

MEMORANDUM

February 9, 2006

TO: The Honorable Chair and Members of The School Board of Miami-Dade County,
Florida

FROM: Rudolph F. Crew, Superintendent of Schools *R.F.C.*

SUBJECT: **WITHDRAWAL OF AGENDA ITEM E-67
REQUEST AUTHORIZATION FOR THE SUPERINTENDENT TO
NEGOTIATE AND ENTER INTO A TOWER AGREEMENT WITH THE
BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY
AND THE BOARD OF COUNTY COMMISSIONERS OF BROWARD
COUNTY, INCLUDING AN ASSOCIATED SUBLEASE FOR LAND
LOCATED AT MCTYRE PARK FOR CONSTRUCTION OF A NEW
COMMUNICATIONS TOWER AND TO TERMINATE THE EXISTING
LEASE AGREEMENTS WITH THE COUNTIES IN THE EVENT NO
AGREEMENT IS REACHED**

Due to the complexity of the issues regarding the tower agreements, additional time is required to finalize a recommendation for the Board's consideration. The attached item is being withdrawn from the February 15, 2006 Agenda.

RFC;jls
M1069
Attachment

cc: School Board Attorney
Superintendent's Cabinet

Ofelia San Pedro, Deputy Superintendent
Business Operations

**SUBJECT: REQUEST AUTHORIZATION FOR THE SUPERINTENDENT TO
NEGOTIATE AND ENTER INTO A TOWER AGREEMENT WITH THE
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COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENTAL RELATIONS

In 1957, the Board purchased a 17.1 acre parcel of land in Pembroke Park, FL, with the State of Florida as tenants in common, and constructed a broadcast tower on a section of this property. Broward County leased a portion of the property from the Board and developed a park for the Town of Pembroke Park. The current lease agreement with Broward County runs through 2014. In 1985, the district leased space on its broadcast tower to Miami-Dade County for an annual rent of \$1.00 a year, and in 1991 leased space to Broward County at the same rate. The leases are currently in force with both counties utilizing the space on the tower for their EMS (911) services.

The district utilized the tower to hold broadcasting equipment for WLRN radio and television until 2001, when it constructed a new tower and removed all broadcasting equipment from the old tower. The need for the new tower stemmed from a federal mandate which required all public television stations to switch to a digital signal, which requires heavier equipment, and additional height. All of WLRN's equipment was moved to the new tower when construction was completed. In order to erect the new tower, the Board entered into a 50 year lease with the State of Florida to lease the State's portion of the land.

**ITEM WITHDRAWN
(02-09-06)
E-67**

During the construction of the new tower, there were significant problems with the contractor. As a result, the district withheld payments that would have otherwise been due to the contractor. Subsequently, the Board was sued by the tower's contractor for breach of the contract, alleging that the design criteria was flawed. The contractor is suing for unpaid change orders, unpaid contract balance and unpaid retainage, and breach of implied covenant of good faith and fair dealing. Litigation is ongoing with the Board being defended by the firm of Tew Cardenas LLP.

As a component of erecting a new tower, the Board was told that revenue could be generated from a new tower by leasing space on the tower to third parties. No space has been leased to date. Staff is preparing a Request For Proposals (RFP) to seek competitive proposals for a tower management company to manage all aspects of the tower for the district, including managing lease agreements, tower maintenance and insurance. The cost of having a tower management company would be paid from the revenue generated from the tower leases.

The old tower, which now only holds the EMS 911 equipment for Broward and Miami-Dade Counties has continued to deteriorate over the past several years. In May, 2003, the district contracted for an inspection of the tower, as required for insurance purposes. The ensuing report confirmed the fact that the tower had become structurally impaired due to rust and deterioration. The cost of repairs was estimated to be \$550,000. Staff began meeting with representative of both Miami-Dade and Broward County in an effort to persuade them to assume responsibility for the tower, since the Board had no use for it and it had become a significant liability. There was also a concern that adequate insurance coverage for the tower was becoming unavailable.

The old tower sustained substantial damage during Hurricane Wilma. A portion of the tower's top section structurally failed resulting in damage to the remaining tower, as well as causing extensive property damage to other structures in the surrounding neighborhood. The damage had caused the tower to become unstable resulting in the need for it to be significantly shortened or removed. The district's property insurance covers the tower, subject to a \$75,000 deductible, and will reimburse the district for incurred costs of dismantling the damaged portions of the tower and lowering its height to a safe 400 feet.

Staff has developed a plan which it believes to be in the Board's best interest and will result in an amicable resolution with Broward and Miami-Dade Counties. The goal of the plan is to transfer responsibility of the existing tower no later than May 1, 2006 to either of both of the counties so that the district can terminate its insurance coverage on the old tower at renewal of its property insurance program and eliminate potential future liabilities. Both counties have been provided copies of the draft agreements and have agreed to either accept or reject the terms no later than March 1, 2006.

The recommended plan would entail the district entering into a tower agreement which has Broward County assuming responsibility for the old tower, effective May 1, 2006 and demolishing that tower no later than September 1, 2006. Broward County would sublease land from the Board and erect its own tower near the existing damaged tower, which will hold their EMS 911 equipment and that of Miami-Dade County.

Under the terms of the recommended tower agreement, the work to shorten the old tower to 400 feet will be completed no later than April 30, 2006, and Broward County will assume complete responsibility for the maintenance and insurance costs of the old tower effective May 1, 2006 while they construct their new tower. The Broward tower is expected to be completed by August 1, 2006. Broward County also shall be responsible for all costs associated with transferring their equipment to the new tower and removing the remaining 400 feet from the old tower; the anticipated completion date for this is September 1, 2006.

The term of the sublease shall run concurrently with the term of the McTyre Park lease and any extensions or renewal of the McTyre Park lease. All facilities constructed on the premises shall be constructed and maintained in a condition to withstand winds from a category 5 hurricane. Broward County shall secure the premises with a suitable fence separating the tower from the remaining portion of the park.

In addition to eliminating the liability that the old tower presents, the recommended sublease with Broward County will result in an estimated \$50,000 in annual savings to the district, eliminating annual expenses for required maintenance, power and insurance costs, and engineering expenses.

In the event that the agreements are rejected by either county, or both, staff is recommending that the current lease agreements with the counties be terminated with sixty days advance notice, pursuant to the termination provisions of both leases.

The Office of Media Programs, Risk and Benefits Management, and the district's Federal Communications Commission Counsel are in agreement with this plan of action.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida:

1. authorize the Superintendent to negotiate and enter into a tower agreement with The Board of County Commissioners of Miami-Dade County, and The Board of County Commissioners of Broward County Board of Commissioners, including a sublease agreement with Broward County Board of Commissioners, effective March 1, 2006, subject to the terms and conditions as stipulated in this item, effective March 1, 2006;
2. terminate its existing lease agreements with the Board of County Commissioners of Miami-Dade County and/or The Board of County Commissioners of Broward County, effective March 17, 2006, pursuant to the termination provisions of the leases in which they are provided 60 days advance notice of termination, in the event no agreement is reached; and
3. authorize the Superintendent to issue a Request For Proposal (RFP) to seek competitive proposals for a tower management company to manage its existing tower.

OSP:sc