

EXHIBIT "1"

SECOND AMENDMENT TO USE AGREEMENT

THIS SECOND AMENDMENT ("**AMENDMENT**") TO USE AGREEMENT (the "**Second Amended Agreement**") is made and entered into this _____ day of _____, 20____, with an effective date of July 23, 2021, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic (hereinafter called the "**LESSEE**"), and the CITY OF MIAMI BEACH, a municipal corporation of the State of Florida (hereinafter referred to as the "City" or "**LESSOR**"), The LESSOR and LESSEE are sometimes referred to in this Amendment individually as "**Party**" and collectively as the "**Parties**".

WITNESSETH:

WHEREAS, LESSOR and LESSEE entered into that certain Use Agreement, dated October 18, 2000 (the "**Agreement**") for LESSEE'S use of parking facilities on and along 41st Street (the "**DEMISED PREMISES**") by North Beach Elementary School ("**School**"), located at 4100 Prairie Avenue, Miami Beach, Florida; and

WHEREAS, LESSOR and LESSEE entered into that certain First Amendment to Use Agreement, dated April 12, 2011, to extend the term for a five-year period and amend certain terms and conditions of the Agreement; and

WHEREAS, LESSOR and LESSEE entered into that certain Renewal of Amended Use Agreement, dated April 14, 2016, to extend the term of the Agreement for an additional five-year period (the Agreement, as amended by the First Amendment to Use Agreement and the Renewal of Amended Use Agreement shall be collectively referred to herein as the "Agreement"); and

WHEREAS, the current term of the Agreement will expire on July 22, 2021; and

WHEREAS, The School Board of Miami-Dade County, Florida, at its meeting of November 18, 2015, authorized the Superintendent to grant or deny all approvals required under the Agreement, including placing the LESSOR in default, and renewing, extending, cancelling or terminating the Agreement, in accordance with Board Action No. 117,912;

WHEREAS, on _____, 2021, the Mayor and the City Commission of the City of Miami Beach adopted Resolution No. _____, approving this Amendment to (1) approve an additional five (5) year renewal term, commencing on July 23, 2021 and ending on July 22, 2026, and concurrent therewith, modify the Agreement to add language that allows for the relocation of the spaces from the 42nd Street lot (P63) to the 42nd Street Garage (G6) at no additional cost; (2) adjust the annual fee from \$3,150.00 to \$5,625.00, which represents 50% of the current rate of \$75 per space for the 15 spaces over a period of 10 months, payable in 12 equal installments; and (3) modify miscellaneous provisions of the Agreement to update the No Discrimination provision; add a Public Records Law provision; and add an Inspector General Audit Rights provision; and

WHEREAS, LESSOR and LESSEE hereby consent to a renewal of the Agreement for another five (5) year term, commencing on July 23, 2021 and ending on July 22, 2026.

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NOW, THEREFORE, for and 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:

The foregoing recitals are true and correct and incorporated herein by reference.

1. Article I of the Agreement, entitled "Premises to Be Leased", is hereby amended as follows:

LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR the following described facilities, totaling thirty (30) parking spaces, hereinafter collectively called the "DEMISED PREMISES," lying and being in the City of Miami Beach, County of Miami-Dade, State of Florida, and more particularly described in Exhibit "A," attached hereto and made a part hereof, to wit:

- Fifteen (15) dedicated metered parking spaces along 42nd Street (hereinafter called "METERED PARKING"); and
- Fifteen (15) dedicated parking spaces in the last row of the surface lot on 42nd Street, (hereinafter called "SURFACE LOT"); which may be relocated to the 42nd Street Garage (G6) at any time at no additional charge, in the event the subject parking spaces in the SURFACE LOT are eliminated due to construction related activities, and cannot be otherwise relocated within the SURFACE LOT.

2. Effective July 23, 2021, the Agreement will be renewed for a five-year period commencing July 23, 2021 and ending July 22, 2026.
3. Paragraph 1 of Article IV of the Agreement, entitled "Consideration," is hereby amended, as follows:

Other than as stipulated in Article V, LESSEE does hereby covenant and agree to pay LESSOR, and LESSOR does hereby covenant and agree to accept from LESSEE, as full consideration for the use and occupancy of the DEMISED PREMISES, the sum of ~~THREE THOUSAND ONE HUNDRED FIFTY DOLLARS (\$3,150.00)~~ FIVE THOUSAND SIX HUNDRED AND TWENTY-FIVE (\$5,625.00) per year, payable in twelve (12) equal monthly installments of ~~TWO HUNDRED SIXTY-TWO DOLLARS AND FIFTY CENTS (\$262.50)~~ FOUR HUNDRED SIXTY-EIGHT AND SEVENTY FIVE CENTS (\$468.75).

