initial representatives shall serve a 2-year term.

Following the initial Board appointments, the Landowners' representatives on the Board shall be elected in accordance with applicable law.

Section 6. Powers of the EFBD. The EFBD shall exercise any and all of the powers granted under Section 1013.355(4), Florida Statutes, as may be amended from time to time, which include, without limitation, the following:

- a. To finance and construct educational facilities within the EFBD boundaries.
- b. To sue and be sued in the name of the EFBD; to adopt and use a seal and authorize the use of a facsimile thereof; to acquire, by purchase, gift, devise, or otherwise, and to dispose of real and personal property or any estate therein; and to make and execute contracts and other instruments necessary or convenient to exercise its powers.
- c. To contract for the services of consultants to perform planning, engineering, legal, or other appropriate services of a professional nature. Such contracts shall be subject to the public bidding or competitive negotiations required of local general purpose governments.
- d. To borrow money and accept gifts; to apply for unused grants or loans of money or other property from the United States, the State, a unit of local government, or any person for any EFBD purposes and enter into agreements required in connection therewith; and to hold, use, and dispose of such moneys or property for any EFBD purposes in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- e. To adopt resolutions and policies prescribing the powers, duties, and functions of the officers of the EFBD, the conduct of the business of the EFBD, and the maintenance of records and documents of the EFBD.
- f. To maintain an office at such place or places as it may designate within the EFBD or within the boundaries of the local general purpose government that created the EFBD.
- g. To lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any projects of the type that the EFBD is authorized to undertake and facilities or property of any nature for use of the EFBD to carry out any of the purposes authorized by Section 1013.355, Florida Statutes.
- h. To borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness pursuant to Section 1013.355, Florida Statutes, for periods not longer than thirty (30) years, provided such bonds, certificates, warrants, notes, or other indebtedness shall only be guaranteed by non-ad valorem assessments legally imposed by the EFBD and other available sources of funds provided in Section 1013.355, Florida

Statutes, and shall not pledge the full faith and credit of any local general purpose government or the School Board.

- i. To cooperate with or contract with other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by Section 1013.355, Florida Statutes, and to accept funding from local and state agencies as provided in Section 1013.355, Florida Statutes.
- j. To levy, impose, collect, and enforce non-ad valorem assessments, as defined by Section 197.3632(1)(d), Florida Statutes, pursuant to Section 1013.355, Florida Statutes, Chapters 125 and 166, Florida Statutes, and Sections 197.3631, 197.3632, and 197.3635, Florida Statutes.
- k. To exercise all powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized in Section 1013.355, Florida Statutes.

**Section 7. Facilities Funding and Construction.** The EFBD shall construct three (3) K-8 schools on sites donated to the School District by the Landowners. Title to the school sites will be conveyed to the School Board at no cost to the School Board. The timing for the conveyance of each school site will be determined by the terms and requirements of the financing for each of the schools to be built under the auspices of the EFBD. All schools shall be designed and built by the EFBD in accordance with School District approved standards. The School Board shall lease the three sites to the EFBD at nominal charge to facilitate the financing and construction of the facilities by the EFBD. Prior to the assumption of any debt for the financing of the school facilities contemplated in this Interlocal Agreement, the parties shall execute one or more funding agreements to set forth the terms and conditions of such indebtedness. Said funding agreement(s) shall address the parties' financing obligations for construction costs and capital maintenance.

The first K-8 school shall be built on that certain parcel of land more particularly described in Exhibit "A" to this Interlocal Agreement as Parcel "A" or on such other parcel of land as may be acceptable to the parties. The first K-8 school shall have a design capacity of at least 2,100 student stations. The cost of construction of the first K-8 school shall be borne exclusively by the School Board.

Each of the second and third K-8 schools shall have a design capacity of up to 2,100 student stations. The cost of the next two (2) schools will be financed by a combination of (a) special assessments levied against the residential property within the boundaries of the EFBD, pursuant to Section 1013.355, Florida Statutes, Chapters 125 and 166, Florida Statutes, and Sections 197.3631, 197.3632, and 197.3635, Florida Statutes; (b) educational facilities impact fees (the "Impact Fees") generated by residential development within the boundaries of the EFBD, as collected by the County under the terms of Chapter 33K of the Code of Miami-Dade County, paid to the School

Board pursuant to the Impact Fee Documents (hereinafter defined) and remitted to the EFBD or its designee under the financing documents executed in connection with any indebtedness incurred to finance the construction of the facilities; and (c) lease payments that may be received from charter school operator(s), if any. The parties agree to coordinate the timing for the design and construction of the second and third schools with the expansion of the assessment areas as provided in Section 4 of this Interlocal Agreement. Notwithstanding the requirements of Section 1013.356, Florida Statutes, The School Board shall not be obligated to contribute additional funding for the second and third schools referenced herein. Any construction and capital costs not covered by funds provided in this section, shall be funded exclusively by the EFBD.

