

RESOLUTION NO. 2018-70

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, REGARDING PARKS AND RECREATION; APPROVING AND AUTHORIZING THE VILLAGE MANAGER TO EXECUTE A NON-EXCLUSIVE USE AGREEMENT WITH THE SCHOOL BOARD OF MIAMI DADE COUNTY FOR THE USE OF THE NORTHEAST BASEBALL FIELD #3 AT CORAL REEF PARK FOR THE SCHOOLS' BOYS BASEBALL PROGRAM; COMMENCING ON JUNE 1, 2018 AND TERMINATING ON MAY 31, 2023, WITH FURTHER CONSIDERATION OF TWO ONE-YEAR EXTENSIONS EFFECTUATING USE THROUGH MAY 31, 2025; AND PROVIDING AN EFFECTIVE DATE. *(Sponsored by Administration)*

WHEREAS, the Miami Palmetto High School boys baseball team has utilized the northeast baseball field #3 at Coral Reef Park since 2003 via an non-exclusive agreement between the School Board of Miami Dade County and the Village; and

WHEREAS, the current governing agreement is set to expire on May 31, 2018, and continued long-term use has been requested by the school; and

WHEREAS, given the excellent track record of Miami Palmetto High School regarding compliance to all use requirements, as well as their responsive and respectful manner in dealing with the Village, it is recommended that the Village Council consider a five year agreement be executed; commencing on June 1, 2018 and terminating on May 31, 2023, with an option to extend for two (2) additional terms of one (1) year each from the expiration of the original term which would effectuate use through May 31, 2025.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE OF PALMETTO BAY, FLORIDA, THAT:

Section 1. The Village Manager is hereby authorized to execute an agreement between Dade County Schools for the use of the northeast baseball Field #3 at Coral Reef Park by the boys baseball teams; subject to the terms and conditions described therein; and for an initial period beginning June 1, 2018, extending through May 31, 2023; with two optional one-year extensions which, if approved, would effectuate use May 31, 2025.

Section 2. This Resolution shall take effect immediately upon its adoption.

PASSED and ADOPTED this 14th day of May, 2018.

Attest:

DocuSigned by:
Missy Arocha
6EDC211E5E8C48C
Missy Arocha
Village Clerk

DocuSigned by:
Eugene Flinn
3B8854AD569F494
Eugene Flinn
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY, FLORIDA ONLY:

DocuSigned by:
Dexter W. Lehtinen
1B1D06E71321445
Dexter W. Lehtinen
Village Attorney

FINAL VOTE OF ADOPTION:

- Council Member Karyn Cunningham YES
- Council Member David Singer YES
- Council Member Larissa Siegel Lara YES
- Vice-Mayor John DuBois ABSENT
- Mayor Eugene Flinn YES

**NON-EXCLUSIVE USE AGREEMENT BETWEEN THE
SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AND
THE VILLAGE OF PALMETTO BAY**

THIS NON-EXCLUSIVE USE AGREEMENT (the “Agreement”) is entered into on this ____ day of _____, 2018, by and between **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a body corporate and politic existing under the laws of the State of Florida (“Board”), relating to Miami Palmetto Senior High School (“School”), and **THE VILLAGE OF PALMETTO BAY** (“Village”), for the shared use of “Field 3”, which is the Northeast Baseball Field located in Coral Reef Park (“Park”), Village of Palmetto Bay, Florida. The Board and Village are sometimes referred to in this agreement individually as “**Party**” and collectively as the “**Parties**”.

WHEREAS, high school students residing within the Village of Palmetto Bay attend the School; and

WHEREAS, the School’s Boys Baseball Team does not have a home field; and

WHEREAS, there is an immediate need for a suitable location for a home field for the School’s Boys Baseball Team; and

WHEREAS, Field 3 at Coral Reef Park is a suitable location for the School’s use; and

WHEREAS, the Parties desire to enter into this Agreement for the continued use of the Field 3 for five (5) years, which shall commence June 1, 2018 and end on May 31, 2023, under the terms and conditions as set forth below.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by all Parties, the Parties agree as follows:

1. **Whereas clauses.** The above referenced whereas clauses are incorporated by reference into this Agreement and stipulated to be true and accurate.

