

Office of School Facilities
Jaime G. Torrens, Chief Facilities Officer

SUBJECT: AUTHORIZE THE SUPERINTENDENT TO:

- 1) **FINALIZE NEGOTIATIONS AND EXECUTE A LEASE AGREEMENT WITH BEACON COLLEGE PREP, INC., FOR THE OPERATION OF A DISTRICT-MANAGED CHARTER SCHOOL ON A PORTION OF THE MARTIN LUTHER KING PLC CAMPUS, LOCATED AT 7124 NW 12 AVENUE, MIAMI, FLORIDA; AND**
- 2) **GRANT OR DENY ALL APPROVALS REQUIRED UNDER THE LEASE AGREEMENT, INCLUDING RENEWING, EXTENDING, CANCELLING OR TERMINATING THE LEASE AGREEMENT**

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

Background

Beacon College Prep, Inc., a Florida not-for-profit corporation ("Beacon"), approached the District with a request to use limited classroom space within the Board-owned Martin Luther King PLC facility ("Facility"), located at 7124 NW 12 Avenue, Miami, as well as a portion of the adjacent playfield, currently improved with three (3) unoccupied Board-owned portable classrooms ("Portables"), to provide administrative and operational services for a District-managed charter school to be operated by Beacon. In addition to use of the three (3) on-site Portables and limited classroom space, Beacon has requested use of three (3) additional unused Board-owned Portables, now located at 3300 NW 27 Avenue, on the campus of the Department of Juvenile Justice ("DJJ") facility. Beacon intends to relocate and install the three (3) off-site Portables onto an unused portion of the Facility playfield, at its sole cost and expense, and to operate its program using limited classroom space within the Facility and the six (6) Portables. Beacon has advised that its use of the Facility is intended to be for a limited duration, as it plans to construct a permanent facility elsewhere and relocate its program in the near term.

Information addressing the proposed Charter for Beacon, as well as a proposed Management Agreement between the Board and Beacon is being presented to the Board at its June 18, 2014 meeting, under agenda items C-30 and C- 1, respectively. Approval of the proposed lease agreement for use by Beacon of the Facility and Portables ("Lease Agreement"), is contingent on the Board's actions in its consideration of these two agenda items.

Under the proposed Lease Agreement, Beacon will have the right to occupy a limited amount of permanent classroom space within the Facility, with the opportunity to request an adjustment to the amount of square footage to be occupied, with 90 days advance written notice to the District, and subject to approval by the Superintendent. In addition, Beacon shall have the right to utilize three (3) unoccupied on-site Portables, and to relocate, install and utilize three (3) additional Board-owned Portables which are currently housed at the DJJ facility. Beacon would be responsible for all costs associated with the removal and transport of the Portables from the DJJ site to the Facility, and for the set-up/installation of the Portables within designated vacant portions of the Facility playground.

Proposed Lease Agreement

The proposed Lease Agreement with Beacon shall include, substantially, the following terms and conditions:

- Beacon shall have use of approximately 3,616 square feet of permanent classroom and ancillary space within the Facility, as well as three (3) on-site unused Portables, with the additional right to relocate three (3) off-site Portables to designated vacant portions of the Facility and utilize same for the operation of its charter school (collectively the "Demised Premises") (see Exhibit "A");
- all costs associated with the removal and transport of the Portables from the DJJ site to the Facility, and for the set-up/installation of same within designated vacant portions of the Facility shall be borne by Beacon;
- an initial lease term of one (1) year, with two (2) one-year renewal terms, at the Board's sole option;
- Beacon shall notify the Board in writing by 4 p.m., August 12, 2014, of any requested adjustments to the Demised Premises (classroom space and/or Portables) to be leased as of the commencement date of the Lease Agreement, which request, if approved by the Superintendent, shall be reflected in the Lease Agreement and all appropriate adjustments made thereto, including any required changes to the exhibits;
- rent at \$1 per year;
- Beacon shall reimburse the Board for its prorata share of the Facility's operating costs borne by the District, including, but not limited to, routine building and grounds maintenance, custodial/janitorial services, trash pick-up, utilities and property insurance. Any costs billed directly to Beacon (e.g. utility service to the Portables) will be paid by Beacon, at its sole cost and expense, and not included in the prorata reimbursement. The reimbursement amount will be reconciled at the end of each year, and a new amount established for the following year and each year thereafter, based on actual costs incurred by the Board. The difference, if any, between the amount collected and the actual incurred costs shall be reimbursed or credited to the applicable party;

