

Office of School Facilities
Rose Diamond, Chief Facilities Officer

**SUBJECT: CONSENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND
 THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, FOR
 THE SETTLEMENT OF AN ASBESTOS RELEASE VIOLATION AT
 GEORGE T. BAKER AVIATION SCHOOL**

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

In order to settle a Miami-Dade County Department of Environmental Resources Management (DERM) Notice of Violation (NOV) issued against the School Board of Miami-Dade County (The Board), the attached Consent Agreement between the parties must be executed. During the demolition phase of a renovation project at George T. Baker Aviation School (Baker Aviation) in late 2004, the Board's contractor accidentally caused the release of asbestos into the indoor environment. This release was in violation of several environmental codes and regulations. DERM issued a NOV in January 2005 and assessed a penalty of \$ 14,000.00. Staff has negotiated an in-kind settlement of this assessed penalty. DERM uses a 1.5 factor to calculate in-kind services contributions. This results in a gross value of \$21,000.00 of in-kind services contributed.

Staff has negotiated with DERM to use these funds to retrofit Board-owned school buses with US-EPA certified crankcase ventilation filtration systems and/or diesel oxidation catalysts. Net funds for the retrofitting of the nine (9) school buses have been allocated in the funding structure listed below. This retrofitting work will be completed by US-EPA certified vendors and will include all necessary warranties and related training of M-DCPS Transportation Department mechanics. Additionally, this retrofitting work has positioned the Board for a \$700,000.00 US-EPA Clean School Bus Grant. Staff has already submitted the Board's Grant proposal to the US-EPA, to similarly retrofit over 400 of the Board's older buses. US-EPA approval of this Grant application is still pending.

The Board benefits by reducing exhaust emissions through converting buses to be compliant with expected EPA regulations and saving \$2,000 of the \$14,000 which would have been paid directly to DERM as a penalty. The balance of the in-kind contribution will consist of administrative time which would have been necessary to perform the retrofit any way.

The complete Terms and Conditions of the attached Consent Agreement have been reviewed and accepted by the School Board Attorney's Office, M-DCPS Transportation Department and the Facilities Operations, Maintenance, Department of Regulatory Compliance.

The funding structure for the Net Funds of retrofitting for the school buses is as follows:

Fund: 0377

Object: 5680

Location: 9115

Program: 1568

Function: 7400

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent or his designee to execute the Consent Agreement Between Miami-Dade County and The School Board of Miami-Dade County, Florida, for the Settlement of an Asbestos Release Violation at George T. Baker Aviation School, and authorize staff to retrofit the necessary number of school buses, pursuant to fully complying with the Terms and Conditions of the executed Consent Agreement.

CC

CONSENT AGREEMENT
BETWEEN
MIAMI-DADE COUNTY DEPARTMENT
OF ENVIRONMENTAL RESOURCES MANAGEMENT
AND
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

This Agreement, entered into by and between MIAMI-DADE COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT (hereinafter referred to as DERM) and the School Board, pursuant to Section 24-7(15)(c), Miami-Dade County Environmental Protection Ordinance, shall serve to redress alleged violations of Chapter 24 of the Code of Miami-Dade County by the School Board at the G.T. Baker Aviation School located at 3275 NW 42 Avenue, Miami, Miami-Dade County, FL.

DERM and the School Board agree to the following:

FINDINGS OF FACT

1. DERM is an agency of Miami-Dade County, a political subdivision of the State of Florida, which is empowered to control and prohibit pollution and protect the environment within Miami-Dade County pursuant to Article VIII, Section 6 of the Florida Constitution, the Miami-Dade County Home Rule Charter and Section 403.182, Florida Statutes.
2. DERM's investigations at the subject facility have revealed renovation activities involving the removal of asbestos containing material without proper notification to DERM in violation of 40 CFR 61, Subpart M Section 61.145(b). Additionally, required emissions controls were not observed at the subject site at the time of the initial disturbance constituting a violation of Section 61.145(c) of 40 CFR61 Subpart M and creating emissions in violation of 61.150(a) of 40 CFR61, Subpart M. Further, removing and disposing this material outside in a disturbed condition without proper disposal procedures for asbestos-containing materials is a violation of Section 61.150(b) of 40CFR61, Subpart M and constitutes a sanitary nuisance under Chapter 24 of the Code of Miami-Dade County. Although the School Board understands DERM's allegations of violations by the School Board as described herein, the execution of this Consent Agreement by the School Board shall not constitute, nor be interpreted as an acceptance, nor as agreement to these claims, by the School Board.
3. DERM issued a notification of the alleged on-site environmental violations to DCPS on January 26, 2005. Said NOTICE required satisfaction of an assessed penalty.

