



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Special Order Request☐ Yes☒ No

Time

Open Agenda☒ Yes☐ No

ITEM No.:

LL-5.

MEETING DATE

Jul 28 2015 10:15AM - Regular School Board Meeting

AGENDA ITEM

OPEN ITEMS

CATEGORY

LL. OFFICE OF PORTFOLIO SERVICES

DEPARTMENT

Facility Planning and Real Estate

TITLE:

First Amendment to Modular Classroom Agreement with the City of Parkland

REQUESTED ACTION:

Approve the First Amendment to Modular Classroom Agreement between The School Board of Broward County, Florida and the City of Parkland (City).

SUMMARY EXPLANATION AND BACKGROUND:

In order to help accommodate for the increase in students from planned residential development in the City, the original Modular Agreement was executed by the City on March 3, 2014 and by the School Board on March 17, 2014. The Agreement stated that in exchange for the City's payment to the School Board in the amount of two million twenty-five thousand dollars (\$2,025,000) (Contribution Payments), the School Board would construct, maintain, and operate eight (8) permanent modular classrooms at public school(s) within the corporate limits of the City and remove eight (8) portable classrooms. The Agreement conditioned the Contribution Payments upon the City's receipt of funds from the owners/developers of various properties in the City. The Agreement also required the School Board to construct only the maximum possible number of modular classrooms that could be funded with the Contribution Payments and prescribed a schedule for payment installments and the delivery of the modular classrooms.

See Supporting Docs for continuation of Summary Explanation and Background.

SCHOOL BOARD GOALS:

☒ Goal 1: High Quality Instruction ☐ Goal 2: Continuous Improvement ☐ Goal 3: Effective Communication

FINANCIAL IMPACT:

The source of these funds is the City of Parkland and is identified in the Amendment to the Adopted District Educational Facilities Plan (AADEFP), Fiscal Year 2014-15 to 2018-19, Addendum No. 2, Page No. 259.

EXHIBITS: (List)

(1) Continuation of Summary Explanation and Background (2) Executive Summary (3) First Amendment to Modular Classroom Agreement (4) Collaboration Form (5) AADEFP Addendum No 2 Page No 259

BOARD ACTION:**APPROVED**

(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Chris O. Akagbosu

Phone: 754-321-2162

Name:

Phone:

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**Senior Leader & Title**

Leslie M. Brown - Chief Portfolio Services Officer

Signature

Leslie M. Brown

Tuesday, July 21, 2015 11:43:57 AM

Approved In Open
Board Meeting On:

By:

JUL 28 2015

School Board Chair

Continuation of Summary Explanation and Background

Since the Modular Agreement was originally approved, increases in the construction cost and the time necessary for construction of the modular classrooms, as well as the loss of a contract purchaser to one of the properties originally anticipated to participate towards the Contribution Payments have warranted an amendment to the original Modular Agreement. Therefore, the Agreement is modified primarily to reflect the reduced Contribution Payments totaling one million nine hundred five thousand dollars (\$1,905,000), which was already received by the School Board, of which thirty three thousand four hundred thirty nine dollars (\$33,439) was spent to remove eight (8) portable classrooms at Riverglades Elementary School, leaving a balance of one million eight hundred seventy-one thousand five hundred sixty one dollars (\$1,871,561) to fund the anticipated development of seven (7) modular classrooms at school(s) located within the corporate limits of the City by March 21, 2016. Also, at the request of the City, a cancellation clause was added to the Amended Agreement that enables immediate termination by either party, and the balance of funds to be returned to the City within thirty (30) days of cancellation, if a contract for the seven (7) modular classrooms is not executed by the School Board by September 16, 2015.

The First Amendment to Modular Classroom Agreement with the City of Parkland has been reviewed and approved as to form and legal content by the Office of the General Counsel.

