

C4 P REFERRAL TO THE PUBLIC SAFETY AND NEIGHBORHOOD QUALITY OF LIFE COMMITTEE TO DISCUSS THE SCHOOL BOARD JOINT USE AGREEMENT REVIEW REGARDING MIAMI BEACH NAUTILUS MIDDLE SCHOOL FENCE REQUEST AT POLO PARK.

Applicable Area:



COMMISSION MEMORANDUM

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| TO: | Honorable Mayor and Members of the City Commission |
| FROM: | Rickelle Williams, Interim City Manager |
| DATE: | July 24, 2024 |
| TITLE: | REFERRAL TO THE PUBLIC SAFETY AND NEIGHBORHOOD QUALITY OF LIFE COMMITTEE TO DISCUSS THE SCHOOL BOARD JOINT USE AGREEMENT REVIEW REGARDING MIAMI BEACH NAUTILUS MIDDLE SCHOOL FENCE REQUEST AT POLO PARK. |

RECOMMENDATION

The Administration recommends that the Mayor and City Commission approve the referral to the Public Safety and Neighborhood Quality of Life Committee (PSNQLC) to discuss the item and provide a recommendation.

BACKGROUND/HISTORY

The School Board of Miami-Dade County, Florida, transmitted a letter dated July 12, 2024 (attachment A) regarding the monitoring of the current legislative session in an attempt to implement changes that may be required in the immediate future. Through this monitoring, the School Board has become aware of the new regulations being promulgated regarding school safety and security. Specifically, an additional emphasis is being placed on locking and monitoring access points to school sites when students are present on campus.

During the School Board's compliance review, they identified Miami Beach Nautilus Middle School as an area of concern. Per their review, there are perimeter fencing enclosure areas lacking where, during regular school hours, students are present for outdoor activities. Additionally, School Board site administration has observed individuals utilizing the basketball courts and baseball fields during school hours resulting in intervention by the resource officer.

The School Board is aware of the long and fruitful history of collaboration with the City of Miami Beach regarding Miami Beach Nautilus Middle School, as well as the forty-year Joint Use Agreement that has been in effect since 1994. At this time, the School Board is requesting a review of the Joint Use Agreement to determine the best way to allow for fencing to be placed around Miami Beach Nautilus Middle School to limit access to the property during instructional time.

ANALYSIS

The Joint Use Agreement (JUA) regarding Polo Park was adopted by the City of Miami Beach per Resolution No. 93-21003 (Attachment B) at its December 1, 1993 meeting and the School Board in accordance with Board Item No. A-17 at its December 8, 1993 meeting. The original term of the agreement is for forty (40) years commencing on January 20, 1994. A Settlement Agreement was executed on December 9, 2009 (Attachment C).

Per the JUA, the jointly owned premises may be utilized as a playground, athletic and recreation area. The School Board has full control, custody, right and use of the premises during regular school hours on regular school days. During summer school and for after-school activities the

administrators of Miami Beach Nautilus Middle School and City's Parks Department shall coordinate access. The City staff, as well as the general public, have the right to access and use of the following areas of the premises during school hours: tot lot, racquetball and tennis courts. Per the JUA, the School Board has reserved the right to promulgate and enforce reasonable rules and regulations governing the use of the recreational facilities by the public during school hours.

FISCAL IMPACT STATEMENT

N/A

Does this Ordinance require a Business Impact Estimate? (FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on .
See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

CONCLUSION

Per the letter dated July 12, 2024 the School Board will submit any documentation necessary to satisfy the requirements of the Improvements section (IV.) of the agreement and is willing to pay for the fencing and its installation at Polo Park.

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

No

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

Education and Performance Initiatives

Sponsor(s)

Co-sponsor(s)

Condensed Title

Ref: PSNQLC - MDCPS Joint Use Agmt Review of Nautilus Middle School Fence at Polo Park.
EPI



Miami-Dade County Public Schools

giving our students the world

Superintendent of Schools

Dr. Jose L. Dotres

Chief of Staff

Jose Bueno

Miami-Dade County School Board

Mari Tere Rojas, Chair

Monica Colucci, Vice Chair

Roberto J. Alonso

Lucia Baez-Geller

Dr. Dorothy Bendross-Mindingall

Mary Blanco

Danny Espino

Dr. Steve Gallon III

Luisa Santos

July 12, 2024

VIA ELECTRONIC EMAIL

RickelleWilliams@miamibeachfl.gov

Ms. Rickelle Williams
Interim City Manager
City of Miami Beach
1700 Convention Center Dr.
Miami Beach, FL 33139

Dear Ms. Williams:

The School Board of Miami-Dade County, Florida, has been closely monitoring the current legislative session in an attempt to implement changes that may be required in the immediate future. Through this monitoring, we have become aware that new regulations are being promulgated regarding school safety and security. Specifically, an additional emphasis is being placed on locking and monitoring access points to school sites when students are present on campus.

