

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

SUBJECT: AUTHORITY TO AUTHORIZE THE SUPERINTENDENT TO:

- 1) EXECUTE A LEASE AGREEMENT WITH MIAMI-DADE COUNTY ("COUNTY"), FOR THE COUNTY'S INTERIM USE OF A PORTION OF THE PLAYFIELD AT SWEETWATER ELEMENTARY SCHOOL ("SCHOOL"), LOCATED AT 10655 S.W. 4 STREET, MIAMI, FLORIDA, FOR THE TEMPORARY OPERATION OF A FIRE STATION;
- 2) EXECUTE ANY OTHER DOCUMENTS OR AGREEMENTS NECESSARY TO EFFECTUATE THE ABOVE TRANSACTION;
- 3) GRANT OR DENY ALL APPROVALS REQUIRED UNDER THE LEASE AGREEMENT, INCLUDING RENEWING, EXTENDING, CANCELING OR TERMINATING THE AGREEMENT, AND PLACING THE COUNTY IN DEFAULT, AS MAY BE APPLICABLE

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

The Florida Department of Transportation ("FDOT") will be making a number of roadway improvements to S.W. 107 Avenue, from S.W. 4 Street to Flagler Street ("Roadway Project"). In order to accomplish the Roadway Project, FDOT will be impacting parcels along S.W. 107 Avenue, including Miami-Dade County Fire Station No. 29 ("Fire Station"), located at 351 S.W. 107 Avenue, adjacent to Sweetwater Elementary School ("School"), located at 10655 S.W. 4 Street. The Fire Station is expected to be inoperable for approximately 18-24 months. As a result, Miami-Dade County ("County") has requested interim use of a portion of the School playfield to place temporary portable units and operate the fire station, until the permanent Fire Station facility is renovated and operable. The proposed area to be used by the County is located on the extreme north of the School playfield and consists of approximately 17,640 square feet.

Proposed Lease Agreement

The Deputy Superintendent/Chief Operating Officer, School Operations, recommends entering into a lease agreement with the County to enable the temporary use. Accordingly, it is recommended that the Board authorize entering into a lease agreement ("Lease Agreement") with the County under, substantially, the following terms and conditions:

- the demised premises shall consist of approximately 17,640 square feet, located on the extreme north of the School playfield ("Demised Premises") (see Exhibit "A");
- the term of the Lease Agreement shall not exceed a period of two (2) years. In the event the Fire Station is unable to be reoccupied and used by the County due to circumstances beyond its control, the Superintendent may, upon written request from the County, extend the term of the Lease Agreement by up to six (6) additional months;
- rent at \$1 per year, with the County responsible for the cost of all utilities serving the Demised Premises;
- the County shall accept the Demised Premises in its "as is, where is" condition as of the effective 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. The County may conduct due diligence investigations of the Demised Premises, at its sole cost and expense, pursuant to an Agreement to Conduct Due Diligence Investigations on Board-Owned Land between the parties;
- the County shall construct, at its sole cost and expense, temporary facilities within the Demised Premises subject to prior Board written approval of the plans. The County shall install, at its expense, a chain link fence, minimum of 6-feet in height, to separate the Demised Premises from the balance of the School site. 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;
- if there is a requirement for infrastructure improvements or other regulatory compliance due to the lease, use or occupancy of the Demised Premises by the County, the County shall be responsible for fulfilling the applicable requirements, at its sole cost and expense;
- the County shall be allowed to erect identification signage, subject to Board approval and in conformance with laws and regulations governing public schools;