Executive Summary

First Amendment to Modular Agreement with the City of Parkland

Mira Lago West Lennar, LLC, Lennar Homes, LLC, Richmond American Homes of Florida, LP and Standard Pacific of Florida and their respective assignees, collectively referred to as "Developers" are the owners/developers of various properties located in the City of Parkland (City), which are planned for residential development, and which will generate additional students into Broward County Public Schools located in the City. In order to accommodate for the increase in students in the City by the properties owned by the Developers, the City and the School Board entered into the original Modular Agreement and agreed that in exchange for payment of funds in the amount of two million twenty-five thousand dollars (\$2,025,000) from the City to the School Board, the School Board would construct, maintain, and operate eight (8) modular classrooms at one or more public schools located within the corporate limits of the City, and remove eight (8) portable classrooms located within the North School Impact Fee Service Area, which also includes the corporate limits of the City. The Modular Agreement also included a Modular Classroom Schedule that required payments to be made in three installments: 1) upon execution of the Agreement by the School Board, 2) by May 15, 2014, and 3) by February 15, 2015, to fund the completion of three modular classrooms by September 29, 2015 and five modular classrooms prior to the opening day of school in the 2016 school year.

Subsequently, the School Board received one million nine hundred five thousand dollars (\$1,905,000) (Contribution Payments) from the City. It should be noted that there was a one hundred twenty thousand dollar (\$120,000) shortfall due to the loss of a contract purchaser to one of the properties originally anticipated to participate towards the Contribution Payments. In accordance with the Modular Agreement, the School Board removed eight (8) portable classrooms at Riverglades Elementary School. With regard to the construction of the 8 modular units, staff advertised the construction project three times. The first time, there were no respondents and subsequently, modifications were made to the location of the units. The second time, a single firm successfully qualified for the project (albeit with a response that exceeded the stated budget) but due to a cone of silence violation, the proposal was rejected. Therefore, a third request for proposals is underway. Due to the funding shortfall, increased construction costs and delays beyond what was anticipated by the original Modular Agreement, an amendment to the original Modular Agreement became necessary. The First Amendment to Modular Agreement with the City of Parkland reflects that for the one million nine hundred five thousand dollars (\$1,905,000) in Contribution Payments already received, of which thirty three thousand four hundred thirty nine dollars (\$33,439) was spent to remove eight (8) portable classrooms at Riverglades Elementary School, a balance of one million eight hundred seventy one thousand five hundred sixty one dollars (\$1,871,561) remains for the School Board to construct an anticipated seven (7) modular classrooms at school(s) located within the corporate limits of the City by March 21, 2016. It should be noted that the First Amendment still limits the obligation of the School Board to construct only what can be fully funded by the Contribution Payments. Also, at the request of the City, a cancellation clause was added to the Amendment that enables immediate termination by either party, and for the balance of one million eight hundred seventy one thousand five hundred sixty one dollars (\$1,871,561) to be returned to the City within thirty (30) days of cancellation, if a contract for seven (7) modular classrooms is not executed by the School Board by September 16, 2015. The Amendment includes a provision which allows the School Board to contract for less than seven (7) modular classrooms by mutual written consent of the parties.

Return to: (enclose self-addressed stamped envelope)

Name:

This Instrument Prepared by:

Address:

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR RECORDING DATA

FIRST AMENDMENT
TO
MODULAR CLASSROOM AGREEMENT

THIS FIRST AMENDMENT TO MODULAR CLASSROOM AGREEMENT ("Amendment") made this 15th day of July, 2015, by **THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**, a body corporate existing under the laws of the State of Florida ("School Board"), with an address of 600 SE Third Avenue, Fort Lauderdale, FL 33301, and the **CITY OF PARKLAND**, a municipal corporation of the State of Florida ("City"), with an address of 6600 University Drive, Parkland, FL 33067. The "Effective Date" of this Amendment shall be the date on which the last party to this Amendment signs.

WITNESSETH:

WHEREAS, the original Modular Classroom Agreement, dated March 17, 2014 ("Agreement") was executed by the City on March 3, 2014 and the School Board on March 17, 2014; and

WHEREAS, since the Agreement was approved by the City and the School Board, the School Board has determined that the cost of eight (8) permanent modular classrooms has increased beyond that which was originally anticipated by the School Board; and

WHEREAS, since the Agreement was approved by the City and the School Board, the School Board has determined that time necessary for construction of the eight (8) permanent modular classrooms has increased beyond that which was originally anticipated by the School Board together with the loss of a contract purchaser which reduced the anticipated funds available for the construction of the modular classrooms; and