If at any time during the term of this Interlocal Agreement, (i) the School Board is able to secure a site for the construction of a high school, (ii) the boundaries of the EFBD are included within the attendance boundaries of the new high school, and (iii) the School Board secures financing for the new high school, then in that event, the EFBD shall promptly seek authorization to increase the special assessments by an amount not to exceed \$50.00 per dwelling unit and shall cause said assessments to be remitted as received to the School Board for the purpose of helping to finance the construction of the high school for so long as the boundaries of the EFBD remain within the attendance boundaries of the high school and any indebtedness issued to finance the construction of the high school remains outstanding.

Section 8. Facilities Operation. The School Board shall have the right to operate all three (3) schools constructed by the EFBD as traditional public schools. However, the School Board may opt not to operate the second and third schools as traditional public schools. In that event, prior to letting a contract for the construction of each of the second and third schools, the School Board shall determine the method for the operation of each school. The EFBD shall hold a public hearing to solicit comments from all of the interested parties, including the EFBD residents and landowners, on the proposed method of operation for each of the two schools and shall forward said comments to the School Board. In making the decision, the School Board shall, in accordance with its rules and regulations, hold a public meeting to solicit and receive the input of all interested parties, including residents within the EFBD, and shall consider the comments received by the EFBD during the public hearing. Further, the School Board shall explore all available alternatives for the operation of the schools, including, without limitation, traditional public schools, charter schools, municipal charter schools, or "Saturn" schools. In the event the School Board decides that either or both schools should be operated as charter schools, the EFBD shall solicit proposals from charter school companies to operate either or both schools and shall thereafter select an operator for each or both of the second and third schools, all in accordance with the applicable State laws, rules and regulations governing the procurement of such services. Once the EFBD selects a charter school operator or operators, the EFBD shall submit a charter application to the School Board for review and approval in accordance with State law and Board rules. To the extent permitted by applicable law,

nothing in this Interlocal Agreement shall limit the ability of the School Board to operate the second and third schools as charter schools through an agreement with a third party sponsor, such as the EFBD, the City of Homestead or a not-for-profit foundation.

Any contract for the operation of the schools as a charter school shall be subject to review and renewal every five (5) years.

**Section 9. Use of Impact Fees.** Any Impact Fees expended or encumbered by the EFBD shall only be used for the capital educational needs of future residents of new residential development within the EFBD boundaries. Specifically, the EFBD shall limit expenditures of the Impact Fees ("Impact Fee Expenditures") to those uses authorized in Section 33K-12 of the Miami-Dade County Code, the "Metropolitan Dade County Educational Facilities Impact Fee Administrative Procedures Manual" adopted pursuant to Ordinance 95-79 dated September 14, 1995 as amended, or any successor thereto, the First Amended Interlocal Agreement dated as of July 25, 2000, as amended between the County and the School Board (the "2000 Interlocal Agreement") and the 2003 Interlocal Agreement (collectively, the "Impact Fee Documents").

**Section 10. Payment of Debt Service.** No bond, debt, or other obligations of the EFBD, nor any default thereon, shall constitute a debt or obligation of the School Board, the County, or the City, except upon the express approval and agreement of the School Board, the Miami-Dade County Board of County Commissioners, and the City of Homestead City Council.

The County agrees to include in the ordinance creating the EFBD a requirement that any surplus revenues of the EFBD be retained by the EFBD in an interest bearing account and the surplus revenue and all of the accrued interest shall be used to pay debt service on the EFBD's bond indebtedness, or to pay for additional capital maintenance costs. The County also agrees to include within said ordinance a provision that prohibits the County and/or the City from taking any action that may negatively impact the EFBD's bonds.