- Beacon shall be responsible, at Beacon's sole cost and expense, for all maintenance, upkeep and repair to the Portables. In addition, Beacon shall be responsible, at Beacon's sole cost and expense for all custodial and janitorial services for the Portables, including, without limitation, removal of trash and litter pick-up;
- in addition to the above, Beacon shall be responsible for payment of all utilities servicing the Portables where separate meters currently exist, or where separate services and/or meters can be reasonably installed;
- based on the actual fiscal year 2012-2013 expenses, shared responsibility for maintenance, custodial, janitorial and utilities, and total square footage to be utilized by Beacon at the Facility, the amount of operating expenses for the initial lease term ("Initial Term") is estimated at \$13.99 per square foot, for a total of \$36,937.84 annually. This amount will be adjusted as necessary subsequent to review of actual costs incurred at the Facility for fiscal year 2013-14;
- in the event Beacon seeks to expand or decrease the Demised Premises, Beacon shall notify the Board in writing at least 90 days prior to the proposed effective date of such adjustment, which approval may be granted by the Superintendent or his designee, at his sole discretion, and the amount of operating expenses and all appropriate exhibits to the Lease Agreement shall be adjusted prospectively, accordingly;
- Beacon may make, at its sole cost and expense, certain interior improvements to the Demised Premises, provided that the plans are first submitted to and approved in writing by the Board. All work shall be performed in compliance with all applicable laws, rules and regulations, including, without limitation, the Florida Building Code, the Americans with Disabilities Act, the Jessica Lunsford Act, the State Requirements for Educational Facilities, and the Miami-Dade County Public Schools criteria and standards, as the same may be amended from time to time;
- the District's Building Department shall review and approve any required construction documents, issue any required construction permits and provide final acceptance of any work at the Demised Premises, including installation of Portables;
- either party shall have the right to cancel the Lease Agreement at will by giving the other party at least 90 days prior written notice, provided the effective date of such cancellation does not fall during the regular school year, as defined by the Board's Elementary and Secondary School Calendar;
- in the event of default by Beacon, which default is not cured within the prescribed timeframe, the Board shall have the right to immediately cancel the Lease Agreement and occupy the Demised Premises;
- in the event of default by the Board, which default is not cured within the prescribed

timeframe, Beacon shall have the right to immediately cancel the Lease Agreement;

- Beacon shall acknowledge and accept the authority of the Board to request and authorize audits, inspections, and reviews, including, but not limited to, the authority to access Beacon's records, its legal representatives' and contractors' records and the obligation of Beacon to retain and make those records available upon request;
- Beacon shall provide the Board with evidence of insurance in the types and amounts of coverage as required by the Board, including but not limited to Commercial General Liability Insurance, Automobile Liability Insurance, Workers' Compensation Insurance and Property Coverage (covering its contents), or as may be amended from time to time, and naming the Board as an additional insured on the Commercial General Liability Insurance;
- Beacon may, at its option, use Board-owned furniture, fixtures and equipment ("FF&E") located within the Demised Premises as of the commencement date of the Lease Agreement, subject to an inventory to be conducted jointly by the Board and Beacon, which inventory shall become an exhibit to the Lease Agreement. Prior to the commencement of any option period, the inventory must be updated based on a joint assessment by the Board and Beacon. Beacon shall replace or provide compensation to the Board for any damaged or missing items at the then current cost;
- the Board shall retain the exclusive right at all times to be the sole authorizer and recipient of revenue generators, such as but not limited to third party advertising, the installation of wireless telecommunications facilities and other similar endeavors, in compliance with Board Policies, provided however, that such endeavors shall not interfere with Beacon's rights to peaceful enjoyment under this Lease Agreement;
- the Board shall retain the right to provide before and after school care services within the Facility, in space not used by Beacon, at the Board's sole option;
- Beacon shall be allowed to erect identification signage, subject to Board approval and in conformance with laws and regulations governing public schools, with said signage to include "a Miami-Dade County Public Schools Managed Charter";
- Beacon shall indemnify and hold the Board harmless, subject to the monetary limitations contained in Florida Statute, Section 768.28, from all liability which may arise as a result of Beacon's negligence, actions or failure to act under the terms of the Lease Agreement;
- the Board shall indemnify and hold Beacon harmless, subject to the monetary limitations contained in Florida Statute, Section 768.28, from all liability which may arise as a result of the Board's negligence, actions or failure to act under the terms of the Lease Agreement;

