

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

SUBJECT: AUTHORIZE THE SUPERINTENDENT TO:

- 1) FINALIZE NEGOTIATIONS AND EXECUTE A NEW LEASE AGREEMENT WITH SOUTH FLORIDA AUTISM CHARTER SCHOOLS, INC. ("SFACS"), FOR THE OPERATION OF A DISTRICT-MANAGED CHARTER SCHOOL ON A PORTION OF THE COUNTRY CLUB MIDDLE SCHOOL CAMPUS, LOCATED AT 18305 N.W. 75 PLACE, MIAMI, FLORIDA; AND
- 2) FINALIZE NEGOTIATIONS AND EXECUTE AN AMENDMENT TO THE EXISTING LEASE AGREEMENT BETWEEN THE SCHOOL BOARD AND SFACS, FOR THE OPERATION OF A DISTRICT-MANAGED CHARTER SCHOOL AT 13835 N.W. 97 AVENUE, HIALEAH, FLORIDA; AND
- 3) GRANT OR DENY ALL APPROVALS REQUIRED UNDER BOTH LEASE AGREEMENTS, INCLUDING RENEWING, EXTENDING, CANCELLING OR TERMINATING THE LEASE AGREEMENTS

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

Background

Since June 2012, South Florida Autism Charter Schools, Inc. ("SFACS") has occupied a portion of the Board-owned facility located at 13835 N.W. 97 Avenue, Hialeah, Florida ("Existing Location") to operate a District-managed charter school. SFACS uses approximately 24,524 square feet of space, as well as non-exclusive use of portions of the parking lots and playfield, pursuant to an existing lease agreement ("Existing Agreement") between the parties. The District provides administrative and operational services to SFACS through a Management Agreement. The current term of the Existing Agreement expires on June 30, 2015, with no renewal periods remaining. Additionally, the Existing Location will be converted to a K-8 Center as part of the GOB program with design expected to start later this year followed by construction.

In order to allow uninterrupted operation of its charter school while continuing its search for acquisition of a permanent site, SFACS and District staff have identified a portion of the Board-owned Country Club Middle School, located at 18305 N.W. 75 Place, Miami ("New Location"), as an interim suitable location for use by SFACS under a new lease agreement ("New Lease"). SFACS's use of the New Location will be for a two-year period, with no further extensions without further Board action. SFACS has also requested that the term of the Existing Agreement be extended for a one-month period (July 1, 2015-July 31, 2015), so as to allow SFACS to relocate to the New Location without disruption.

Proposed Amendment to Existing Agreement

Accordingly, it is recommended that the Existing Agreement be amended to provide, substantially, for the following:

- the current term of the Existing Agreement, which expires on June 30, 2015, will be extended for the one-month period commencing July 1, 2015 and ending July 31, 2015.

All other terms and conditions of the Existing Agreement will remain unchanged, including reimbursement to the Board for its prorata share of operating expenses at this location.

Proposed New Lease Agreement for Country Club Middle School

The proposed New Lease with SFACS at Country Club Middle School ("School") shall include, substantially, the following terms and conditions:

- SFACS shall have use of approximately 24,982 square feet of classroom ancillary space within the School, as well as non-exclusive use of portions of the parking lot and north portion of the playfield area (collectively the "Demised Premises") (see Exhibit "A"). In addition, SFACS may use the School bus drop-off area for SFACS parent and bus drop-off commencing after the School's official morning arrival time;
- an initial lease term of one (1) year, with one 1-year renewal term, at the Board's sole option. SFACS acknowledges and agrees that no further extensions will be available beyond June 30, 2017, without further Board action;
- SFACS shall notify the Board in writing by 4 p.m., August 14, 2015, of any requested adjustments to the Demised Premises, which request, if approved by the Superintendent, shall be reflected in the New Lease and all appropriate adjustments will be made thereto, including any required changes to the exhibits;
- rent at \$1 per year;
- SFACS 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, if any, 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, the amount of Operating Expenses for the initial lease term is estimated at \$5.32 per square foot, for a total of \$134,904.24 annually. This amount covers SFACS's proportionate share of Operating Expenses based on SFACS's 100% use of classroom space and office space and 50% use of the dining facility;
- 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 SFACS seeks to expand or decrease the Demised Premises, SFACS shall notify the Board in writing at least ninety (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 New Lease shall be adjusted prospectively, accordingly;
- SFACS may request certain interior improvements to the Demised Premises. If approved, 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, and at the sole cost and expense of SFACS;
- 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;
- either party shall have the right to cancel the New Lease, without cause or penalty, by giving the other party at least ninety (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 SFACS, which default is not cured within the prescribed timeframe, the Board shall have the right to immediately cancel the New Lease and occupy the Demised Premises;
- in the event of default by the Board, which default is not cured within the

