

Office of School Facilities  
Jaime G. Torrens, Chief Facilities Officer

**SUBJECT: THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AUTHORIZE THE SUPERINTENDENT TO:**

- 1) FINALIZE NEGOTIATIONS AND EXECUTE AN AMENDED AND RESTATED AGREEMENT BY AND BETWEEN THE SCHOOL BOARD AND FLORIDA MEMORIAL UNIVERSITY ("FMU"), FOR THE JOINT DEVELOPMENT AND USE OF A PORTION OF THE JAN MANN OPPORTUNITY SCHOOL CAMPUS, LOCATED AT 16101 NW 44 COURT, MIAMI, FLORIDA 33054, AND ADJACENT LAND OWNED BY FMU, TO CONSTRUCT AND OPERATE RECREATIONAL FACILITIES FOR THE JOINT USE OF THE DISTRICT AND FMU; AND**
- 2) FINALIZE NEGOTIATIONS AND EXECUTE A JOINT USE AGREEMENT BY AND BETWEEN THE BOARD AND FMU, FOR THE JOINT USE OF RECREATIONAL FACILITIES, WITH PROVISIONS FOR FMU TO ALLOW THE CITY OF MIAMI GARDENS TO JOINTLY USE THE RECREATIONAL FACILITIES; AND**
- 3) GRANT OR DENY ALL APPROVALS REQUIRED UNDER THE AMENDED AND RESTATED LEASE AND JOINT USE AGREEMENTS, INCLUDING RENEWING, EXTENDING, ASSIGNING, CANCELLING OR TERMINATING THE AGREEMENTS; AND**
- 4) FINALIZE NEGOTIATIONS AND EXECUTE ANY OTHER DOCUMENTS OR AGREEMENTS NECESSARY TO EFFECTUATE THE ABOVE TRANSACTIONS**

**COMMITTEE: FACILITIES AND CONSTRUCTION REFORM**

**LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY**

### Background Information

Since 1997, the School Board ("Board") and Florida Memorial University ("FMU") have jointly utilized a baseball field and recreational area (collectively, the "Baseball Field"), located across portions of the FMU and Jan Mann Opportunity School ("School") campuses, pursuant to a lease agreement between the parties ("Existing Lease"). FMU designed and constructed the Baseball Field and the Board contributed \$138,000 towards construction. The term of the Existing Agreement expires in 2017.

FMU and the City of Miami Gardens ("City") recently entered into a public-private partnership to develop and construct recreational improvements for the benefit of FMU and the community. In this regard, FMU and the City are desirous of developing a 4.2-acre parcel of land owned by FMU ("FMU Parcel"), located immediately adjacent to the School campus (see Location Map). Improvements are anticipated to include a new football/soccer field and track and field facilities (the "Improvements"). FMU has approached the District to advise that the 4.2-acre FMU Parcel is insufficient in size to complete the proposed Improvements, and is seeking a collaboration with the Board to expand the available area through the use of a one-acre portion of the adjacent School campus ("Board Parcel"). To offset the loss of existing School parking/bus drop-off facilities, FMU is offering to make comparable improvements elsewhere on the School campus, at no expense to the Board. District and FMU staff are proposing that continued joint use of the Baseball Field, and the construction and joint use of the proposed Improvements be accomplished through the implementation of an Amended and Restated Lease Agreement as well as a Joint Use Agreement between the Board and FMU (the "Parties"). Given the role of the City in funding the Improvements, it is anticipated that the proposed Joint Use Agreement will make provisions for the City to jointly utilize the Improvements, under terms agreeable to the Parties. The Existing Lease between the Board and FMU will terminate effective with the commencement of the Amended and Restated Lease Agreement.

### Amended and Restated Lease Agreement:

Terms and conditions of the proposed Amended and Restated Lease Agreement, covering the Baseball Field, FMU Parcel and Board Parcel shall include, substantially, the following:

- an initial 40-year term, with two additional 10-year extensions, at the mutual agreement of the Parties;
- the Existing Lease between the Board and FMU shall terminate effective with the commencement of the Amended and Restated Lease Agreement;
- FMU shall develop and construct recreational improvements on the combined FMU Parcel and Board Parcel (collectively referred to as the "Joint Use Parcel"), at no cost to the Board, for the joint use and benefit of the Board and FMU;
- the Board and FMU shall enter into a Joint Use Agreement to make the Baseball Field, Joint Use Parcel and the Improvements available for the joint use of the Parties, under a schedule and terms as more specifically outlined below, with

provisions for FMU to allow the City to use the Baseball Field, Board Parcel and Improvements during FMU's period of use, under terms agreeable to the Parties;