**Section 11. School Attendance Zone.** As provided in Section 1013.357, Florida Statutes, it is the intent of the parties that the student population at the EFBD facilities shall, to the greatest extent possible, reflect the racial, ethnic, and socioeconomic balance of the School District. As such, to the extent allowed by state and federal law, so long as the EFBD levies special assessments to finance the cost of construction of educational facilities, the School Board shall utilize its established ABC procedures to establish school attendance zones which shall always include all assessed property within the EFBD, but which may allow students residing within a reasonable distance of the EFBD facilities to attend such facilities.

**Section 12. Term.** This Interlocal Agreement shall remain in full force and effect from the date of its execution until such time as it is terminated by any party upon ten (10) days' written notice to the other parties. Notwithstanding the foregoing, it is agreed that this Interlocal Agreement may not be terminated by any party during any

period that the bonds issued by the EFBD remain outstanding, or during any period in which the proceeds of such bonds are still in the possession of the EFBD or its agents pending distribution, unless the parties to this Interlocal Agreement mutually agree in writing to the terms of such termination. Should either the County, School Board, or the City be dissolved, abolished, or otherwise cease to exist, the successor governmental entities to said entities shall be deemed to be the responsible parties hereunder.

Section 13. Financial Report. An annual audit of the EFBD financial statements for the School Board, the County, and the City shall be completed in accordance with generally accepted Government Auditing Standards by an independent certified public accountant. At a minimum, the financial statements for the EFBD shall include a balance sheet, statement of revenues, expenditures and charges in fund equity and combining statements prepared in accordance with generally accepted accounting principles. Required supplementary information from the EFBD shall include a schedule of construction in progress to reflect annual activity of the EFBD. Required supplementary information from the County shall include a schedule of all fees remitted to the School Board derived from impact fees collected within the EFBD, and required supplementary information from the School Board shall include a schedule of all fees remitted to the EFBD.

The independent auditor shall determine whether the EFBD has complied with the applicable laws and regulations including, but not limited to, Section 1013.355, Florida Statutes, this Interlocal Agreement, the Impact Fee Documents and any funding agreement between the parties. As required by generally accepted Government Auditing Standards, the auditor shall prepare a report on the results of tests of compliance. This report, which may be included in either the report on the financial audit or a separate report, shall contain a statement of positive assurance on those items that were tested for compliance and negative assurance on those items not tested. It shall also include all material instances of non-compliance. The auditor shall also report on deficiencies noted in the internal control structure designed to provide reasonable assurance that the EFBD is managing funds in compliance with applicable laws, regulations, and contract terms, and resources are safeguarded against waste, loss, and misuse, and that reliable data is obtained, maintained and fairly disclosed in reports.

As it relates to the use of the Impact Fees, the School Board and auditors designated by School Board and/or the County shall have the right to perform an audit of the public records related to the use of the Impact Fees for any construction of public educational facilities within the EFBD. For purposes of this provision, the contractor and its subcontractors and consultants doing construction for the EFBD shall be required to keep such full and detailed accounts as may be necessary for proper financial management under this Interlocal Agreement and the Impact Fee Documents, and maintain necessary internal controls that shall be satisfactory to the School Board and the County. Auditors shall be afforded access to all fee payer and/or contractor records, books, correspondence, receipts, vouchers, memoranda and similar data, excluding confidential personnel records, relating to the contract projects. The fee payer and/or

the contractor, its subcontractors, and consultants shall preserve all such records for a period of four (4) years after final payment or for such longer periods as may be required by law. These records may not be destroyed or disposed of unless prior authorization is given by the Director of Records Retention of the Miami-Dade County Public Schools.

In addition to the foregoing, the EFBD shall provide the School Board, the County, and the City with a cumulative monthly accounting of the Special Assessments levied and collected in order to allow the parties to monitor the EFBD's obligations.

All records such as, but not limited to, construction, financial, correspondence, instructions, memoranda, bid estimate sheets, proposal documentation, back charge documentation, canceled checks, reports and other related records produced and maintained by the contractor, its subcontractors, and consultants relating to public educational facilities funded by the Impact Fees shall be deemed public records, and shall be made available for audit, review or copying by the School Board and/or the County, or auditors designated by the School Board and/or the County upon reasonable notice.

The audit reports from the EFBD shall be provided to the School Board, the County, and the City no later than one hundred eighty (180) calendar days following the close of the EFBD's fiscal year.

Section 14. Consent. This Interlocal Agreement shall be considered the parties' consent to the creation of the EFBD as required by Section 1013.355, Florida Statutes.

