

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

SUBJECT: AUTHORIZE THE SUPERINTENDENT TO:

- 1) **FINALIZE NEGOTIATIONS AND EXECUTE A LEASE AGREEMENT WITH TEACH FOR AMERICA, INC., FOR USE OF SPACE AT THE JOSE DE DIEGO MIDDLE SCHOOL CAMPUS, LOCATED AT 3100 N.W. 5 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

LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

Background

The School Board, at its meeting of March 18, 2015, authorized: 1) entering into a new Professional Services Agreement with Teach For America, Inc. ("TFA") for the 2015-2016 school-year, with renewal options for 2016-2017 and 2017-2018; and 2) negotiating the leasing of District space to TFA, under mutually agreeable terms and conditions ("Lease Agreement"). After a review of possible sites to locate the TFA facilities, a portion of Board-owned Jose De Diego Middle School, located at 3100 N.W. 5 Avenue, Miami ("School"), was identified for this purpose. The area in question will require certain capital improvements, which will be provided by TFA at its sole cost and expense.

Proposed Lease Agreement

The proposed Lease Agreement between the Board and TFA (collectively the "Parties") at the School shall include, substantially, the following terms and conditions:

- TFA shall have use of approximately 9,460 square feet of space within the School, as well as non-exclusive use of portions of the School parking lot (collectively the "Demised Premises") (see Exhibit "A");
- the Lease Agreement shall be effective upon the latter of: (1) the effective date of

the Professional Services Agreement between the Board and TFA, or (2) execution of the Lease Agreement by both parties. Thereafter the term of the Lease Agreement shall run concurrent with the term of the Professional Services Agreement, which calls for an initial term of one (1) year (2015-2016) with two (2) 1-year renewal terms (2016-2017 and 2017-2018);

- the parties acknowledge and agree that the cancellation, termination or expiration of the Professional Services Agreement shall automatically serve to cancel or terminate the Lease Agreement by operation of law, without further action by or notice from either party;
- in addition to the above, either party shall have the right to cancel the Lease Agreement, without cause or penalty, by giving the other party at least 90 days prior written notice;
- rent at \$1 per year;
- TFA shall reimburse the Board for its prorata share of the School's operating expenses borne by the District, including, but not limited to, routine building and grounds maintenance, custodial/janitorial services, trash pick-up, utilities and property insurance ("Operating Expenses"). 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 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;
- based on the actual fiscal year 2013-14 expenses at the School, the amount of Operating Expenses for the initial lease term is estimated at \$5.36 per square foot, for a total of \$50,705.60 annually;
- the amount of Operating Expenses will be adjusted as necessary subsequent to review of actual costs incurred at the School for fiscal year 2014-15;
- in the event TFA seeks to expand or decrease the Demised Premises, TFA shall make a written request to the Board 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;
- TFA 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;
- in the event of default by TFA, 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, TFA shall have the right to immediately cancel the Lease Agreement;
- TFA 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 TFA's records, its legal representatives' and contractors' records and the obligation of TFA to retain and make those records available upon request;
- TFA 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;
- TFA may, if and as agreed to by TFA and District Operations, 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 School Operations and TFA, which inventory shall become an exhibit to the Lease Agreement. Prior to the commencement of any option period under the Professional Services Agreement, the inventory must be updated based on a joint assessment by School Operations and TFA. TFA shall replace or provide compensation to the Board for any damaged or missing items at the then current cost;
- TFA shall be allowed to erect identification signage, subject to Board approval and in conformance with laws and regulations governing public schools;
- TFA shall hold harmless and indemnify the Board against any and all liability, cost or expense of whatsoever kind or nature including, but not by way of limitation, attorneys' fees and court costs arising out of bodily injury to persons including death, or damage to tangible property arising out of or incidental to the performance of the Lease Agreement by or on behalf of TFA, whether or not due to or caused in part by the negligence or other culpability of the Board, excluding

only the sole negligence or culpability of the Board;

- TFA agrees, at its own expense, and upon written request by the Board, to defend any suit, action or demand brought against the Board on any claim or demand arising out of, resulting from, or incidental to performance under the Lease Agreement;
- the Board shall indemnify and hold TFA 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;
- TFA shall be responsible for the payment of any taxes, fees or other assessments, including but not limited to sales tax, imposed on the School due as a result of the occupancy and use of the Demised Premises by TFA;
- TFA 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;
- TFA shall accept the Demised Premises, including, but not limited to, 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;
- 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 TFA, TFA shall be responsible for fulfilling the applicable requirements, at its sole cost and expense;
- TFA may not assign or sublet any portion of the Demised Premises;
- TFA 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 TFA. Any improvements constructed by TFA 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 Demised Premises, other than damage or destruction caused by TFA, 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 TFA, shall be repaired by TFA 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 School 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 TFA at the School.

The principal of Jose De Diego Middle School and the Associate Superintendent, Education Transformation Office, recommend entering into the Lease Agreement with TFA. 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.

A copy of the proposed Lease Agreement has been placed on file with the Citizen's Information Center.

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

- 1) finalize negotiations and execute a lease agreement with Teach for America, Inc., for use of space at the Jose De Diego Middle School campus, located at 3100 N.W. 5 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.

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