- Beacon shall be responsible for the payment of any taxes, fees or other assessments, including but not limited to sales tax, imposed on the Facility due as a result of the occupancy and use of the Demised Premises by Beacon;
- Beacon shall comply with all applicable laws, rules, regulations, ordinances and codes of all governmental authorities, including, without limitation, Board Policies, the Americans with Disabilities Act and the Jessica Lunsford Act;
- Beacon shall accept the Demised Premises, including, but not limited to any Portables, classroom space, grounds, and parking lots, in its "as is, where is" condition as of the commencement date of the Lease Agreement, with no representations or warranties by the Board as to the physical condition or usability of the Demised Premises for any specific use or purpose;
- Beacon shall not use, handle, generate, manufacture, produce, store, discharge, treat, remove, transport or dispose of Hazardous Substances at, in, upon, under, to or from the Demised Premises;
- if, while in its period of use under this Lease Agreement, there is a requirement for infrastructure improvements or other regulatory compliance due to the lease, use or occupancy of the Demised Premises by Beacon, Beacon shall be responsible for fulfilling the applicable requirements, at its sole cost and expense;
- Beacon may not assign or sublet any portion of the Demised Premises;
- Beacon shall surrender the Demised Premises to the Board, at the expiration, termination or cancellation of the Lease Agreement in as good condition as existed on the commencement date of the Lease Agreement, ordinary wear and tear excepted, including removal of all personal property and other items belonging to Beacon. Any improvements constructed by Beacon shall be removed and the area restored to the same or better condition as previously existed, unless the Board, at its sole option, chooses to keep the improvements. In addition, Beacon shall, at the Board's sole option, demolish the three (3) Portables relocated to the Facility, at the expiration, termination or cancellation of the Lease Agreement, and restore the area to the same or better condition as existed prior to the installation of the Portables thereon;
- in the event of damage or destruction of all or portions of the Demised Premises, other than damage or destruction caused by Beacon, the Board may, at its sole option, either cancel the Lease Agreement, or repair or replace the damaged facilities, at the Board's expense;
- damage or destruction of all or portions of the Demised Premises caused by Beacon, shall be repaired by Beacon at its sole cost and expense;
- the Lease Agreement shall be deemed inferior and subordinate to any existing or future financing or conveyance by the Board of the Facility or any portions thereof;

- the Lease Agreement shall be construed and enforced according to the laws of the State of Florida and the venue for any disputes shall be Miami-Dade County, Florida;
- in the event of any litigation between the parties under the Lease Agreement, each party shall be responsible for its own attorney's fees and court costs through trials and appellate levels; and
- for purposes of the Lease Agreement, the Superintendent of Schools shall be the party designated by the Board to grant or deny any modifications and approvals required by the Lease Agreement, including without limitation increasing or decreasing the area of the Demised Premises, renewing or extending the Lease Agreement, amending any of its exhibits, canceling and/or terminating the Lease Agreement, or reviewing and approving matters related to any construction by Beacon at the Facility.