4. Article XVIII of the Agreement is hereby amended to add the following language:

Additionally, LESSEE shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

5. A new article XXVI is hereby added to the Agreement, as follows:

XXVI.

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FLORIDA PUBLIC RECORDS LAW; AUDITS AND INSPECTIONS & ACCESS TO RECORDS

This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. The Parties understand the broad nature of these laws and agree to comply with Florida's Public Records Laws and laws relating to records retention. LESSEE shall keep and maintain public records required by LESSOR to perform the service. LESSEE shall keep records to show its compliance with this Agreement. LESSEE's contractors and subcontractors must make available, upon request of LESSOR, a Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, any books, documents, papers, and records of LESSEE or its assigns, contractors or subcontractors which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Upon request from the LESSOR's custodian of public records, LESSEE shall provide LESSOR with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. LESSEE shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following the expiration or early termination or cancellation of this Agreement if LESSEE does not transfer the records to LESSOR. LESSEE, its assigns, contractors and sub-contractors shall retain all records for five (5) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1). LESSEE, upon completion of the Agreement, shall transfer, at no cost to LESSOR, all public records in possession of LESSEE or keep and maintain public records required by LESSOR to perform the service. If LESSEE transfers all public records to LESSOR upon completion of the Agreement, LESSEE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LESSEE keeps and maintains public records upon completion of the Agreement, LESSEE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to LESSOR, upon request from LESSOR's custodian of public records, in a format that is compatible with the information technology systems of LESSOR.

LESSEE shall incorporate this provision into every contract that it enters into relating to the DEMISED PREMISES:

**IF THE PARTIES HAVE QUESTIONS REGARDING THE
APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE
PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING
TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC
RECORDS AT:**

CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411

6. A new article XXVII is hereby added to the Agreement, as follows:

XXVII.

INSPECTOR GENERAL AUDIT RIGHTS

- (A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, LESSOR has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of LESSOR.
- (B) The Office of the Inspector General is authorized to investigate LESSOR affairs and empowered to review past, present and proposed LESSOR programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor LESSOR projects and programs. Monitoring of an existing LESSOR project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the LESSEE, its officers, agents and employees, lobbyists, LESSOR staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the LESSOR is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- (C) Upon ten (10) days written notice to the LESSEE, the LESSEE shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the LESSEE its officers, agents and employees, lobbyists, LESSOR staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

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- (D) The Inspector General shall have the right to inspect and copy all documents and records in the LESSEE's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- (E) The LESSEE shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:
- i. If this Agreement is completely or partially terminated, the LESSEE shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - ii. The LESSEE shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- (F) The provisions in this section shall apply to the LESSEE, its officers, agents, employees, subcontractors and suppliers. The LESSEE shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the LESSEE in connection with the performance of this Agreement.
- (G) Nothing in this section shall impair any independent right of LESSOR to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on LESSOR by the LESSEE or third parties.
6. Except as amended by this Second Amendment to Use Agreement, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

[INDIVIDUAL SIGNATURE PAGES FOLLOW]

EXHIBIT "1"

IN WITNESS WHEREOF, LESSEE and the LESSOR have caused this Second Amendment to Use Agreement to be executed by their respective and duly authorized officers the day and year first hereinabove written.

WITNESSES AS TO THE LESSEE:

LESSEE:

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

Print Name: _____

By: _____

Alberto M. Carvalho
Superintendent of Schools

Date: _____

Print Name: _____

RECOMMENDED:

Jaime G. Torrens
Chief of Staff
Date: _____

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

Office of Risk and Benefits Management

Risk and Benefits Officer
Date: _____

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

School Board Attorney
Date: _____

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

Office of Treasury Management

Treasurer
Date: _____

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WITNESSES AS TO THE LESSOR:

LESSOR:
CITY OF MIAMI BEACH

Print Name: _____

By: _____
Name: Alina T. Hudak
Title: City Manager
Date: _____

Print Name: _____

ATTEST:

City Clerk
Date: _____

**TO THE LESSOR: APPROVED AS TO
FORM, LANGUAGE & FOR EXECUTION:**

By: _____
City Attorney
Date: _____