During our compliance review, we have identified Miami Beach Nautilus Middle School as an area of concern. This site currently lacks perimeter fencing enclosing areas where, during regular school hours, students are present for outdoor activities. Conversations with the principal have revealed additional security concerns, as he has noted that he commonly must ask the resource officer to remove individuals from the basketball courts and baseball field during instructional time.

The School Board is aware of the long and fruitful history of collaboration with The City of Miami Beach regarding Miami Beach Nautilus Middle School, as well as the forty-year Joint Use Agreement that has been in effect since 1994. At this time, the School Board is requesting a review of the Joint Use Agreement to determine the best way to allow for fencing to be placed around Miami Beach Nautilus Middle School to limit access to the property during instructional time. To this effect, the Board is willing to submit any documentation necessary to satisfy the requirements of the *Improvements* section (IV.) of the agreement and is willing to pay for the fencing and its installation.

As always, the main concern for the Board is to move with expediency to assure the safety and security of the students and maintain full compliance with all federal, state, and local laws (as is mandated in section XVIII).

Sincerely,

A handwritten signature in blue ink, appearing to read 'JBueno', with a stylized flourish at the end.

Jose Bueno

JB:im
L002

cc: Mr. Luis Diaz
Ms. Tabitha Fazzino
Chief Ivan Silva
Dr. Yesenia Aponte
Dr. Gilberto Bonce
Dr. Guillermo Munoz
Mr. Ignacio Palacio
Mr. Humberto Brito
Dr. Leslie Rosenfeld

be construed as waiving or relinquishing any such covenants or conditions, but the same shall continue and remain in full force and effect.

XX.

ENTIRE AGREEMENT

This Agreement represents the total agreement between the parties.

XXI.

SUCCESSORS AND ASSIGN

This Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

XXII.

LIMITATION OF LIABILITY

LESSOR and LESSEE desire to enter into this Agreement only if in so doing LESSOR and LESSEE can place a limit on their liability for any cause of action for money damages due to an alleged breach by LESSOR or LESSEE of this Agreement, so that their liability for any such breach never exceeds the sum of \$10,000. LESSOR and LESSEE hereby express their willingness to enter into this Agreement with a \$1,000,000 limitation on recovery for any damage action for breach of contract.