The proposed Lease Agreement will be reviewed by the School Board Attorney's Office and the Office of Risk and Benefits Management prior to execution.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to:

1) finalize negotiations and execute a lease agreement with Beacon College Prep, Inc., for the operation of a District-managed charter school at Martin Luther King PLC, located at 7124 NW 12 Avenue, Miami, Florida, under, substantially, the terms and conditions noted above; and

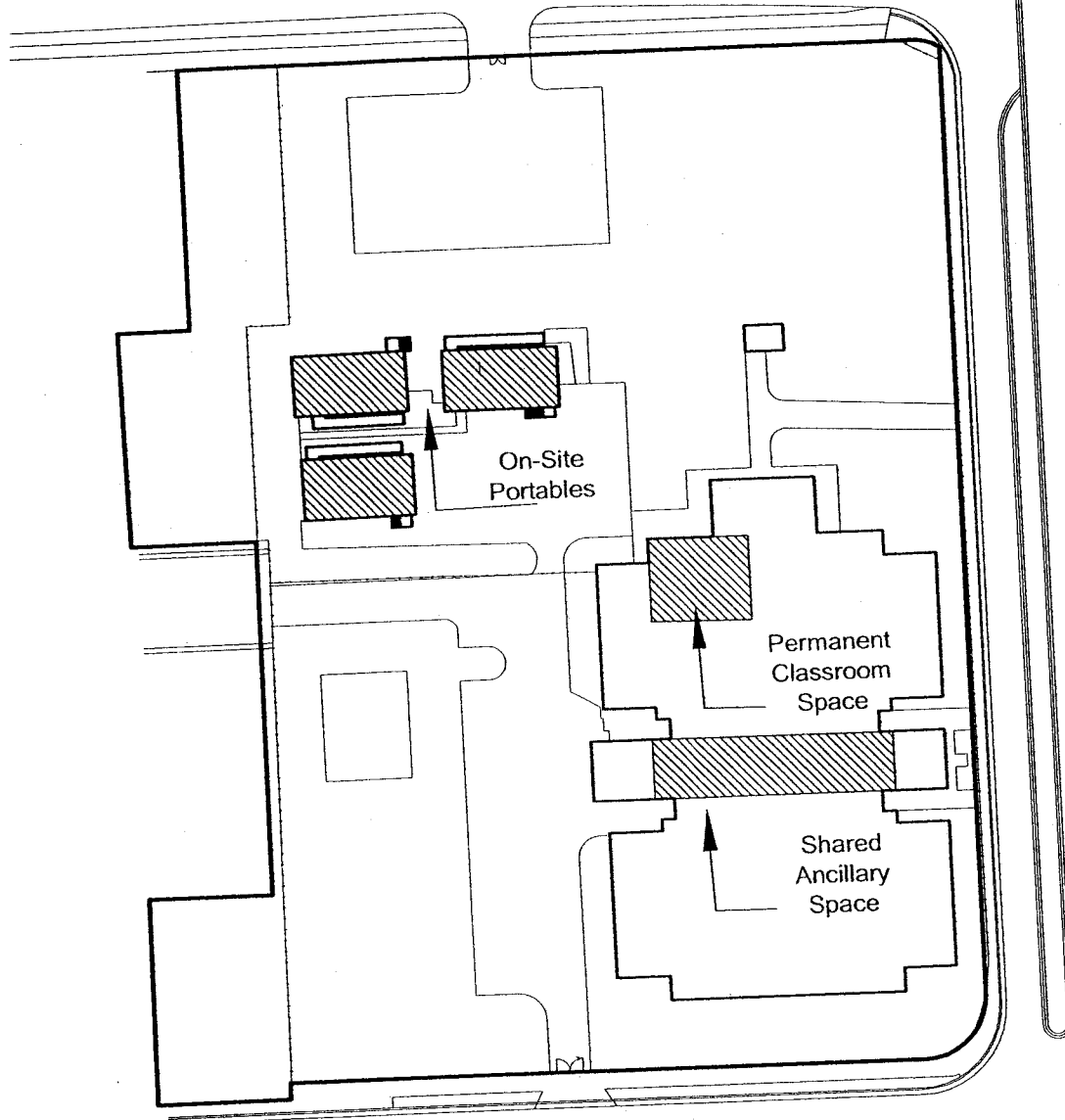
2) grant or deny all approvals required under the lease agreement, including renewing, extending, cancelling or terminating the lease agreement.

MCA:mca

Exhibit "A"

Martin Luther King PLC

N.W. 72ND STREET



N.W. 12TH AVENUE

N.W. 71ST STREET

Note: Beacon shall have the right to use 3 additional Board-owned portable classrooms to be relocated and installed by Beacon at a mutually agreed to portion of the school.



Not to scale