Section 15. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or it must be given by written certified U.S. mail, with return receipt requested, addressed to the party for whom it is intended, at the place specified. For the present, the parties designate the following as the respective places for notice purposes:

If to the School Board:                      Superintendent  
Miami-Dade County Public Schools  
1450 N.E. Second Avenue  
Miami, FL 33132

If to the County:                              County Manager  
Miami-Dade County  
111 N.W. First Street  
Miami, FL 33128

If to the City:

Mr. Curt Ivy, Jr.  
City Manager  
City of Homestead  
790 N. Homestead Blvd.  
Homestead, FL 33030

With a Copy to:

Susan L. Trevarthen, Esq., City Attorney  
Weiss Serota Helfman Pastoriza & Guedes, P.A.  
3107 Stirling Road, Suite 300  
Ft. Lauderdale, FL 33312

Section 16. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed by the School Board, the County, and the City.

Section 17. Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Interlocal Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

Section 18. Filing. It is agreed that, prior to issuance of the bonds, this Interlocal Agreement shall be filed with the Clerk of the Circuit Court of Miami-Dade County, as required by Section 163.01(11), Florida Statutes.

[Execution Page(s) Follow]



**IN WITNESS WHEREOF**, the parties hereto have made and executed this Interlocal Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2004.

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

**ATTEST:**

By: \_\_\_\_\_  
Michael Krop  
Chair

By: \_\_\_\_\_  
Merrett Steirheim,  
Superintendent

**The City of Homestead, Florida**

**ATTEST:**

By: \_\_\_\_\_  
Roscoe Warren  
Mayor-Commissioner

By: \_\_\_\_\_  
Sharon Auxler, City Clerk

**Miami-Dade County , Florida**

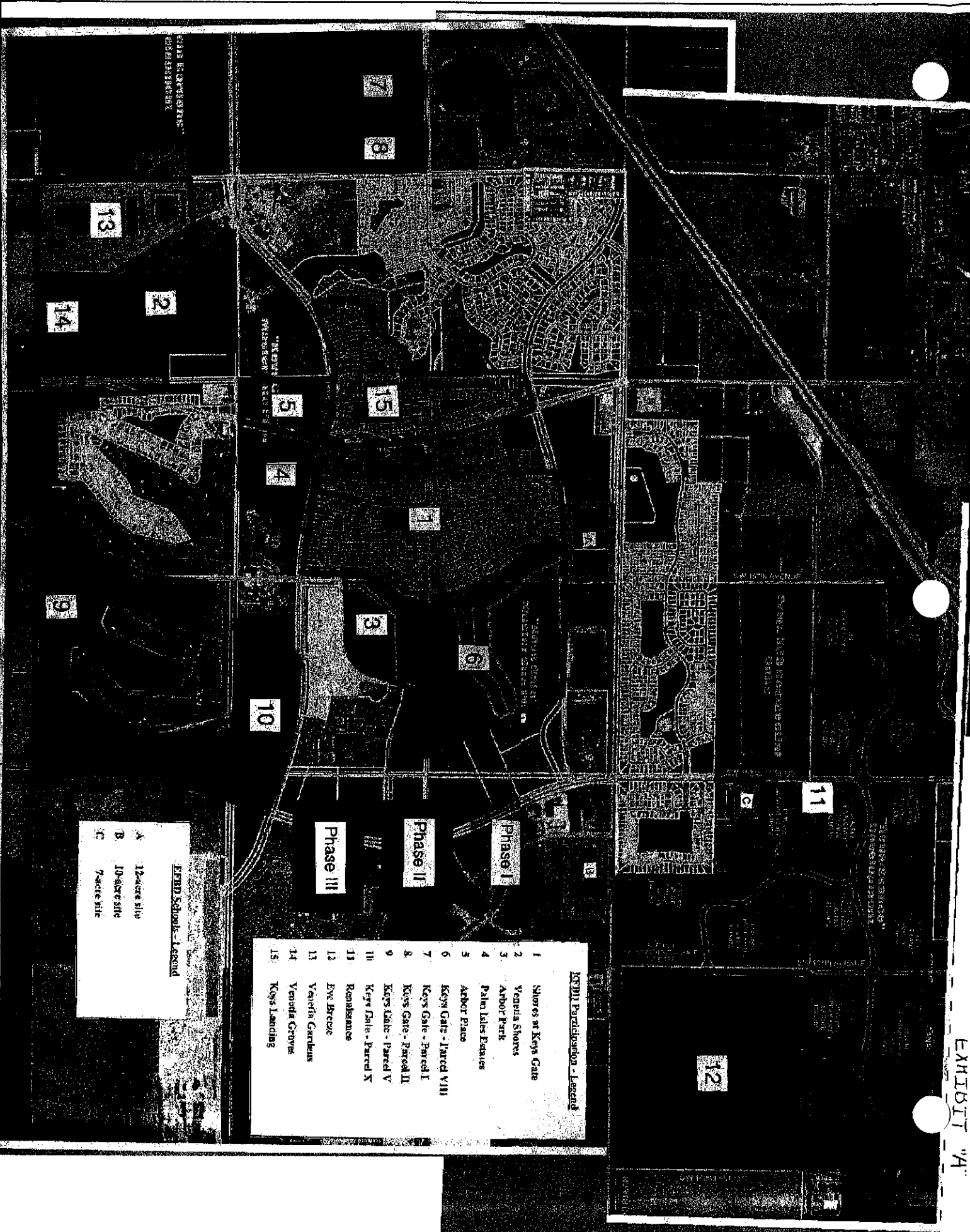
**ATTEST:**

By: \_\_\_\_\_  
George Burgess  
County Manager

By: \_\_\_\_\_  
\_\_\_\_\_, Deputy Clerk

**Approved as to Form and Legal Sufficiency**

\_\_\_\_\_  
Assistant County Attorney



**MEPHI Paradiseport - Legend**

- 1 Shores at Keyes Gate
- 2 Veneta Shores
- 3 Arbor Park
- 4 Palm Islet Estates
- 5 Arbor Place
- 6 Keyes Gate - Parcel VIII
- 7 Keyes Gate - Parcel I
- 8 Keyes Gate - Parcel II
- 9 Keyes Gate - Parcel V
- 10 Keyes Gate - Parcel X
- 11 Renaissance
- 12 Eye Breeze
- 13 Veneta Gardens
- 14 Veneta Groves
- 15 Keyes Landing

**EPBD Schools - Legend**

- A 12-acre site
- B 10-acre site