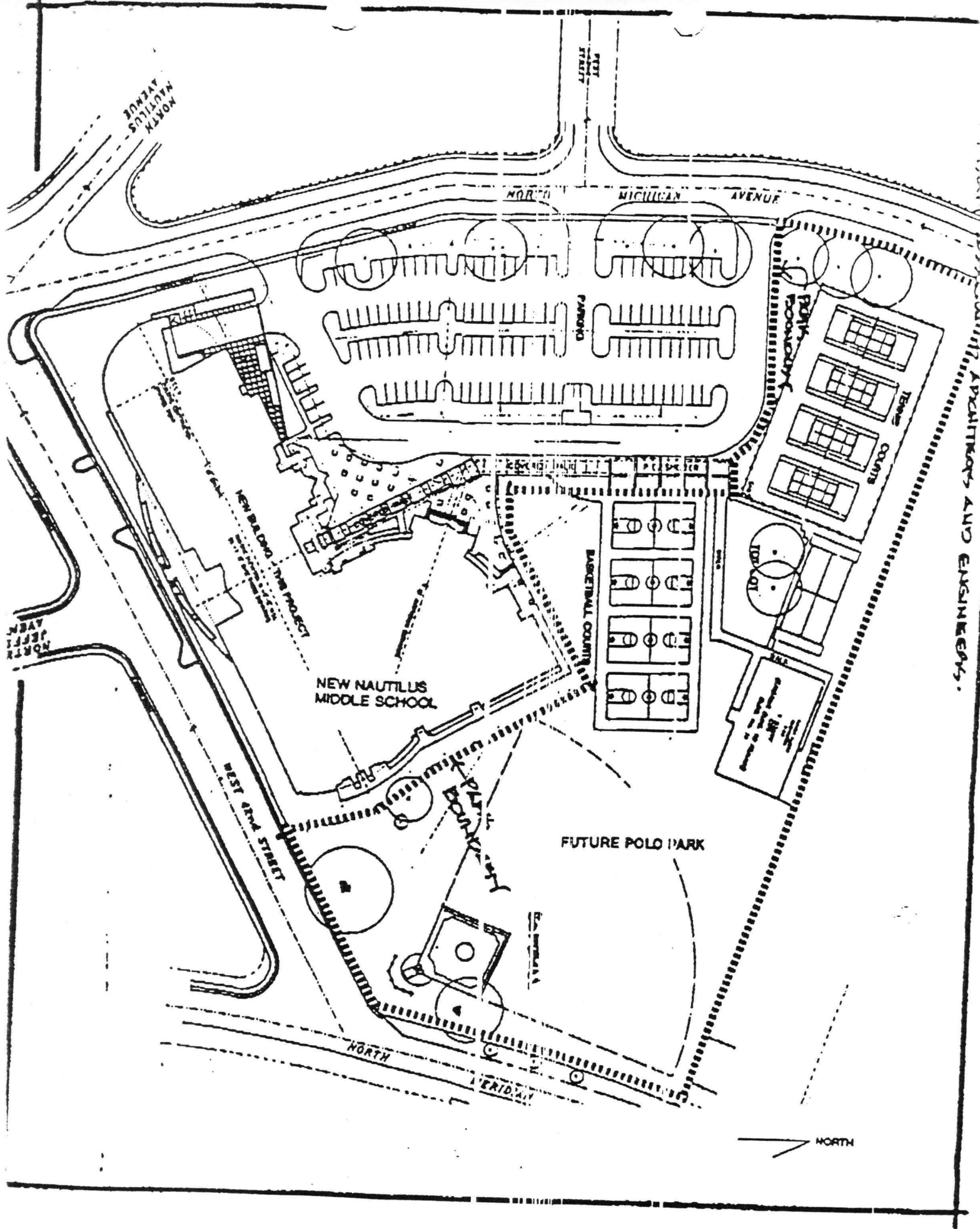
Accordingly, LESSOR and LESSEE hereby agree that LESSOR and LESSEE shall not be liable to each other for damages in an amount in excess of \$1,000,000 for any action occurring from breach of contract arising out of the performance or non performance of any application imposed upon the LESSOR or LESSEE by this Agreement.

The foregoing provision shall not preclude an action by LESSOR or LESSEE for specific performance. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitations placed upon LESSEE's or LESSOR's liability as set forth in Florida Statutes, Section 768.28

XX111.

ARBITRATION

Any controversy or claim for money damages arising out of or relating to this Agreement, or the breach hereof shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and the arbitration award shall be final and binding upon the parties hereto and subject to no appeal, and shall deal with the question of the cost of arbitration and all matters related thereto. In that regard, the parties shall mutually select one arbitrator, but to the extent that the parties cannot agree upon the arbitrator, then the American Arbitration Association shall appoint one. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for an order of enforcement. Any controversy or claim other than a controversy or claim for money damages arising out of or relating to this Agreement or the breach thereof, including any controversy or claim relating to the right to specific performance, shall be settled by litigation not arbitration.



PLANNERS AND ENGINEERS.

ATTACHMENT B

LIST OF IMPROVEMENTS BY LESSEE

The LESSEE hereby agrees to construct, at its sole expense, in accordance with applicable Department of Education standards, the following improvements:

1. four regulation hard surface basketball courts
2. four regulation hard court tennis courts
3. two outdoor racquetball courts
4. grass softball field and softball backstop
5. tot lot (including new equipment)

Both parties agree that the specifications for the above improvements shall be found in the set of construction drawings and documents for this project.

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RESTATED SETTLEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of December, 2009, by and between THE CITY OF MIAMI BEACH, a municipal corporation of the State of Florida (hereinafter called the "CITY" or the "LESSOR"), and the SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic of the State of Florida (hereinafter called the "SCHOOL BOARD" or the "LESSEE"), collectively the "Parties".

