

Business Operations
Ofelia San Pedro, Deputy Superintendent

SUBJECT: APPROVAL OF PROPOSED AGREEMENT FOR THE FINANCING AND CONSTRUCTION OF A PUBLIC SCHOOL EDUCATIONAL FACILITY WITHIN THE HOMESTEAD EDUCATIONAL FACILITIES BENEFIT DISTRICT (EFBD)

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

Background

On June 16, 2004, the School Board (Board) approved a tri-party Interlocal Agreement (Interlocal) between the Board, the County and the City of Homestead, for the establishment of an Educational Facilities Benefit District (EFBD) in the City of Homestead. As the Board may recall, creation of an EFBD is authorized under Section 1013.355 F.S., and can be generally described as a special district that provides an alternative mechanism to finance and build educational facilities in tandem with residential development in areas of high growth. In the specific case of the Homestead EFBD, approximately 10,784 units are projected to be built within the next several years, and to ultimately generate approximately 5,674 students. The plan of action to house the projected new students is to build three K-8 schools; the first of those schools is to be funded entirely by the District, and is proposed as a 2,120-seat facility. A capital allocation in the amount of \$34.5 million has been included in the Five-Year Capital Plan for Fiscal Year 05-06, \$31.1 million of which is slated for design and construction of the School; the balance is for FF&E.

Subsequent to Board approval, the Interlocal was submitted to the Miami-Dade Board of County Commissioners (Commission) and in turn approved at its meeting of January 20, 2005. Additionally, the Commission adopted an ordinance authorizing the creation of the Homestead EFBD as the special district entity under whose umbrella the schools referenced above will be built and operated. The Homestead EFBD will be governed by a seven member board comprised of: three members appointed by the Board, one member appointed by the City of Homestead, one member appointed by the County and two members appointed by the landowner.

Additional Information

Now that creation of the EFBD has been duly authorized and the tri-party Interlocal has been approved by all the entities, the next step is execution of a tri-party agreement between the Board, the EFBD and Michael Latterner & Associates (Developer) to finance and construct the first K-8 school (School) within the Homestead EFBD. Such a document, hereinafter referred to as Agreement, has been prepared and reviewed by District staff, the School Board Attorney, the District's bond counsel and the Developer's

REPLACEMENT

F - 5

representatives. The terms and conditions contained in that Agreement are substantially as described in the next section, and cover several key areas:

1. obligations of the EFBD (Section 4);
2. terms and conditions associated with conveyance of the School and all associated real property interests to the Board (Section 5);
3. compensation, funding and method of payment for the design and construction of the School (Section 6);
4. obligations of the Board (Section 7);
5. completion of School (Section 8);
6. ownership of School's plans, specifications and all other related reports and documents (Section 9);
7. general clauses addressing elements such as indemnification, default and enforcement, and dispute resolution (Sections 10-33).

Agreement - Terms and Conditions

- the EFBD shall be responsible for the development of the School's plans and specifications in compliance with the Board approved prototypical facilities list for a K-8 facility and all related educational specifications, and shall ensure that District staff is engaged during the design and construction phases through periodic consultations which are to occur on at a least a monthly basis;
- the EFBD shall be responsible for administration of the design and construction activities, which shall include coordination with the Board's Project Representative (Chief Facilities Officer or designee), the Developer and the Design/Build Contractor (Design/Builder);
- the Board's staff shall be responsible for timely review and approval of the final design and construction documents, for approval of any extraordinary costs beyond the \$31.1 million allocation, consisting of items such as site de-mucking, off-site utility connections, environmental mitigation or hurricane enhancement measures, and for approval of the terms of financing. Failure by the Board's staff to provide these timely approvals shall give the EFBD or the Board the right to terminate the Agreement and the Board shall reimburse EFBD for actual planning, design and pre-construction services provided to that point, but not to exceed \$500,000. In the event the Agreement is terminated as described above, the Board shall have ownership of all surveys, plans, reports or other documents developed up to that point;

- upon approval of the design and construction documents by the EFBD and the Board, the School shall be built on the approximate 13-acre site described in Exhibit 1, and hereinafter referred to as Premises;
- the EFBD shall be responsible for retaining the services of a design professional to serve as the EFBD's design criteria professional (DCP) and for selecting the Design/Builder in accordance with the governing state statutes;
- the EFBD shall secure from the Design/Builder a performance and payment bond in the name of the Board and the EFBD for 100% of the value of the work to be performed by the Design/Builder, which bond shall meet the criteria set forth by the Board's Office of Risk Management and be approved by that Office;
- the EFBD shall be responsible to pay for construction claims when due, or if chooses to contest the validity of such, pay for all associated defense or judgment costs, on its behalf and on behalf of the Board;
- the EFBD shall obtain prior approval from the Board for all change orders, provided however that the cost of any change order requested by the Board, shall be the Board's sole responsibility;
- the EFBD shall be responsible for financing the design and construction of the School until it is conveyed to the Board, including interest payments and cost of issuing debt. The cost of the financing shall be subject to a cap to be approved by the EFBD and the Board's staff prior to issuance, and the Board's staff shall be afforded the opportunity to review and provide input on the financing terms;
- the EFBD shall release to the Board all rights associated with the design and construction of the School, and shall ensure that upon completion of the School, there is certification by the DCP that the School has been constructed in accordance with the Board approved plans and specifications;
- within 120 days of the Agreement's execution by all parties, the Board shall have the option to either acquire and install the FF&E for the School, or to delegate those responsibilities to the EFBD for a lump sum, to be agreed upon by all parties to the Agreement;
- prior to commencement of construction, the Developer shall cause the Premises to be conveyed to the EFBD by M&H Homestead, Ltd. (Landowner), and no later than 60 days prior to the commencement of construction, Developer shall ensure Landowner provides a title insurance policy in the amount of the value of the Premises and in a form acceptable to the Board and the EFBD. The Developer shall indemnify the EFBD and the Board for any actions or activities that occur prior to conveyance of the Premises to the EFBD;

- the EFBD shall convey the Premises and the School to the Board within 30 days of issuance of a final Certificate of Occupancy (CO) from all the appropriate governing entities, and all improvements become the property of the Board;
- the total compensation for the design, development and construction of the Premises and School shall be a not-to-exceed lump sum of \$31,150,000, plus the cost of financing and any previously agreed upon and authorized extraordinary costs;
- the Board shall use its best efforts to secure funding as contemplated in the Agreement, and Board staff shall respond to inquiries made by Developer or the EFBD during design and construction of the School, which shall include review of plans, specifications and documents within 15 days of the inquiry. In the event the 15-day turn-around time is not achieved, then all parties to the Agreement shall come together and determine a reasonable extension to the date of delivery of the School and Premises;
- unless otherwise extended as described above, the School and Premises shall be completed, as evidenced by issuance of a final CO, by or before July 1, 2006. In the event the July 1, 2006 deadline is not met as a result of force majeure beyond the control of the EFBD, then the Board's project representative shall extend the timeline for completion of construction and issuance of final CO by a commensurate amount of time;
- the EFBD shall indemnify and hold the Board harmless for all actions or activities that occur prior to the conveyance to the Board of the Premises and School;
- dispute resolution shall follow a stepped approach, starting first with the representatives of the parties to this Agreement, next with the Superintendent, EFBD and the Developer, followed by non-binding mediation, and finally by litigation, where all other efforts have failed.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, approve the proposed agreement for the financing and construction of a public school educational facility within the Homestead Educational Facilities Benefit District (EFBD), substantially in conformance with the terms and conditions described above.

RD:ARC