4. On February 10, 2005 a meeting between DERM and School Board representatives was held to discuss settlement of the assessed penalty through implementation of in-kind services and a pollution prevention plan. The School Board agreed to provide in-kind services in the amount of \$21,000 to be managed through a Consent Agreement between the School Board and DERM.
5. In an effort to insure continued protection of the health and safety of the public and the environment of Miami-Dade County and to insure compliance with Chapter 24, Miami-Dade County Environmental Protection Ordinance, and to avoid time consuming and costly litigation, the parties hereto agree to the following, and it is ORDERED:

SETTLEMENT COSTS

6. DERM had determined, due to the violations on-site which included, but are not limited to those listed in paragraph 2, that a penalty of \$14,000.00 or the equivalent amount (1 ½ times penalty) of in-kind services is appropriate. The School Board agrees to provide in-kind services of a nature and according to a schedule that is agreeable to DERM. Should the School Board fail to provide in-kind services in the manner described in paragraphs 7 and 8 of this Agreement. The School Board shall pay a prorated amount of the \$14,000.00 penalty based on the outstanding percentage of in-kind services remaining.
7. The School Board shall perform in-kind services in the amount of \$21,000.00 as provided for in cases involving government entities. Said \$21,000.00 shall be utilized to retrofit School Board buses through the installation of EPA-Certified crankcase ventilation filtration systems and/or diesel oxidation catalysts, as appropriate, and in accordance with the "In-Kind Services Project Description," attached hereto and incorporated herein by reference as Exhibit "A" of this Agreement.
8. The In-Kind Services Project described in "Exhibit A" shall be completed within 210 days of the effective date of this Agreement.

SUBMITTAL AND REPORTING REQUIREMENTS

9. The School Board shall submit to DERM, on a monthly basis, a project status report. The first project status report shall be submitted within thirty (30) days of the effective date of this Agreement. Each successive project status report shall be submitted thirty (30) days from the date the previous report was submitted to DERM, shall include updated information and shall detail the progression of the In-Kind Services Project included in this Agreement. Project Status Reports may be submitted via e-mail to bromfd@miamidadegov

10. A Final In-Kind Services Project Report shall be submitted to DERM within 210 days of the effective date of this Agreement and shall include information as specified in "Exhibit A" of this Agreement.
11. If upon review of the School Board Monthly Project Status Reports or Final In-Kind Services Project Report, DERM requires the School Board to provide additional information, the School Board shall provide said additional information to DERM within fourteen (14) days of receiving the DERM written request. Should the School Board request an extension of time to submit any of the reports required under paragraphs 9 – 11 herein, DERM shall grant an extension of time to submit these reports, not to exceed ten (10) working days.

SAFETY PRECAUTIONS

12. The School Board shall maintain the subject site, during the pendency of this Agreement, in a manner, which shall not pose a hazard, or threat to the public at large or the environmental and shall not cause a nuisance or sanitary nuisance as set forth in Chapter 24, Miami-Dade County Environmental Protection Ordinance.

VIOLATION OF REQUIREMENTS

13. In the event that the School Board fails to implement or complete the In-Kind Services Project described in paragraph 6, 7, 8, 9, 10 and 11 of this Agreement, the School Board may be subject to continued enforcement action, which may result in the imposition of additional civil penalties and administrative costs.

GENERAL PROVISIONS

14. DERM expressly reserves the right to initiate appropriate legal action to prevent or prohibit any future violations of applicable statutes or the rules promulgated thereunder.
15. Entry into this Agreement does not relieve the School Board of the responsibility to comply with applicable federal, state, or local laws, regulations and ordinances.
16. Where timetables or conditions contained in this Agreement cannot be met by the School Board, due to circumstances beyond the School Board's control, the School Board shall provide written documentation to DERM that shall substantiate that the cause, or causes, were not reasonably in the control of the School Board. A determination of the reasonableness of the delay shall be made by DERM in writing for the purpose of imposition of penalties if applicable, pursuant to paragraph 13 of this Agreement. The School Board shall be provided a copy of DERM's written determination. No penalties shall be assessed against the School Board if DERM determines that the delay was occasioned by circumstances beyond the School Board's control.

17. This Agreement shall neither be evidence of a prior violation by the School Board, nor shall it be deemed to impose any limitation upon any investigation or action by DERM in the enforcement of applicable provisions of Chapter 24, Miami-Dade County Environmental Protection Ordinance. This Agreement shall neither serve as, nor is it intended to be, an admission of guilt or wrongdoing by any of the parties to this Agreement. This Agreement is being entered into on a compromise basis only, in order to avoid further time, trouble, litigation and expense.
18. This Agreement shall become effective upon the date of execution by the Director, Environmental Resources Management, or his designee, and upon the approval of the School Board at a regularly scheduled public meeting, and upon execution by the Superintendent of Schools. This Agreement constitutes an offer of settlement in accordance with § 90.408 of the Florida Evidence Code until this Agreement is accepted and executed by the parties, including the School Board. If this Agreement is not accepted and executed by the parties, it shall be void and shall not be admissible in this cause or in any subsequent legal action between the parties.
19. This Agreement is made and entered into in the State of Florida, and shall in all respects be interpreted, enforced and governed in, and under the laws of Florida. The language and all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any of the parties. If any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will continue in full force and effect notwithstanding.
20. This is the entire agreement between the parties. No other promises or agreements have been made other than those in the Agreement.
21. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Agreement, shall not be construed as a waiver or relinquishment for the failure of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment to any provision of this Agreement shall be deemed to have been made by either party unless in writing and signed by the parties.
22. The parties to this Agreement agree to exercise good faith in upholding the terms of this Agreement.

Accepted and agreed to:

Miami-Dade County Public Schools

Rudolph Crew, Ed. D, Superintendent

Date

Miami-Dade County, Department of Environmental
Resources Management

John W. Renfrow, P.E. Director

Date