2. **Scope of Use.**

2.1 The Village Shall make available Field 3, the Northeast Baseball Field located in Coral Reef Park, Village of Palmetto Bay, Florida, for practice and games for the “Palmetto Senior High School Boys Baseball Team,” which is the School’s official baseball team during baseball season. Baseball season is defined as and includes the following periods: (1) Regular Season Practice and Games: January 15th – April 30th; and (2) Tournament (Practice Site only, as needed): May 1st – May 30th.

2.2 The School will not charge spectators to attend games at the Park.

2.3 The School shall monitor its players, staff, spectators and visiting team’s players, staff and spectators to ensure compliance with all Village, School, and Park rules and regulations. The School shall designate one person at each team practice or game as the responsible party for ensuring compliance with all applicable rules and regulations. The School is responsible for monitoring the conduct of the entire group which includes spectators.

2.4 No alcoholic beverages are permitted in the Park.

2.5 The School shall conduct its events in an orderly manner and so as not to annoy, disturb, or be offensive to Park patrons or residents in the vicinity of its operation. The School shall use best efforts to monitor and control the conduct, demeanor and appearance of its officers, coaches, members, employees, agents and representatives and demeanor and conduct of customers, spectators and patrons. In the event the Village

notifies the School of observed inappropriate behavior, the School will take immediate steps to attempt to correct the behavior.

2.6 All use of Field 3 shall be in accordance with the schedule identified at section 6, infra.

2.7 In no event may Field 3 be used for night practice or night games. The School specifically agrees that it will not seek to use Field 3 for night practice or night games, nor shall the School seek to have the Village, Miami-Dade County or the Board add field lights to the Park.

2.8 No voice or sound amplification of public address equipment will be used unless prior approval in writing is provided by the Village.

3. **Term of Use.** This Agreement shall be for continued use of the Field for five (5) years, which shall commence June 1, 2018 and end on May 31, 2023.

4. **Times of Use.** The School will be provided first priority in scheduling and coordinating access to Field 3 during baseball season. Field 3 may be scheduled for use by the School during baseball season for the following time periods:

- Practice Days from 3:00p.m.-6:00p.m.;
- Weekday Game Days from 2:00p.m.-6:30p.m.;
- Saturday Practice and Games from 8:00 a.m.-noon.

5. **Priority of Use and Non-Exclusive Use.** Field 3 may be made available by the Village to any other users, at other times that are not scheduled for use by the School for practice or games, without restrictions. The Village will review the calendar of proposed practice and game events provided by the School prior to scheduling any third

parties to use Field 3. Subject to the School calendar, the Village may authorize and schedule other events for third persons for Field 3.

6. **Scheduling.**

6.1 At least one month prior to the start of the School's baseball season, the School shall provide the Village with a schedule for the proposed use of Field 3. The School and Village shall agree upon a mutually acceptable schedule for practices and games in compliance with Section 2, above. The School shall provide immediate written notice to the Village of any change in the proposed schedule.

6.2 Any special events or additional facility usage will require written approval from the Village Manager or his/her designee.

7. **Capital Improvements**

7.1 The School, subject to the prior written approval by the Village Manager, may make capital improvements to Field 3. Both Parties agree that any capital improvements made by either Party may occur over the five-year term of the underlying Agreement, as funding becomes available. Should improvements requested by the Board and/or School be such that it causes a substantial change to the footprint of the park, then approval shall be pursuant to the Village Council, by four-fifth vote, authorizing a change in the Coral Reef Park Master Plan.

7.2 The costs of all capital improvements initiated by the School are the sole financial responsibility of the Board.

7.3 The Village will retain ownership of any and all permanent improvements to Field 3, such as a new backstop, permanent dugouts, grass infield, etc.

7.4 The School shall retain ownership of any removable or temporary improvements, such as a removable outfield fence, pitching machines, etc.

7.5 During the term of this Agreement, the School shall be responsible for maintaining any capital improvements undertaken by the Board or School at Field 3.

7.6 All equipment, site improvements and signage installed by the School shall be approved by the Village prior to installation. The School shall not install, remove or replace the equipment or furnishings without notification to, and prior approval by the Village.

7.7 The School agrees that any temporary fencing installed in the outfield shall be see-through, and that netting beyond the outfield shall be installed as needed.