- C 7-acre site

GRAND RECREATION CENTER

RECREATION CENTER

VENETA GARDENS

VENETA GROVES

VENETA GARDENS

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Jacksonville  
Miami  
Orlando  
Tallahassee  
Tampa  
Washington, DC  
West Palm Beach

One Southeast Third Avenue  
SunTrust International Center  
28th Floor  
Miami, Florida 33131-1714  
www.akerman.com  
305 374 5600 tel 305 374 5095 fax

June 11, 2004

Juan J. Mayol, Jr.  
305 755 5807  
jmayol@akerman.com

**VIA FACSIMILE AND HAND DELIVERY**

Mark Richard, Esq.  
United Teachers of Dade  
2200 Biscayne Avenue  
5th Floor  
Miami, FL 33132

**Re: Proposed Homestead Educational Facilities Benefit District**

Dear Mr. Richard:

It was a pleasure to meet with you last week. Thank you for giving us the opportunity to address the concerns you have raised on behalf of the United Teachers of Dade ("UTD") regarding the formation and operation of the proposed Educational Facilities Benefit District ("EFBD"). We will certainly continue to work with you to make sure UTD's important role and stake in the success of the public school system is recognized as we (hopefully) move forward to form the EFBD.

As promised, last Friday, I sent you by e-mail the draft of the proposed interlocal agreement. This document will lay out the foundation for the creation of the EFBD. One of the most fundamental changes in the draft is the right of the School Board to select the method of operation of all of the schools. We would welcome your comments and suggestions.

The interlocal agreement addresses many of the questions listed in the outline of "Critical Unanswered Questions" you introduced at the School Board's workshop on the EFBD. For your convenience, this letter summarizes the responses we provided you at our recent meeting. Generally, the questions are addressed in the order they were raised in your outline.

**I. Governance Issues.**

The educational facilities benefit district or "EFBD" is a governmental entity created with the approval of the local municipality, county and school board, after securing the consent of

affected landowners, for the strict and narrow purpose of financing the construction and maintenance of educational facilities. The creation of EFBD's are authorized by Sec. 1013.355, Florida Statutes, which was enacted by the Florida Legislature in 2002. As a governmental entity, the EFBD will be subject to the same laws, rules and regulations as any other governmental entity in the State of Florida.