WITNESSETH

WHEREAS, the CITY and the SCHOOL BOARD have entered into a JOINT USE AGREEMENT and a CONSTRUCTION AGREEMENT, both dated the 20th day of January, 1994, attached hereto as Exhibit "A" and Exhibit "B" respectively, regarding the property known as POLO PARK; and

WHEREAS, those agreements deal with certain improvements to be made on, and joint usage of POLO PARK; and

WHEREAS, disagreements have arisen concerning the proper construction of the tennis courts by the SCHOOL BOARD, and the CITY has not accepted possession of said improvements under the terms of the CONSTRUCTION AGREEMENT; and

WHEREAS, the CITY and the SCHOOL BOARD entered into a SETTLEMENT AGREEMENT dated the 1st day of December 2002, which was intended to resolve these disagreements, complete the SCHOOL BOARD'S obligations under the CONSTRUCTION AGREEMENT, and allow the Parties to operate under the terms of the JOINT USE AGREEMENT; and

WHEREAS, as a part of the SETTLEMENT AGREEMENT, the SCHOOL BOARD agreed to pay to the CITY the amount of \$85,000, as settlement of all issues between the Parties; and

WHEREAS, after further negotiations, the Parties have now agreed to restate the SETTLEMENT AGREEMENT in compliance with the terms and conditions provided herein, in order to provide a revised framework for the final settlement of all outstanding claims, disputes, disagreements and conflicts whatsoever between the Parties pertaining to the Construction Agreement; and

WHEREAS, it is the Parties intent that this restated SETTLEMENT AGREEMENT supersede and replace the above described SETTLEMENT AGREEMENT; and

WHEREAS, the SCHOOL BOARD, pursuant to Agenda Item F-3, Board Action # 113,174, at its meeting of November 17, 2009, authorized the Superintendent to finalize negotiations and execute this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I.

RECITALS

The Parties agree that the above recitals are true and correct and are incorporated herein by reference.

II.

PAYMENT OF FUNDS BY THE SCHOOL BOARD

The CITY shall assume any and all responsibility for the repairs to the tennis courts, with the SCHOOL BOARD to provide the CITY Fifty Thousand Dollars (\$50,000), as its share of the repair cost. This amount shall augment the above mentioned Eighty-Five Thousand Dollars (\$85,000), previously authorized by the SCHOOL BOARD in 2002 but not yet paid.

III.

ACCEPTANCE OF IMPROVEMENTS

The Parties agree that, upon payment to the CITY by the SCHOOL BOARD of the amounts of Eighty Five Thousand Dollars (\$85,000) and Fifty Thousand Dollars (\$50,000), totaling One Hundred and Thirty Five Thousand Dollars (\$135,000), the CITY shall deem all work required to be performed by the SCHOOL BOARD under the CONSTRUCTION AGREEMENT to be satisfactorily concluded and complete, and the improvements made by the SCHOOL BOARD to POLO PARK to be deemed accepted by the CITY. The SCHOOL BOARD shall remit the total amount of \$135,000 to the CITY within thirty (30) days of the CITY'S approval of this Agreement, and acceptance of the improvements to POLO PARK shall not be effective until such time as the funds are received by the CITY.

IV.

JOINT USE AGREEMENT

Concurrent with payment to the CITY by the SCHOOL BOARD of the funds enumerated in Article II, the Parties hereby ratify and affirm that the JOINT USE AGREEMENT remains in full force and effect.

V.

RESOLUTION OF CLAIMS

This Agreement settles and resolves all claims, disputes, disagreements and conflicts among and between the Parties arising from the CONSTRUCTION AGREEMENT, including, but not limited to all claims that were, or could have been raised by any Party to this dispute, and the CITY releases the SCHOOL BOARD from any and all claims and liabilities whatsoever relating to the Construction Agreement.

VI.

ATTORNEYS 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 term shall survive the termination of this Agreement.

VII.

EFFECTIVE DATE

This Agreement shall become effective as of the date of full execution by both Parties.

IN WITNESS WHEREOF, the Parties hereto have individually, through their proper officials, executed this Agreement the day and year first hereinabove written.

THE CITY OF MIAMI BEACH, FLORIDA

THE SCHOOL BOARD OF MIAMI-
DADE COUNTY, FLORIDA


MAYOR


SUPERINTENDENT

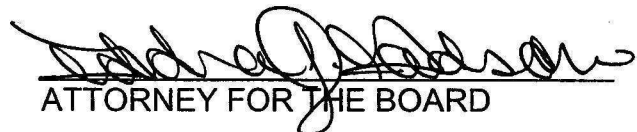
ATTEST:


CITY CLERK

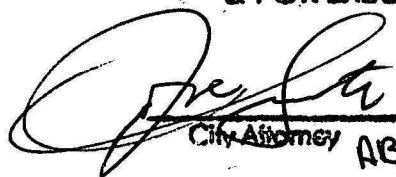
APPROVED AS TO FORM:

CITY ATTORNEY

APPROVED AS TO FORM:


ATTORNEY FOR THE BOARD

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney AB

12/4/09
Date