- 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 the County's rights to peaceful enjoyment under the Lease Agreement;
- the District's Building Department shall review and approve construction documents, issue any required construction permits and provide final acceptance of any work at the Demised Premises;
- subsequent to the effective date of the Lease Agreement, but prior to commencing any work on the Demised Premises, the County shall be required to conduct environmental testing of the Demised Premises, at the County's sole cost and expense, to establish a baseline for the environmental condition of the Demised Premises;
- the County shall comply with all School safety and security criteria, and provide proper supervision of the Demised Premises, and maintain the Demised Premises safe and secure at all times;
- the County, at the County's expense, shall be responsible for upkeep of the Demised Premises, including the perimeter fencing and all improvements located or constructed thereon under the Lease Agreement, in a good, safe, clean and code compliant condition at all times;
- during its period of occupancy, the County agrees that its use of the Demised Premises shall not unreasonably disrupt nor interfere with any of the School's educational activities or operations, and agrees to work closely with the School administrator to minimize any impact on School operations and assure the safety of the School's students, staff, visitors, invitees and the public at all times, including minimizing noise within the Demised Premises, especially during periods of School testing;
- at the expiration, termination or cancellation of the Lease Agreement, the County shall:
 - conduct additional environmental testing of the Demised Premises, at its sole cost and expense, and if the environmental testing documents the presence of environmental conditions not evidenced by the pre-construction environmental testing, the County shall be contractually obligated to remediate the environmental condition, at its sole cost and expense; and
 - 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 effective date of the Lease Agreement, ordinary wear and tear excepted, including removal of all personal property and other items belonging to the County and all improvements located within the Demised Premises, including removal of all elements constructed by the County and full restoration;

- the County may cancel the Lease Agreement, without cause or penalty, by giving the Board ninety (90) days prior written notice. In addition, the County may cancel the Lease Agreement in the event of default on the part of the Board, which default is not cured within the applicable timeframes, or damage or destruction to the Demised Premises;
- the Board may cancel the Lease Agreement in the event of default on the part of the County, which default is not cured within the applicable timeframes. In addition, the Board may immediately cancel the Lease Agreement for cause and without penalty, and without providing the County with an opportunity to cure the default, if the County fails to comply with the Jessica Lunsford Act or assigns or sublets the Demised Premises;
- in the event of damage or destruction of all or portions of the Demised Premises, other than damage or destruction caused by the Board, the County may, at its sole option, either cancel the Lease Agreement, or repair or replace the damaged facilities, at the County's expense;
- the Lease Agreement shall be subject to Florida's Public Records Laws. The parties understand the broad nature of these laws and both agree to comply with Florida's Public Records Laws and laws relating to records retention;
- the County shall provide the Board with confirmation of the County's self-insurance program in form and substance acceptable to the Board or, in the alternative, proof of insurance in the types and amounts of coverage as may be reasonably required by the Board, including but not limited to Commercial General Liability Insurance, Automobile Liability Insurance, Worker's Compensation Insurance and Property Coverage, or as may be amended from time to time;
- the County 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 the County's negligence, actions or failure to act under the terms of the Lease Agreement;
- in addition, the County 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 the County 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;
- the County 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;
- the County 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;
- the County may not assign or sublet any portion of the Demised Premises;
- 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;
- the County shall be responsible for the payment of any taxes, fees or other assessments, including but not limited to sales tax, imposed on the School or Demised Premises as a result of the occupancy and use of the Demised Premises by the County;
- for purposes of the Lease Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the Board to grant or deny all approvals required by the Lease Agreement relating to environmental issues within the Demised Premises, and any construction by the County; and
- in addition to the above, for purposes of the Lease Agreement, the Superintendent of Schools shall be the party designated by the Board to grant or deny any approvals required by the Lease Agreement, including, without limitation, amending any of the exhibits to the Lease Agreement, renewing, extending, canceling or terminating the Lease Agreement, and placing the County in default.

The proposed Lease Agreement has been reviewed by the School Board Attorney's Office and the Office of Risk and Benefits Management for legal sufficiency and risk management issues, respectively, and found to be in compliance. A copy of the proposed Lease Agreement has been placed on file with the Citizen's Information Center and Recoding Secretary to the Board.

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

1. execute a lease agreement with Miami-Dade County ("County"), for the County's interim use of a portion of the playfield at Sweetwater Elementary School ("School"), located at 10655 S.W. 4 Street, Miami, Florida, for the temporary operation of a fire station;
2. execute any other documents or agreements necessary to effectuate the above transaction;
3. grant or deny all approvals required under the lease agreement, including renewing, extending, canceling or terminating the agreement, and placing the County in default, as may be applicable.

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Exhibit "A"

W. Flagler Street

Sweetwater
Elementary School

S.W. 107th AVENUE

Fire Station

S. W. 4th STREET

Legend



Demised Premises
(temporary fire station)



Not to scale