prescribed timeframe, SFACS shall have the right to immediately cancel the New Lease;

- SFACS 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 SFACS's records, its legal representatives' and contractors' records and the obligation of SFACS to retain and make those records available upon request;
- SFACS 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;
- SFACS 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 New Lease, subject to an inventory to be conducted jointly by the Board and SFACS, which inventory shall become an exhibit to the New Lease. Prior to the commencement of any option period, the inventory must be updated based on a joint assessment by the Board and SFACS. SFACS 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 SFACS's rights to peaceful enjoyment under this New Lease;
- the Board shall retain the right to provide before and after school care services within the School, in space not used by SFACS, at the Board's sole option;
- SFACS 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";
- SFACS shall indemnify and hold the Board harmless from all liability which may arise as a result of SFACS's negligence, actions or failure to act under the terms of the New Lease;
- the Board shall indemnify and hold SFACS 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 New Lease;

- SFACS shall be responsible for the payment of any taxes, fees or other assessments, including but not limited to sales tax, imposed on the School site due as a result of the occupancy and use of the Demised Premises by SFACS;
- SFACS 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;
- SFACS 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 New Lease, 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;
- SFACS 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 New Lease, there is a requirement for infrastructure improvements or other regulatory compliance due to the lease, use or occupancy of the Demised Premises by SFACS, SFACS shall be responsible for fulfilling the applicable requirements, at its sole cost and expense;
- SFACS may not assign or sublet any portion of the Demised Premises;
- SFACS shall surrender the Demised Premises to the Board, at the expiration, termination or cancellation of the New Lease in as good condition as existed on the commencement date of the New Lease, ordinary wear and tear excepted, including removal of all personal property and other items belonging to SFACS. Any improvements constructed by SFACS 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 SFACS, the Board may, at its sole option, either cancel the New Lease, 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 SFACS, shall be repaired by SFACS at its sole cost and expense;
- the New Lease shall be deemed inferior and subordinate to any existing or future financing or conveyance by the Board of the School site or any portions thereof;

- the New Lease 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 New Lease, each party shall be responsible for its own attorney's fees and court costs through trials and appellate levels; and
- for purposes of the New Lease, the Superintendent of Schools shall be the party designated by the Board to grant or deny any modifications and approvals required by the New Lease, including without limitation increasing or decreasing the area of the Demised Premises, renewing or extending the New Lease, amending any of its exhibits, canceling and/or terminating the New Lease, or reviewing and approving matters related to any construction by SFACS at the School.

The Deputy Superintendent/Chief Operating Officer, School Operations, and the Assistant Superintendent, School Choice & Innovation, recommend amending the Existing Agreement to extend the term for the period of July 1, 2015 – July 31, 2015, and entering into the New Lease with SFACS at the School for the period of July 1, 2015 – June 30, 2016. The proposed Amendment to the Existing Agreement and New Lease 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 new lease agreement with South Florida Autism Charter Schools, Inc. ("SFACS"), for the operation of a District-managed charter school on a portion of the Country Club Middle School campus, located at 18305 N.W. 75 Place, Miami, Florida, under, substantially, the terms and conditions noted above; and
- 2) finalize negotiations and execute an amendment to the existing lease agreement between the School Board and SFACS, for the operation of a District-managed charter school at 13835 N.W. 97 Avenue, Hialeah, Florida, under, substantially, the terms and conditions noted above; and
- 3) grant or deny all approvals required under both lease agreements referenced above, including renewing, extending, cancelling or terminating the lease agreements.

MCA:mca