WHEREAS, in order to accommodate for the projected increase in new additional students into the City, the City and School Board have agreed that in exchange for the City transferring and the School Board's receipt of the funds in the amount of One Million Nine Hundred Five Thousand Dollars (\$1,905,000), the School Board shall construct, maintain and operate seven (7) permanent modular classrooms ("Modular Classrooms") in the corporate limits of the City as provided in this Amendment for at least five (5) years; and

WHEREAS, the parties acknowledge that the City has delivered the One Million Nine Hundred Five Thousand Dollars (\$1,905,000) to the School Board; and

39 **WHEREAS**, the proposed Modular Classrooms are intended to supplement any
40 otherwise required school concurrency or school impact fee requirements and are not in lieu of
41 any such requirements; and
42

43 **WHEREAS**, the City is not incurring any independent financial obligations pursuant to
44 this Amendment but has agreed to provide to the School Board with only those payments
45 received from developers within the City who earmark said payments for the purposes set forth
46 herein; and
47

48 **WHEREAS**, the City and School Board desire to amend the Agreement to reflect the
49 changed conditions described above, while implementing and restating the Agreement to the
50 fullest extent possible, subject to these changed conditions and terms as set forth herein; and.
51

52 **NOW THEREFORE**, in consideration of the payments, promises, covenants and
53 undertakings hereinafter set forth, the parties hereto, intending to be legally bound, agree as
54 follows:
55

56 Section 1. Recitations. The recitals set forth above are true and correct and are
57 incorporated into this Amendment by this reference as if fully set forth herein.
58

59 Section 2. Paragraph 2 of the Agreement is hereby amended to read as follows:
60

61 2. Payment and Construction of Modular Classrooms.
62

63 a. Developers' and City's Payment for Modular Classrooms. Pursuant to the terms
64 and conditions contained in separate agreements between the Developers, City, and
65 County (as applicable), the Developers have paid funds to the City in the amount of
66 One Million Nine Hundred and Five Thousand Dollars (\$1,905,000) ("Contribution
67 Payments"). Such Contribution Payments were paid by the City to the School Board
68 and shall be used by the School Board to construct, maintain and operate the Modular
69 Classrooms to be located at one or more public schools which are within the
70 corporate limits of the City for at least five (5) years. The City's payments to the
71 School Board are anticipated to provide funding for a total of seven (7) Modular
72 Classrooms.
73

74 In addition to the School Board's construction of the Modular Classrooms, the School
75 Board utilized the Contribution Payments to remove eight (8) existing portable
76 classrooms from Riverglades Elementary School, which is within the corporate limits
77 of the City ("Portable Classroom Removals"). Subsequent to the Portable Classroom
78 Removals, the remaining Contribution Payments balance is One Million Eight
79 Hundred Seventy One Thousand Five Hundred Sixty One Dollars (\$1,871,561).
80

81 The actual number of modular classrooms that will be constructed will be based upon
82 the remaining Contribution Payments balance as received by the City from Developer
83 payments; however, the maximum possible number of modular classrooms will be
84 constructed for the amount of money paid to the School Board by the City. In the
85 event the payments are insufficient to construct a complete modular classroom the
86 City shall not be required to pay the additional payments to the School Board and the
87 School Board shall return the balance, if any, of the unused or unapplied payments to
88 the City within one month of the completion date, or by no later than July 30, 2016.

Any such returned funds may be used by the City for a community project or other municipal purposes as determined in the sole discretion of the City Commission to accommodate and benefit the City.

- b. School Board's Construction of Modular Classrooms. In accordance with the Modular Classroom Schedule, the School Board shall construct (or cause to be constructed) the Modular Classrooms. Except for the payment of the Contribution Payments from the Developers to the City, and from the City to the School Board, the Developers and City shall not be responsible for the costs or expenses associated with the School Board's construction, maintenance, and/or operation of the Modular Classrooms or the Portable Classroom removals, other than those included in this Amendment.
- c. The School Board shall be responsible for maintaining and operating the Modular Classrooms in the same manner as other public schools located within the City's municipal limits, at its sole cost and expense for a period of five years from the completion of construction.
- d. The School Board's construction of the Modular Classrooms shall be done in a good and workmanlike manner, free of material defects, and shall comply with all the State of Florida Requirements for Educational Facilities (SREF) and applicable School Board policies and procedures.
- e. The School Board's obligation to construct the Modular Classrooms and the Portable Classroom Removal pursuant to this Amendment, was conditioned upon the receipt of the Contribution Payments by the City to the School Board, of which the School Board acknowledges receipt of the Contribution Payments.
- f. The "Modular Classroom Schedule" is as follows:

