

RESOLUTION NO. 2021-182

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE A FOURTH AMENDMENT TO THE PRE-ANNEXATION AGREEMENT BETWEEN THE CITY, NORTH BROWARD PREPARATORY SCHOOLS, LLC, A FLORIDA LIMITED LIABILITY COMPANY AND BMOC-MIA (FL) LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO CLARIFY THE LANGUAGE IN THE PRIOR AGREEMENTS AND TO PROVIDE THE CITY WITH INCREASED PAYMENTS FOR FIRE-RESCUE SERVICES BASED ON SCHOOL'S RECENT EXPANSION AND AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE ATTACHED SETTLEMENT AGREEMENT BETWEEN THE CITY, NORTH BROWARD PREPARATORY SCHOOLS, LLC, A FLORIDA LIMITED LIABILITY COMPANY AND BMOC-MIA (FL) LLC, A DELAWARE LIMITED LIABILITY COMPANY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City entered into a Pre-Annexation Agreement with North Broward Preparatory Schools Management II, LTD, now known as North Broward Preparatory Schools, LLC, a Florida Limited Liability Company and BMOC-MIA (FL) LLC, a Delaware Limited Liability Company (collectively "School") on November 17, 1997 ("Agreement"); amended by that certain First Amendment to the Pre-Annexation Agreement dated May 13, 2004 ("First Amendment"); Second Amendment to the Pre-Annexation Agreement dated December 9, 2010 ("Second Amendment"); and Third Amendment to the Pre-Annexation Agreement dated February 12, 2015 ("Third Amendment") (collectively, the "Pre-Annexation Agreements"); and

WHEREAS, School owns a private preparatory school on certain property located within the City as more particularly described in the Exhibits attached to the Fourth Amendment to the Agreement attached as Exhibit "1" ("Property"); and

WHEREAS, portions of the property were annexed into the City in 1997 pursuant to the terms of the Pre-Annexation Agreement dated November 17, 1997; and

WHEREAS, commencing on a date prior to the effective date of the Pre-Annexation Agreement and continuing thereafter through the date of this Fourth Amendment, the Property has been and continues to be used and operated as a private educational institution, as defined by Section 196.198, Florida Statutes; and

WHEREAS, in 2000, the City enacted Ordinance No. 2000-21 (as amended by Ordinance Nos. 2007-020, 2010-026, and 2016-37), which provided for a City-wide fire-rescue assessment (“Fire-Rescue Assessment”) levied against properties within the City, including, but not limited to, private educational institutions, but specifically exempting public educational institutions; and

WHEREAS, the City is in the process of modifying the Fire-Rescue Assessment levied against properties within the City via Ordinance No. 2021-019; and

WHEREAS, City provides the School with fire-rescue services (“Fire-Rescue Services); and

WHEREAS, School’s campus has expanded to include dormitories and other support buildings and uses, and School plans to make further improvements to the Property; and

WHEREAS, the parties have agreed to further amend the Prior Agreements to provide for reimbursement to City for the costs associated with School for the demands on City for Fire-Rescue Services; and

WHEREAS, it is the intent of the parties to repeal all references to Payment in Lieu of Taxes (“PILOT”) as well as to remove all references to payments for “Public Facilities and Services” from the date of execution of this Agreement going forward; and

WHEREAS, amendment of the Pre-Annexation Agreements as provided herein is in the best interest of the City in order to ensure that School helps pay the increased costs associated with City providing fire-rescue services to School based on its recent

expansion and in accordance with City's updated Fire-Rescue Assessment Fee Study as adopted by and referenced in Ordinance 2021-019 and clarifies that the term of the agreement is fifty(50) years from the date of execution of the Fourth Amendment; and

WHEREAS, School has agreed that immediately after or, in any event, no later than ten (10) days after, the approval and execution of this Fourth Amendment to the Pre-Annexation Agreement by City, School will file a Notice of Voluntary Dismissal with Prejudice of the case entitled: "North Broward Preparatory Schools, LLC, v. City of Coconut Creek, a Florida Municipal Corporation," Case Number CACE-20-021961, in the Seventeenth Judicial Circuit in and for Broward County, Florida, thereby dismissing and releasing all claims against the City as referenced in the attached Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this resolution. All exhibits attached hereto are incorporated herein and made a specific part of this resolution.

Section 2: That the City Commission has reviewed and hereby approves the attached Fourth Amendment to the Pre-Annexation Agreement between the City of Coconut Creek and North Broward Preparatory School and the attached Settlement Agreement between the City, North Broward Preparatory Schools, LLC, a Florida Limited Liability Company and BMOC-MIA (FL) LLC, a Delaware Limited Liability Company.

Section 3: That the City Manager, or designee, is hereby authorized to execute the Fourth Amendment to Pre-Annexation Agreement between North Broward Preparatory Schools, LLC and the City, attached hereto as Exhibit "1," and the Settlement Agreement between the City and North Broward Preparatory Schools, LLC, attached hereto as Exhibit "2."

Section 4: That if any clause, section, other part or application of this resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this resolution.

Section 5: That this resolution shall be in full force and effect immediately upon its adoption.

Adopted this 26th day of August, 2021.

Rebecca A. Tooley, Mayor

Attest:

Marianne Bowers, Interim City Clerk

Tooley	<u>Aye</u>
Rydell	<u>Aye</u>
Sarbone	<u>Aye</u>
Welch	<u>Aye</u>
Railey	<u>Aye</u>

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