8. **Maintenance**

8.1 The Village shall be responsible for normal maintenance of Field 3, as is performed throughout the Park.

8.2 The School shall be responsible for general cleanup of Field 3 and the parking lots used in conjunction with a practice or game. The School will clean the entire ball field or facility area including the dugout, fence lines and spectator area after each day's use and will place all trash in the Village's trash receptacles.

8.3 The School shall take good care of Field 3, to ensure that upon the expiration of this Agreement, or its termination in any manner, Field 3 is in not worse condition than it was at the commencement of this Agreement, ordinary wear and tear, or damage by fire, windstorm or other acts of God, excepted.

8.4 The School shall pay the Village \$321.87 per week for maintenance other than that described as normal maintenance as provided by Village, specifically including dragging the infield and lining the field (during baseball season). Effective June 1, 2019, and on an annual basis thereafter during the term of this Agreement, the non-normal maintenance amount shall be adjusted annually by the percentage increase reflected in the Consumer Price Index for all Urban Consumers for the month of May. However, in no event shall this amount increase by more than four percent (4%) per year.

9. **Parking and Transportation**

9.1 Participants, including staff, players, coaches, visiting teams and spectators, shall be directed to use the northeast parking lot on 77th Avenue.

9.2 Under no circumstances shall anyone park in the residential areas surrounding the Park, specifically including the residential area immediately north of the Park.

9.3 Visiting Teams shall use school buses to attend games.

9.4 For practice days, the School agrees to continue the practice of caravanning to the practice site.

9.5 For game days, the School agrees that, should parking capacity at the northeast lot become a concern, the team will travel to the Park in a school bus.

10. **Security**. The School shall be responsible for providing appropriate levels of security to include the use of administrative and athletic personnel, non-sworn security staff and sworn School Board Officers. The Village reserves the right to require

additional security, if needed, as determined by the Parties. The expenses of additional security, such as off-duty Police Officers, will be the responsibility of the Board.

11. **Termination Due to Breach**

11.1 Either Party may terminate this Agreement due to a material breach by the other Party, which breach has not been cured within one business day of the date of receipt of written notice of breach from the Party seeking termination.

11.2 Termination shall be effective as of the end of the one business day period in the case of any uncured material breach.

11.3 Neither Party shall have any liability to the other for any incidental, consequential or other damages due to termination for material breach.

11.4 The rights and remedies of the Parties provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. **Termination for Convenience.** Prior to the start of baseball season, either Party may terminate this Agreement without cause upon 30 days written notice to the other Party. If the School's baseball season has already started, the Village may terminate this Agreement without cause upon 30 days written notice, but the termination shall become effective at the end of the School's baseball season.

13. **Signs.** Any signage, temporary or permanent, shall be pre-approved by the Village. Approved Village signage and/or banners may be installed by the School prior to the scheduled game, ~~during said game day~~ and must be removed immediately following the game. Should darkness or inclement weather impact the ability of the School to remove the signs and/or banners, the School will have until effect the timing of

~~removal, completion of removal must be completed by 10:00 am the following day to complete the removal. Notwithstanding the foregoing, the Parties agree that for consecutive games, or games taking place on consecutive days, the Board shall be permitted to remove such signage and/or banners after the last of the consecutive games or consecutive days.~~

13.14. Indemnification and Sovereign Immunity

~~13.14.1~~ The Village does hereby agree to indemnify and hold harmless the Board, to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the Village shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the Village arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the Village. However, nothing herein shall be deemed to indemnify the Board from any liability or claim arising out of the negligent performance or failure of performance of the Board or as a result of the negligence of any unrelated third party.

14.2 The Board does hereby agree to indemnify and hold harmless the Village, to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the Board shall not be held liable to pay a personal injury or property damage claim or judgment by any one person

which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the Board arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the Board. However, nothing herein shall be deemed to indemnify the Village from any liability or claim arising out of the negligent performance or failure of performance of the Village or as a result of the negligence of any unrelated third party.

14.15. Insurance. The Board shall provide Village with a letter of self-insurance providing coverage for the protection and indemnification of the Village and School with respect to any and all claims for bodily injury/property damage and automobile liability.