- the Board shall retain fee simple ownership of the Board Parcel and the Board-owned portion of the Baseball Field at all times;
- FMU shall accept the Baseball Field and Board Parcel in its "as is, where is" condition as of the commencement date of the Amended and Restated Lease Agreement, with no representations or warranties by the Board as to the physical condition or usability of the parcels for any specific use or purpose;
- the Improvements to be constructed on the Joint Use Parcel shall include, without limitation, a football/soccer field and track and field facilities. Any substantive change to the proposed use of the Joint Use Parcel or proposed Improvements shall be approved by the Parties;
- FMU shall construct a replacement parking lot and bus drop-off area elsewhere on the School campus, as determined by the Board, to offset the loss of such facilities on the Board Parcel, all at no expense to the Board;
- the District's Building Department shall review and approve construction documents, issue any required construction permits and provide final acceptance for any improvements constructed on the Board Parcel or elsewhere on the School site. All work shall be performed in compliance with all applicable laws, rules and regulations, including, without limitation, the Florida Building Code, the Americans with Disabilities Act, the Jessica Lunsford Act, the State Requirements for Educational Facilities, and the Miami-Dade County Public Schools criteria and standards, as the same may be amended from time to time;
- FMU shall have use, from time to time, of the adjacent North Transportation Center staff parking lot ("North Transportation Lot") when not otherwise in use by the District, for overflow parking purposes. Any costs related to such use (i.e. staff overtime, lighting, fence modifications, security, site cleaning, etc.) shall be borne by FMU;
- each Party shall provide evidence of insurance in the types and amounts of coverage as reasonably required by the other Party or, in the alternative, the Parties may provide evidence of self-insurance;
- FMU shall hold harmless and indemnify the Board against any all liability, cost or expense of whatsoever kind or nature including, but not by way of limitation, attorneys' fees and court costs arising out of bodily injury to persons including death, or damage to tangible property arising out of or incidental to the performance of the Amended and Restated Lease Agreement by or on behalf of FMU, whether or not due to or caused in part by the negligence or other culpability of the Board, excluding only the sole negligence or culpability of the Board;

- FMU agrees, at its own expense, and upon written request by the Board, to defend any suit, action or demand brought against the Board on any claim or demand arising out of, resulting from or incidental to performance under the Amended and Restated Lease Agreement;
- the Board shall indemnify and hold FMU harmless, subject to the extent of the limitations contained in Florida Statute, from all liability which may arise as a result of the Board's negligence, actions or failure to act under the terms of the Amended and Restated Lease Agreement;
- neither Party shall use, handle, generate, manufacture, produce, store, discharge, treat, remove, transport or dispose of Hazardous Substances at, in, upon, under, to or from the Joint Parcel, Baseball Field or North Transportation Lot;
- other than as specified below, neither Party may assign or sublet the Joint Use Parcel, the Baseball Field or any portion thereof to another party, without first securing the consent of the other Party, which consent may be withheld at such Party's discretion;
- FMU shall surrender the Board Parcel and Board-owned portion of the Baseball Field to the Board, at the expiration, termination or cancellation of the Amended and Restated Lease Agreement in a good, clean and functional condition, ordinary wear and tear excepted, including removal of all personal property and other items belonging thereto;
- in the event of damage or destruction of all or portions of the Improvements or Baseball Field, FMU may, at its sole option, either cancel the Amended and Restated Lease Agreement, or repair or replace the damaged facilities, at no expense to the Board;
- the Amended and Restated Lease Agreement shall be deemed inferior and subordinate to any existing or future financing by the Board of the School campus, Board Parcel, Board-owned portion of the Baseball Field, or any portions thereof;
- the Amended and Restated Lease Agreement shall be construed and enforced according to the laws of the State of Florida and the venue for any disputes shall be Miami-Dade County, Florida;
- in the event of any litigation between the Parties, each Party shall be responsible for its own attorney's fees and court costs through trials and appellate levels;
- for purposes of the Amended and Restated Lease Agreement, the Superintendent of Schools shall be the party designated by the Board to grant or deny any modifications and approvals required by the Amended and Restated Lease Agreement, including without limitation, renewing, extending, assigning, canceling

and/or terminating the Amended or Restated Lease Agreement, amending any of its exhibits, establishing use schedules, modifying the areas or periods of use, and reviewing and approving matters related to any construction by FMU; and

- the Amended and Restated Lease Agreement shall contain such additional terms and conditions as mutually agreed to by the Parties.

