

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

SUBJECT: AUTHORIZE THE SUPERINTENDENT TO:

- 1) EXECUTE A LEASE AGREEMENT WITH MIAMI-DADE COUNTY ("COUNTY"), FOR USE OF THE FORMER FLORAL HEIGHTS ELEMENTARY SCHOOL FACILITY, LOCATED AT 5120 NW 24 AVENUE, MIAMI, FLORIDA, WITH PROVISIONS FOR THE COUNTY TO SUB-LEASE ALL OR PORTIONS OF THE FACILITY TO ONE OR MORE QUALIFIED NOT-FOR-PROFIT ENTITIES PROVIDING COUNTY SPONSORED PROGRAMS TO THE COMMUNITY; AND
- 2) GRANT OR DENY ALL APPROVALS REQUIRED UNDER THE LEASE AGREEMENT, INCLUDING AUTHORIZING SUB-LEASE AGREEMENTS BETWEEN THE COUNTY AND QUALIFIED ENTITIES, INCREASING OR DECREASING THE AREA OCCUPIED BY THE COUNTY, RENEWING, EXTENDING, CANCELLING OR TERMINATING THE LEASE AGREEMENT, AND PLACING THE COUNTY IN DEFAULT, AS MAY BE APPLICABLE

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

Neighbors and Neighbors Association, Inc. ("NANA"), a not-for-profit 501(c)3 organization, operates a number of community based programs intended to serve Miami-Dade County ("County") residents; many of the programs are funded by the County. Representatives of NANA have approached the District with a request to utilize a Board-owned facility to operate its programs. Under Board Policy, the Board and another governmental entity, in this case the County, may enter into a lease agreement through direct negotiation, and under terms agreeable to both parties. The County has expressed a desire to enter into a lease agreement with the Board for use of a District facility, with the intent of sub-leasing to one or more qualified not-for-profit entities, including NANA. District staff, in collaboration with representatives of NANA and the County, have identified the former Floral Heights

Elementary School facility, located at 5120 N.W. 24 Avenue, Miami ("Facility"), for use by the County and its potential qualified sub-tenants. The Facility recently housed Corporate Academy, and staff from the Educational Alternative Outreach Program, but is currently vacant.

Proposed Lease Agreement

The Deputy Superintendent/Chief Operating Officer, School Operations, has verified that there is no intended use of the Facility for District educational purposes for the immediate future, and recommends entering into a lease agreement with the County for use of the Facility, with provisions for the County to sub-lease the Facility to one or more qualified not-for-profit entities providing County-sponsored programs to the community. 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 Board shall lease to the County the entire Facility, located at 5120 N.W. 24 Avenue, Miami, Florida, including all buildings, improvements and grounds ("Demised Premises") (see Location Map);
- an initial lease term of five (5) years, with two (2) five-year renewal periods, at the Board's sole discretion;
- rent at \$1 per year;
- the County shall accept the Demised Premises 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;
- the County shall have the right to cancel the Lease Agreement at any time with ninety (90) days notice. In addition, the County may also cancel the Lease Agreement in the event of default by the Board, which default is not cured;
- the Board shall have the right to cancel the Lease Agreement at any time, without penalty, provided said cancellation is for a School District purpose, as determined solely by the Board, or in the event of sale of some or all of the Demised Premises, by giving the County written notice at least one hundred eighty (180) days prior to the effective date of said cancellation. In addition, the Board may also cancel the Lease Agreement in the event of default by the County, which default is not cured;
- the County 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 effective date of the Lease Agreement, ordinary wear and tear excepted, including removal of all personal property and other items belonging to the County. Any improvements constructed by the County 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 the County, 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 the County, shall be repaired by the County, at the County's sole cost and expense;
- the County may not sublet any portion of the Demised Premises, other than to qualified not-for-profit entities ("Qualified Third Party") to provide County-sponsored programs to the community, subject to and in compliance with the terms and conditions of a Board-approved sublease agreement, and under the supervision and control of the County. In all such instances, the County shall remain fully obligated, liable and responsible for all duties, terms and conditions under the Lease Agreement;
- at such time as the County wishes to allow a Qualified Third Party to utilize all or portions of the Demised Premises, the County shall notify the Board in writing of its intent, and provide all such necessary information regarding such Qualified Third Party and the proposed sublease arrangement, including the name of the third party, type of entity, programs to be provided and other pertinent information as may be required by the Board, for the Board's review and approval, which approval shall be at the Board's sole authority;
- if approved by the Board, the Qualified Third Party shall enter into a sublease agreement with the County, containing the same terms and conditions of the Lease Agreement, plus such additional terms specific to the sublease arrangement. The form of sublease agreement shall be generated by the County and provided to the Board for approval by the Superintendent, Office of Risk and Benefits Management and School Board Attorney's Office, prior to the County entering into same with the approved Qualified Third Party;
- the County, at the County's expense, shall be responsible for all maintenance, repair and upkeep of the Demised Premises, including, without limitation, maintenance and repair of all buildings and improvements, walking surfaces, parking areas, fences and gates, restrooms, roofing, plumbing systems, electrical systems, structural systems and field mowing. In addition, the County shall collect and dispose of garbage and litter at the Demised Premises, and provide all custodial or janitorial services to the Demised Premises;
- the County shall be responsible for the cost of all utilities serving the Demised Premises, including, without limitation, electricity, gas, water, sewer, solid waste disposal, storm water and trash collection. The County shall install separate utility services and/or meters in its name and shall pay for such services at the County's sole cost and expense;