The EFBD will be governed by a governing board (the "Board"). Because of the limited scope of the EFBD, the Board's powers will be quite restricted. Generally, the Board will make decisions pertaining to the levying of assessments and the issuance of debt to finance the construction of the school facilities. By statute, the membership of the Board will include representation from the School Board, the City of Homestead and the affected landowners. The members will be subject to all of the laws, rules and regulations that govern the conduct of public officials in the State of Florida, including laws governing financial disclosure and conflicts of interest. At first, the landowners will select their own representatives. However, as homes are sold within the boundaries of the EFBD, the landowners will be replaced by homeowners who will elect their own representatives to the EFBD Board. The meetings of the EFBD Board are considered "public meetings" under State law and must be noticed as required by law. The members of the Board will not receive compensation for their service.

## **II. Taxation Issues.**

Under State law, the EFBD Board may levy non-advalorem assessments on property within the EFBD. Similarly, the EFBD may issue bonds, which are secured by such assessments. Once bonds or other indebtedness are issued, the EFBD can not legally "cancel" the assessments. The budget must be adopted pursuant to State law after the required public hearings. The amount of the assessment will be "capped" by the instruments that will be executed by the landowners consenting to the creation of the EFBD and to the imposition of the annual assessments. Any increase in the assessments would require the consent of the affected landowners.

## **III. Jurisdiction.**

The EFBD is exclusively a financing mechanism. The EFBD Board will have little, if any, jurisdiction over curriculum and programs at the schools within the EFBD. The specific duties and rights of the EFBD, the City, the School District and the County will be set forth in the interlocal agreement creating the EFBD. As contemplated, the EFBD will build (and maintain) the schools and the School District will directly (through the operation of the schools) or indirectly (through its regulation of charter schools) will oversee curriculum and program issues. Under the current proposal, the School Board will decide the method for the operation of the schools after receiving input from the affected stakeholders. It is the intent of the agreement to allow the School Board to consider all available options, including charter schools and "saturn" schools. Responsibility over shortfalls in the cost of the operation of the schools will depend on the method of operation. For instance, if the schools are operated by a charter school

company, then that company will be responsible for any shortfalls under the terms of the agreement between the EFBD and the charter school company. If, as currently contemplated, all of these schools are operated by the School District, any operational shortfalls will be the responsibility of the School District as it would be with any other school operated by the School District.

The sites for the schools will be donated free of charge to the School District. At the end of the financing period, ownership of all of the school facilities will be transferred to the School District. We do not anticipate any impact on the current proposal from SB 3000.

#### **IV. Public Financing.**

The true beneficiaries of the formation of the EFBD will be the current and future residents of the City of Homestead living inside and outside of the EFBD. The creation of the EFBD would provide several benefits to the City of Homestead and the School District. Most importantly, the creation of the EFBD will result in the conveyance of the proposed school sites to the School District free of charge. Conservatively, the fair market value of the three sites will be worth between \$6,000,000.00 - \$10,000,000.00. Additionally, approximately \$50,000,000.00 in assessments, which would otherwise not be available to the District, will be pledged for the construction of public school facilities. Under the terms of the interlocal agreement, the School District's financial commitment will be limited. As contemplated in the interlocal agreement, the details of the financing of the costs of construction will be covered in one or more "funding" agreements between the School District and the EFBD. The District's ad valorem revenues will be freed up to address the needs of other parts of the School District. These advantages are even more important when considered in light of the School District's most recent need assessment for the Homestead area. Most clearly, if the School Board does not address this situation, the children and the teachers at Homestead's existing schools will be condemned to operate in overcrowded conditions.

Students from outside the EFBD will be able to attend the schools within the EFBD provided the EFBD schools are "oversized" to ensure that additional student stations are available. Under the EFBD statute, the interlocal agreement provides for the School District to establish school attendance zones that allow students residing within a reasonable distance of the facilities financed by the EFBD to attend the facilities.

#### **V. Potential Conflicts.**

Various experts around the state have provided invaluable assistance with our efforts to establish the EFBD, including State Representative Frank Attkisson, who has provided us with invaluable guidance throughout the last few months. Mr. Taylor Smith, who was also involved in the creation of the Osceola County EFBD's, has assisted us in the creation of the financial models for the proposed Homestead EFBD. Mr. Charlie Dodge has also provided his expertise.

Mark Richard, Esq.