15.16. Notices. Whenever any Party is required to give or deliver any notice to any other Party, or desires to do so, such notices shall be sent via certified mail, private postal service or hand delivery as provided for below, and delivery shall be deemed effective upon receipt thereof. Notices shall be sent to:

Board: The School Board of Miami-Dade County, Florida
 c/o Superintendent of Schools
 School Board Administration Building
 1450 N.E. 2nd Avenue, 9th Floor
 Miami, Florida 33132
 Fax: 305-995-1488

With a copy to: Miami-Dade County Public Schools
 Planning, Design and Sustainability
 1450 N.E. 2nd Avenue, Room 525
 Attention: Deputy Chief Facilities and Eco-Sustainability
 Officer

Fax: 305-995-4760
Miami, Florida 33132

With a copy to:

The School Board of Miami-Dade County, Florida
School Board Attorney's Office
1450 NE 2nd Avenue, #400
Miami, FL 33132
Attn: School Board Attorney
Fax: 305-995-1412
e-mail: Walter.Harvey@dadeschools.net and
ACraft@dadeschools.net

With a copy to:

Victoria G. Dobbs, Principal
Miami-Palmetto Senior High School
7460 S.W. 118th Street
Pincrest, Florida 33156

Village:

Edward Silva, Village Manager
Village of Palmetto Bay
8950 S.W. 152nd Street
Palmetto Bay, Florida 33157

~~16~~17. **Severability.** If a term, provision, covenant, contract or condition of this Agreement is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this Agreement and the remainder shall be effective as though every term, provisions, covenant, contract or condition had not been contained herein.

~~17~~18. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

~~18~~19. **Choice of Law.** This Agreement shall be governed by the laws of the State of Florida. Venue shall lie in Miami-Dade County.

~~19~~20. **Attorney's Fees.** In the event of any litigation between the Parties under this Agreement, each Party shall be responsible for its own attorney's fees and court costs

through trials and appellate levels. The provisions of this paragraph shall survive the expiration or early termination or cancellation of this Agreement.

20-21. Option to Renew. The term of this Agreement may, at the mutual agreement of the Parties, be extended under the same terms and conditions, for two (2) additional terms of one (1) year each from the expiration of the original term. Any such extension of the term shall be accomplished through the execution of an amendment to this Agreement.

21-22. Assignment and Amendment. No assignment by either Party of this Agreement or any part of it, or any monies due or to become due, shall be made. This Agreement may only be amended, by the Parties, with the same formalities as this Agreement.

22-23. Authority of the Superintendent.

For purposes of this Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the Board to grant or deny any and all approvals required by this Agreement dealing with scheduling, periods of use, capital improvements by the Board, or any other operational issues.

In addition to the above, the Superintendent shall be also be the party designated by the Board to grant or deny any approvals required by this Agreement, including without limitation, amending any of the exhibits to the Agreement, placing the Village in default, and renewing, extending, canceling or terminating the Agreement, as provided herein.

23-24. Joint Use Committee.

A Joint Use Committee, made up of the School Administrator, or designee, and the Park Supervisor, or designee, shall be established as of the commencement date of this Agreement. The Joint Use Committee shall meet on an annual basis following the

conclusion of the School's baseball season to coordinate and resolve any issues pertaining to the scheduling, use, operation, maintenance, and supervision of Field 3.

IN WITNESS WHEREOF, the Parties hereto, acting through their duly authorized officers have executed this Agreement as of the date first above written.

VILLAGE OF PALMETTO BAY

By: _____
Edward Silva
Village Manager

ATTEST:

By: _____
Missy Arocha

Approved as to form:

Dexter W. Lehtinen
Village Attorney

Witness:

Print Name:

Witness:

Print Name:

BOARD:

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

By: _____

Alberto M. Carvalho
Superintendent of Schools

Date: _____

RECOMMENDED:

Jaime G. Torrens
Chief Facilities Officer

Date: _____

**TO THE BOARD: APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

School Board Attorney

Date: _____

**TO THE BOARD: APPROVED AS TO
TREASURY MANAGEMENT ISSUES:**

Office of Treasury Management

Date: _____

**TO THE BOARD: APPROVED AS TO
RISK MANAGEMENT ISSUES:**

Office of Risk and Benefits Management

Date: _____