- in the event the County seeks to increase or decrease the area of the Demised Premises, the County 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, at his sole discretion, and all appropriate exhibits to the Lease Agreement shall be adjusted prospectively, accordingly;
- the County may make, at its sole cost and expense, 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 applicable, and 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;
- 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 right to peaceful enjoyment under the Lease Agreement;
- the County shall comply with all District safety and security criteria, and provide proper supervision of the Demised Premises, and maintain the Demised Premises safe and secure at all times;
- the Lease Agreement shall be subject to Florida's Public Records Laws. The County understands the broad nature of these laws and agrees 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 County may, if and as agreed to by 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 the County, which inventory shall become an exhibit to the Lease Agreement. Prior to the commencement of any renewal period under the Lease Agreement, the inventory must be updated based on a joint assessment by School Operations and the County. The County shall replace or provide compensation to the Board for any damaged or missing items at the then current cost;
- 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 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;
- the County shall be responsible for the payment of any taxes, fees or other assessments, including but not limited to sales tax, ad valorem tax, all licenses, permits and other taxes which may be imposed on the Demised Premises as a result of the leasing, 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 construction within the Demised Premises; 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, approving any proposed sub-lease by the County of all or portions of the Demised Premises to a Qualified Third Party, amending any of the exhibits to the Lease Agreement, increasing or decreasing the area of the Demised Premises, renewing, extending, canceling or terminating the Lease Agreement, and placing the County in default.