June 11, 2004

Page 4

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Mr. Attkisson, Mr. Dodge and Mr. Smith will be compensated by the landowners. The City has also contributed \$50,000.00 towards the payment of soft costs.

As you and I have discussed in the past, our law firm serves as legal counsel to the School District in connection with employment and governmental issues. The School District staff, including the Superintendent and the School Board Attorney, are aware of our participation in the creation of the Homestead EFBD. Our role in advising the landowners/homebuilders in the creation of the EFBD is in no way adverse to the School District. There is no conflict of interest. As such, no waiver is required.

Lastly, there are no "pre-arranged" deals for future business between the EFBD and any entities or individuals. As we discussed above, as a governmental entity, the EFBD will be subject to all of the laws, rules and regulations governing the procurement of goods and services.

**VI. Other.**

The proponents of the EFBD – M&H Homestead Partners, Ltd., the City of Homestead, Mr. Taylor Smith and the undersigned – played absolutely no role in the passage of SB 3000. We are committed to the formation of the EFBD as a far superior alternative to SB 3000.

We are committed to work with the UTD as one of the central stakeholders in the educational system. We will remain open and available to meet with you and others in an attempt to address any issues or concerns that may arise. We greatly appreciate your insight and cooperation.

Very truly yours,

AKERMAN SENTERFITT

Juan J. Mayol, Jr.

JJM/bf

CC: Mr. Merritt Stierheim  
Johnny Brown, Esq.  
Mr. Ed Marquez  
Mr. Fernando Albuerne  
Susan L. Traverthan, Esq.  
Mr. Michael Latterner  
Mr. Taylor Smith

**Juan Mayol**

---

**From:** "Melody McDougald" <mmcdougald@phillipsrichard.com>  
**To:** <Jmayol@akerman.com>  
**Date:** 6/15/2004 3:19 PM

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Dear Juan:

We are in receipt of your answers to the questions UTD submitted at the School Board Workshop. We appreciate the cooperative effort you have shown with regard to those inquiries.

Be advised that we are relying on your legal representations in answering those questions. Your response has satisfied our concerns regarding those questions.

We further appreciate the amendments you made to the proposed Interlocal Agreement so as to insure complete School Board control over all curriculum, operations, management, administrative and educational decisions.

Please share with me the concerns raised by MDCPS staff or the School Board members. I would like to be involved in the discussion over those issues as well. Thank you.

Mark

*Melody J. McDougald  
Phillips, Richard & Rind, P.A.  
9360 SW 72 Street, Suite 283  
Miami, Florida 33173  
Tele: 305-412-8322  
Fax: 305-412-8299  
E-mail: [mmcdougald@phillipsrichard.com](mailto:mmcdougald@phillipsrichard.com)*

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June 14, 2004

Juan J. Mayol, Jr.  
 305 755 5807  
 jmayol@akerman.com

**VIA FACSIMILE**

Mr. Fernando Albuerne  
 Administrative Director  
 Department of Site Acquisition and Leasing  
 Miami-Dade County Public Schools  
 1450 NE 2nd Avenue, Suite 525  
 Miami, Florida 33132

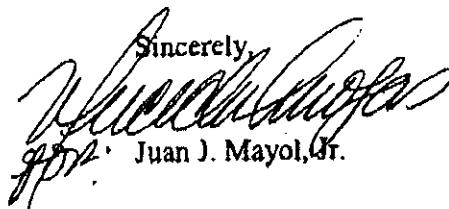
Re: Proposed Homestead Educational Facilities Benefit District (EFBD)

Dear Fernando:

I wanted to take this opportunity to thank you and the other members of the District's staff for all your efforts to analyze the proposed EFBD.

The proponents of the EFBD remain committed to the creation of the EFBD as an efficient means to provide badly needed student stations in the fast developing City of Homestead. However, if the School District is unable to accept the EFBD, stakeholders (i.e., the city of Homestead, the landowners and others) will explore other available alternatives. As we have communicated to you and others in the School District, if the School Board does not approve the interlocal agreement in substantially the form that has been negotiated with staff at its meeting of June 16, 2004, we will have no choice but to explore other means to provide the necessary school facilities.

We look forward to the completion of this process and the approval of the EFBD by the School Board.

Sincerely,  
  
 Juan J. Mayol, Jr.

JJM/ma  
 cc: Mr. Michael Lattner

(M2105319;1)