

December 3, 2003

Business Operations  
J.E. Surash, P.E., Chief Business Officer

**SUBJECT: AUTHORIZATION TO EXECUTE A LEASE AGREEMENT WITH  
FLORIDA EAST COAST RAILWAY COMPANY FOR 25  
FACULTY PARKING SPACES BEHIND THE DESIGN AND  
ARCHITECTURE SENIOR HIGH SCHOOL**

**COMMITTEE: FACILITIES MANAGEMENT**

Since December 1990, the Board has leased a portion of railroad right-of-way behind the Design and Architecture Senior High School, located at 4001 N.E. 2<sup>nd</sup> Avenue, from Florida East Coast Railway Company (FEC), for 25 faculty parking spaces. The FEC has notified the District that it will terminate the current agreement on December 17, 2003, and that the District must enter into a new lease agreement in order to continue its occupancy beyond that date. The FEC is taking this action to modify a number of terms and conditions, including the indemnification and insurance language and annual lease rate, which will increase from \$3,700 to \$4,085. Other terms and conditions of the proposed new lease, which will commence December 18, 2003, are substantially different than the current lease agreement.

The FEC has indicated that, because of changing economic conditions, it will increase the annual rental rate from \$3,700 (\$12.33 per parking space per month), to \$4,085 (\$13.62 per parking space per month). This 10.4% increase equates closely to the Consumer Price Index (CPI) increase for the period of December 1999 through November 2003 (an effective increase of 9.75%), and falls well below the lower range of parking rates paid by the District in the vicinity (see rent schedule). No physical improvements requiring the use of District funds will be necessary as a result of the proposed Board action. Terms and conditions of the proposed lease agreement are substantially as follows:

- one year lease term;
- unlimited one-year renewal options at the sole discretion of the Board;
- annual rental rate of \$4,085, which will remain fixed during each option period;
- the Board is responsible for all utilities consumed on the premises;
- the Board is responsible for maintaining and keeping the premises in good order and repair;

**REPLACEMENT  
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- in the event the District's presence or activities causes the landlord to incur costs for cleaning, trash removal, inspections, or like expenses, the District will be required to pay such cost to the FEC on demand. Notwithstanding the foregoing, the District will pay the greater of the actual inspection costs or \$350 for any inspection or follow-up inspection conducted by the FEC or its agents on the premises, the results of which show a violation of this lease agreement of any federal, state, municipal law or regulation;
- in the event the premises should be destroyed or so damaged to the extent that it is unfit for District use, the FEC shall have 60 days to notify the District whether the premises will be restored by the FEC. If the FEC elects to rebuild and restore the premises, then such work must be completed within 180 days from the end of the 60 day period;
- the Board assumes all risks of injury or death to District employees, contractors, agents and invitees and damage to or destruction of District property resulting or arising from FEC operations, regardless of the sole or joint negligence of the FEC;
- in the event the FEC places the District in default, the District shall have 30 days to cure. Failing which, the FEC may immediately terminate this lease agreement and retake possession of the premises, and the District shall pay the FEC on demand all costs incurred by the FEC, including attorneys' fees and costs, and any cost associated with re-entering, re-letting the Premises, restoring the Premises for re-letting, and enforcing any obligations of the District under this lease;
- in the event the District places the FEC in default, the FEC shall have 30 days to cure. Failing which, the District's sole remedy shall be to immediately terminate this lease agreement;
- the Board shall indemnify and hold the FEC harmless, to the extent of the limitations included within Florida Statutes, 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. Notwithstanding this provision, the Board shall assume all risks of injury or death to District employees, contractors, agents and invitees, and damage to or destruction of District property resulting from or arising from FEC operations, regardless or whether due or claimed to be due to the sole or joint negligence of the FEC. Please note that the School Board Attorney's Office has advised that the requirement for the Board to assume all risk of loss, even where the FEC is at fault, is a policy decision on the part of the Board. It is staff's intention to continue to pursue this matter with the FEC, in an attempt to waive this provision;
- either party may cancel the lease agreement at any time by providing the other party with 30 days prior written notice; and

- the Superintendent of Schools shall be the party designated by the Board to grant or deny all approvals required by this lease agreement, or to cancel this lease agreement.

Staff contacted the principal of the Design and Architecture Senior High School, the ACCESS Center 3 Assistant Superintendent, and the Associate Superintendent of ACCESS Centers, who indicated a continuing need for this parking facility for the one-year period commencing December 18, 2003 and ending December 17, 2004, and recommend approval of the lease agreement.

The proposed lease agreement has been reviewed by the School Board Attorney's Office and the Office of Risk and Benefits Management.

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida, authorize the Superintendent or his designee to execute a lease agreement with Florida East Coast Railway Company for 25 faculty parking spaces behind the Design and Architecture Senior High School, at an annual rental rate of \$4,085, subject to staff attempting to seek a waiver of the provision for the Board to assume all risk of loss, even where the FEC is at fault, and final review of the document by the Office of Risk and Benefits Management and the School Board Attorney's Office. The initial one-year term will commence December 18, 2003 and will end December 17, 2004.

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## RENT SCHEDULE

<b>LEASED PARKING FACILITIES</b>			
<u>Location of Parking Facility</u>	<u># of spaces</u>	<u>Amount of Rent</u>	<u>Use</u>
1. U.S. Parking & Associates 1444 Biscayne Blvd. (parking garage)	175 (a)	\$75,600/year <b>(\$36/space/month)</b>  this amount includes the 20% City of Miami parking surcharge and is broken down as follows: \$63,000/year or \$30/space/month for rent & \$12,600/year or \$6/space/month for surcharge fee	serves District staff in SBAB complex
2. Biscayne Management Corp. 1444 Biscayne Blvd. (parking garage)	150	\$50,400/year <b>(\$28.00/space/month)</b>	serves District staff in SBAB complex
3. Jack Thomas lot 235 NE 16 Street (surface lot)	100	\$31,500/year <b>(\$26.25/space/month)</b>	serves District staff & visitors in SBAB complex

**Notes:**

- (a) The Florida Grand Opera canceled its lease agreement for District use of 117 parking spaces at 1411 N.E. 2 Avenue, effective November 30, 2003. To replace the parking spaces lost at the Florida Grand Opera lot, the District has exercised its option to lease a total of 100 additional parking spaces at the 1444 Biscayne Boulevard parking garage, for a total of 175 parking spaces.