Joint Use Agreement:

Terms and conditions of the proposed Joint Use Agreement (“JUA”) shall include, substantially, the following:

- the term of the JUA for the Baseball Field shall continue uninterrupted, and shall commence for the Joint Use Parcel upon completion of the Improvements on the Joint Use Parcel, and FMU’s construction of a new parking lot and bus drop-off area on the School campus, and shall thenceforth run concurrent with the term of the Amended and Restated Lease Agreement, as outlined above;
- the Parties shall meet on an annual basis, or more often as necessary, to establish a mutually acceptable schedule of use of the Baseball Field., Joint Use Parcel and Improvements. Notwithstanding this provision, the Board shall have use of the Baseball Field, Joint Use Parcel and Improvements during normal school hours to operate educational, recreational and/or sports related programs;
- FMU may use existing staff/visitor parking facilities at the School and staff parking facilities at the North Transportation Lot when not otherwise in use by the District, for overflow parking purposes, with any costs related thereto to be borne by FMU;
- in addition to the above, the exact areas or periods of use may be modified from time to time throughout the school year by mutual agreement of the Parties, or their authorized representatives;
- either Party may request use of the Baseball Field, Joint Use Parcel and Improvements for special events or functions, during the other Party’s period of use. Approval of such requests shall not be unreasonably withheld, provided such use does not conflict with the other Party’s operations or previous obligations;
- FMU may contract with the City to use the Baseball Field, Joint Use Parcel and Improvements during FMU’s period of use, for the City’s recreational or educational services and programs. In that event, FMU shall be responsible for all maintenance, clean-up, risk management, supervision and other terms and conditions set forth in the Amended and Restated Lease Agreement and JUA, the same as if the FMU, itself, were utilizing the Baseball Field, Joint Use Parcel or Improvements. FMU shall require the City to provide liability insurance, insuring FMU and the Board, as a pre-condition to its use, and shall provide evidence of same to the Board;
- FMU shall be responsible, at its sole cost and expense, for all maintenance, upkeep

and repair of the Baseball Field, Joint Use Parcel and all improvements constructed thereon. In addition, FMU shall be responsible, at its sole cost and expense, for providing on-site security, and all custodial and janitorial services for the Baseball Field, Joint Use Parcel and Improvements during its periods of use, including, without limitation, removal of trash and litter pick-up;

- FMU shall be responsible for payment of any utilities relating to the use and operation of the Baseball Field, Improvements and Joint Use Parcel. FMU or the City shall install separate services and/or meters in its name and shall pay for such services at its sole cost and expense;
- FMU shall be responsible for the payment of any taxes, fees or other assessments, including but not limited to sales tax, imposed on the Baseball Field, Board Parcel and North Transportation Lot due as a result of the occupancy and use of the Baseball Field or Board Parcel by FMU;
- neither Party shall use, handle, generate, manufacture, produce, store, discharge, treat, remove, transport or dispose of Hazardous Substances at, in, upon, under, to or from the Baseball Field, Joint Use Parcel and North Transportation Lot;
- FMU shall be responsible for payment or fulfillment of any requirement for infrastructure improvements or other regulatory compliance due to the lease, use or occupancy of the Baseball Field, Board Parcel or North Transportation Lot by FMU;
- other than as specified above, neither Party may assign or sublet the Baseball Field, Joint Parcel, or any portion thereof to another party, without first securing the consent of the other Party, which consent may be withheld at such Party's discretion;
- FMU shall surrender the Board Parcel and the Board-owned portion of the Baseball Field to the Board, at the expiration, termination or cancellation of the JUA in a good, clean and functional condition, ordinary wear and tear excepted, including removal of all personal property and other items belonging thereto;
- in the event of damage or destruction of all or portions of the Baseball Field or Improvements, FMU may, at its sole option, either cancel the JUA, or repair or replace the damaged facilities, at no expense to the Board;
- the JUA shall be deemed inferior and subordinate to any existing or future financing by the Board of the School campus, Board Parcel, Board-owned portion of the Baseball Field or any portions thereof;
- the JUA shall be construed and enforced according to the laws of the State of Florida and the venue for any disputes shall be Miami-Dade County, Florida;
- in the event of any litigation between the Parties, each Party shall be responsible for

its own attorney's fees and court costs through trials and appellate levels;