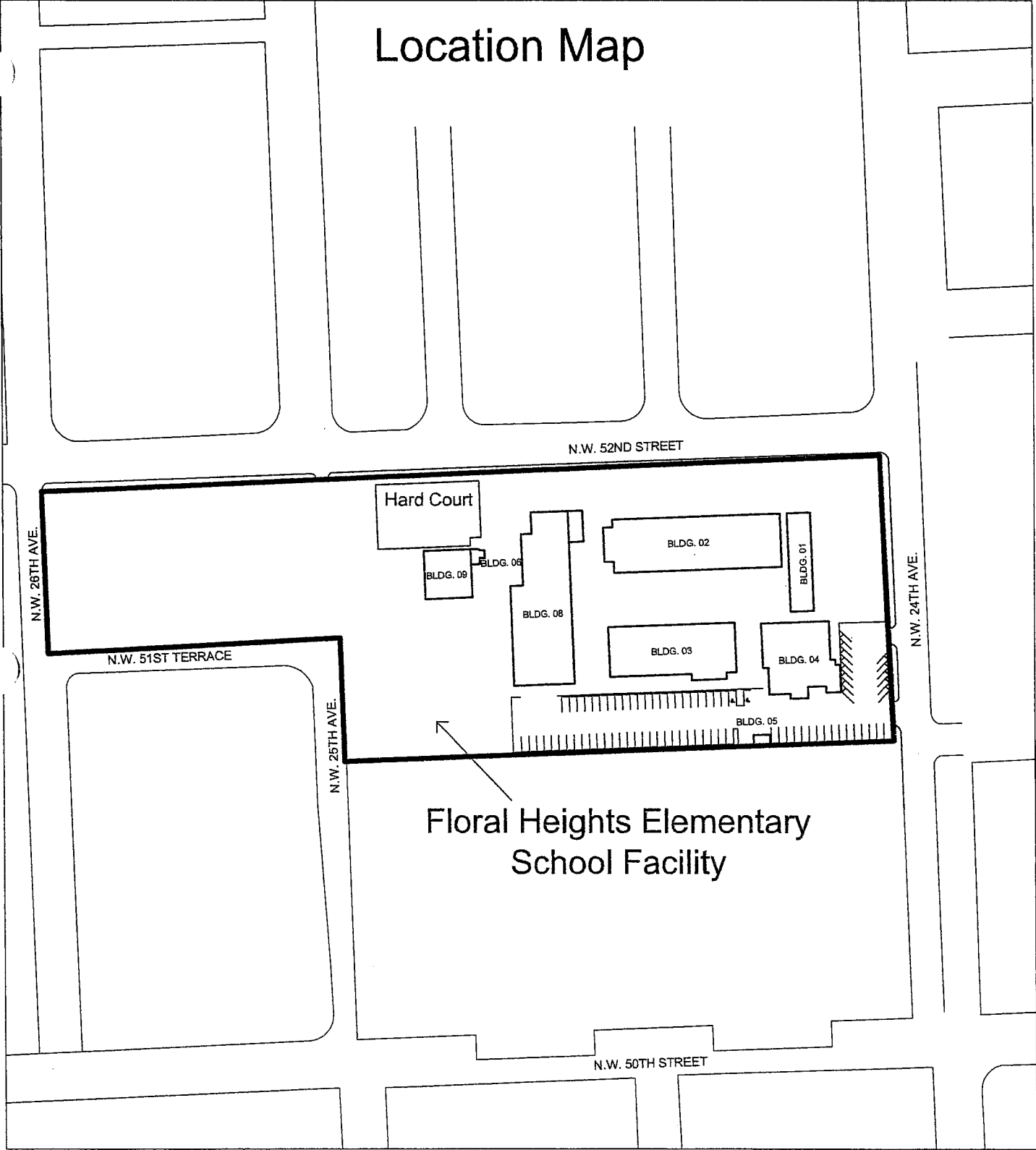
The proposed Lease Agreement has been reviewed by the School Board Attorney's Office and the Office of Risk and Benefits Management for legal sufficiency and risk management issues, respectively, and found to be in compliance. A copy of the proposed Lease Agreement has been placed on file with the Citizen's 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 use of the former Floral Heights Elementary School facility, located at 5120 NW 24 Avenue, Miami, Florida, with provisions for the County to sub-lease all or portions of the facility to one or more qualified not-for-profit entities providing County programs to the community, under, substantially, the terms and conditions noted above; and
2. grant or deny all approvals required under the lease agreement, including authorizing sub-lease agreements between the County and qualified entities, increasing or decreasing the area occupied by the County, renewing, extending, canceling or terminating the lease agreement, and placing the County in default, as may be applicable.

MCA:mca

Location Map



Floral Heights Elementary
School Facility



Not to scale