

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

SUBJECT: AUTHORIZATION FOR THE SUPERINTENDENT TO FINALIZE NEGOTIATIONS AND EXECUTE A LEASE AGREEMENT WITH THE LBA CHILDREN & FAMILIES FOUNDATION, INC., FOR THE OPERATION OF A CHARTER SCHOOL AT 13835 NW 97 AVENUE, HIALEAH, FLORIDA

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

Background

The School Board (Board), at its meeting of June 13, 2012, authorized the Superintendent to finalize negotiations and execute a management agreement with The LBA Children & Families Foundation, Inc. (LBA), a Florida not-for-profit corporation, operating as Latin Builder's Association Construction Management and Business Academy (School), to provide administrative and operational services (Management Agreement). The Board also authorized the Superintendent to negotiate a lease agreement (Lease Agreement) with LBA, for use of portions of the Board-owned facility located at 13835 NW 97 Avenue, Hialeah (Facility).

The Lease Agreement will convey to LBA the right to occupy specific portions of the Facility (inclusive of building and grounds), with the opportunity to adjust the amount of square footage to be occupied within the Facility, with 90 days advance written notice to the District, and subject to approval by the Superintendent.

Proposed Lease Agreement

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

- the School shall use approximately 5,425 square feet of classroom and ancillary space within the Facility (demised premises) (see Exhibit "A");
- the initial lease term shall run from August 1, 2012 through June 30, 2013, unless the Management Agreement is terminated, or the Lease Agreement is terminated sooner;
- LBA shall notify the Board in writing by 4 p.m., August 13, 2012, of any requested adjustments to the amount of space 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;
- LBA shall pay an amount necessary to reimburse the Board for the School's portion of the Facility's operating costs, including, but not limited to routine building and grounds maintenance, custodial/janitorial services, trash pick-up, utilities and property insurance. This 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 the actual costs incurred by the Board. The difference, if any, between the amount collected and the actual incurred costs shall be reimbursed to the Board. The amount for the period of August 1, 2012 through June 30, 2013 (Initial Term) is estimated at \$5.76 per gross square foot, for a total of \$28,644, but will be finally established subsequent to review of actual costs incurred in the Facility for fiscal year 2011-12;
- the Initial Term may be extended for one additional term of one (1) year, at the sole option of the Board, provided the Management Agreement between the Board and LBA has likewise been extended, and LBA is not in default of any of the terms of the Lease Agreement. No further extensions may be granted without the Board's approval;
- prior to each of the possible two periods of use, the parties shall review any necessary capital improvements within the Facility (including but not limited to repair or replacement of the roof, HVAC components, etc.), and the parties will establish a proposed schedule and cost sharing or responsibility, as applicable, for this work;
- in the event LBA seeks to expand or decrease its area of occupancy, LBA 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;
- LBA shall have the right to construct certain interior improvements to the demised premises, all at LBA's sole cost and expense, provided the plans for same are first submitted and approved by the Board or designee. All work shall be performed in compliance with all applicable laws, rules and regulations, including, without limitation, the Florida Building Code, the State Requirements for Educational Facilities, and the Miami-Dade County Public Schools (District) criteria and standards, as the same may be amended from time to time. The District's Building Department shall be the entity responsible for reviewing and approving all construction documents, issuing permits for construction and providing final acceptance of the work;

- 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 LBA, 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. Further, a default by LBA under the Management Agreement, which default is not cured within the prescribed timeframe, shall constitute a default under the Lease Agreement, and 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, LBA shall have the right to immediately cancel the Lease Agreement;
- LBA 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 LBA's records, its legal representatives' and contractors' records and the obligation of LBA to retain and make those records available upon request;
- LBA 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;
- LBA 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 LBA, which inventory shall become an exhibit to the Lease Agreement. Prior to the commencement of the option period, the inventory must be updated based on a joint assessment by the Board and LBA. LBA 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 LBA'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 LBA, at the Board's sole option;

- LBA 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”;
- LBA shall indemnify and hold the Board harmless from all liability which may arise as a result of LBA’s negligence, actions or failure to act under the terms of the Lease Agreement;
- the Board shall indemnify and hold LBA 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;
- LBA 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 LBA;
- LBA 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;
- LBA shall accept the Facility 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 Facility for any specific use;
- LBA 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 Facility;
- 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 LBA, LBA shall be responsible for fulfilling the applicable requirements, at its sole cost and expense;
- LBA may not assign or sublet any portion of the Facility;
- LBA shall surrender the Facility 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 LBA. Any improvements constructed by LBA 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 the event of damage or destruction of all or portions of the Facility, other than damage or destruction caused by LBA, the Board may, at its sole option, either cancel the Lease Agreement, or repair or replace the damaged facilities, at the Board's 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 the Lease Agreement, amending any of its exhibits, canceling and/or terminating the Lease Agreement, or reviewing and approving matters related to construction by LBA 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 finalize negotiations and execute a lease agreement with The LBA Children & Families Foundation, Inc., for the operation of a charter school at 13835 NW 97 Avenue, Hialeah, under, substantially, the terms and conditions noted above.

MCA:mca