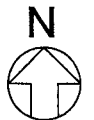
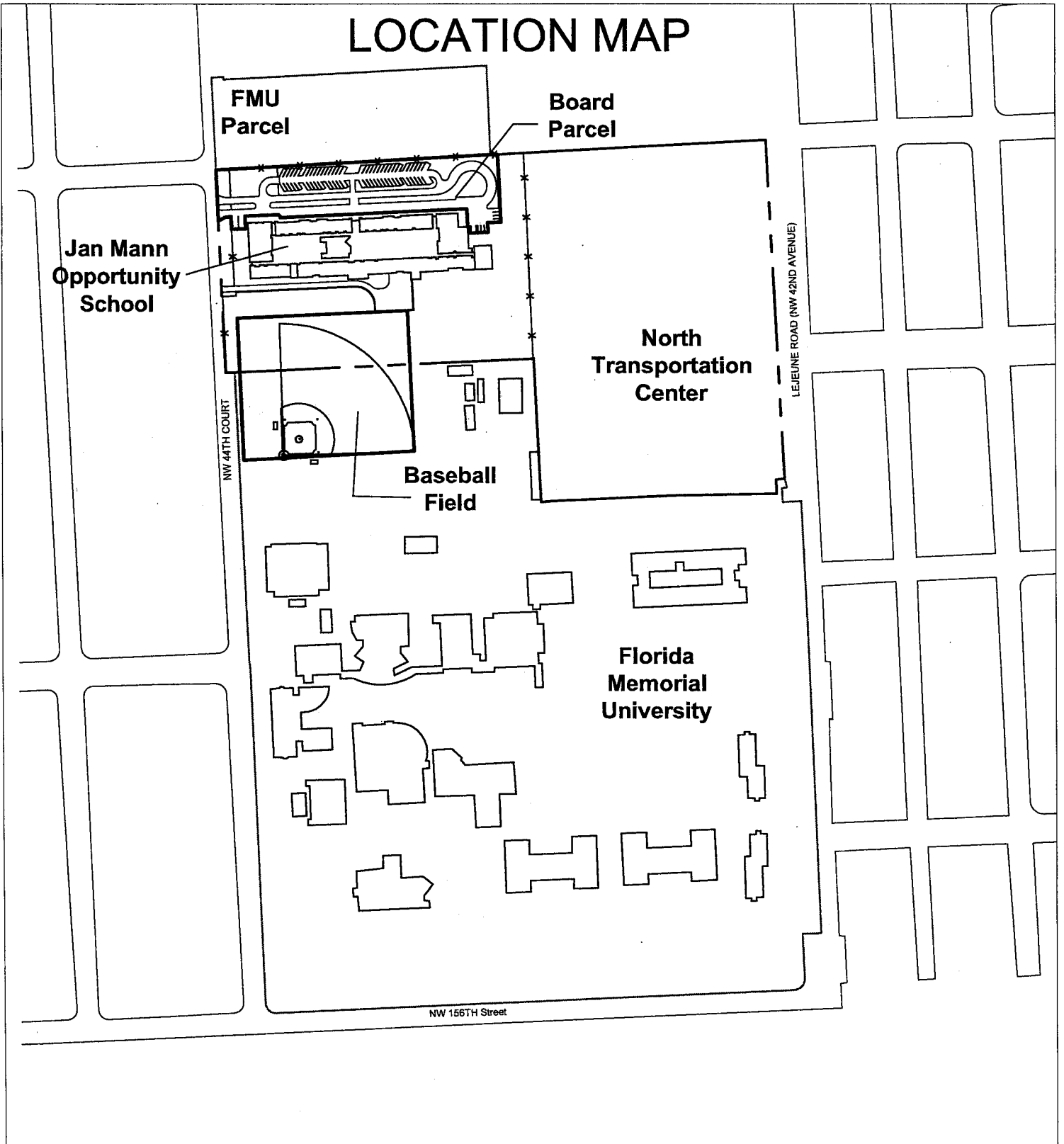
- either Party may cancel the JUA with one year advance notice. The Parties agree that the cancellation of the JUA by either Party shall automatically serve to cancel the Amended and Restated Lease Agreement by operation of law, without further action by or notice from either Party;
- for purposes of the JUA, the Superintendent of Schools shall be the party designated by the Board to grant or deny any modifications and approvals required by the JUA, including without limitation, renewing, extending, assigning, canceling and/or terminating the JUA, amending any of its exhibits, establishing use schedules, modifying the areas or periods of use, and reviewing and approving matters related to any construction by FMU ; and
- the JUA shall contain such additional terms and conditions as mutually agreed to by the Parties.

The Amended and Restated Lease Agreement, JUA and any other related documents will be reviewed and approved by the District's Office of Risk and Benefits Management and by the School Board Attorney's Office prior to execution.

**RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to:**

1. finalize negotiations and execute an Amended and Restated Lease Agreement by and between the School Board and Florida Memorial University ("FMU"), for the joint development and use of a portion of the Jan Mann Opportunity School campus, located at 16101 NW 44 Court, Miami, Florida 33054, and adjacent land owned by FMU, to construct and operate recreational facilities for the joint use of the District and FMU, under, substantially, the terms and conditions noted above; and
2. finalize negotiations and execute a Joint Use Agreement by and between the parties, for the joint use of recreational facilities, with provisions for FMU to allow the City of Miami Gardens to jointly use the recreational facilities, under, substantially, the terms and conditions noted above; and
3. grant or deny all approvals required under the Amended and Restated Lease and Joint Use Agreements, including renewing, extending, assigning, cancelling or terminating the Agreements; and
4. finalize negotiations and execute any other documents or agreements necessary to effectuate the above transactions.

# LOCATION MAP



Not to scale