Modular Classroom Schedule

Completion Date of Modular Classrooms by School Board	Anticipated Number of Modular Classrooms to be constructed
March 21, 2016, or as otherwise extended by mutual agreement of the City Manager and Superintendent of Schools.	7

- g. If a contract for the seven (7) Modular Classrooms as provided for herein is not executed by the School Board no later than September 16, 2015, the Agreement (including this Amendment thereto) may be immediately terminated by either party and the sum of \$1,871,561, the remaining balance of the \$1,905,000 (which the City paid to the School Board pursuant to the Agreement together with any addition funds paid by the City of Parkland pursuant to the Agreement (or this Amendment thereto) shall be returned to the City of Parkland within 30 days from the date of cancellation and the Agreement (and this Amendment thereto) shall become void and of no further force and effect upon receipt of said payment to the City and to the School Board.

Notwithstanding the foregoing, the School Board may contract for less than seven (7) Modular Classrooms (by no later than the date specified above), by mutual written acknowledgement (which may be evidenced by email) between both parties, whereupon the Agreement (and this Amendment thereto) shall continue in full force and effect.

Section 3. Further Assurances. The parties shall execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and shall perform such acts as shall reasonably be requested of them in order to carry out this Amendment.

Section 4. Amendments. No modification, further amendment, or release of the terms or conditions contained herein shall be effective unless executed by the School Board and the City.

Section 5. Counterparts. This Amendment may be executed in counterparts, each of which may be deemed to be an original. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all of the parties of this Amendment.

Section 6. Joint Effort. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein. The preparation of this Amendment has been a joint effort of the parties and the resulting documents shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

Section 7. Merger Clause. This Amendment and the Agreement and all the exhibits referenced herein and annexed hereto sets forth the entire agreement among the parties hereto, and it supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the parties.

Section 8. Severability. If any provision of this Amendment is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Amendment, and the balance of the Amendment will remain in full force and effect as long as doing so would not affect the overall purpose or intent of the Amendment.

Section 9. Authority. Each person signing this Amendment on behalf of a party individually warrants that he or she has full legal power to execute this Amendment on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Amendment.

Section 10. The parties hereby agree that the Agreement as amended by this Amendment remains in full force and effect. To the extent of any inconsistency between the terms of this Amendment and the terms of the Agreement, the terms of the Amendment shall supersede and control to the extent of such inconsistency.

[REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW]

Witnesses:

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

Signature

Print Name

Signature

Print Name

ATTEST:

Superintendent of Schools

By:

(Signature)

Print Name: Donna P. Korn

Title: School Board Chair

Dated:

STATE OF FLORIDA)

) SS

COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 24th day of May, 2015, by Donna P. Korn, as School Board Chair of THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA.

He or she is:

☒ personally known to me, or

☐ produced identification. Type of identification produced

(Seal)

NOTARY PUBLIC

NOEMI GUTIERREZ

Print Name:

My commission expires:



Approved as to form:

Office of the General Counsel

1st Amend. City Parkland Modular E

214 Witnesses:

215 Carole S. Morris

216 Signature

218 Carole S. Morris

219 Print Name

222 Kimberly Skaggs

223 Signature

225 Kimberly Skaggs

226 Print Name

229 ATTEST:

230 Jean Panebianco
City Clerk

THE CITY OF PARKLAND

By: [Signature]

(Signature)

Print Name: Michael Udine

Title: Mayor

Dated: July 17, 2015



231 STATE OF FLORIDA)

232) SS

233 COUNTY OF BROWARD)

234 The foregoing instrument was acknowledged before me this 17 day of JULY,
235 2015, by Michael Udine as Mayor of THE CITY OF PARKLAND.

236 He or she is:

237 [☒] personally known to me, or

238 [] produced identification. Type of identification produced _____.

239 (Seal)

NOTARY PUBLIC:



240 Print Name: JEAN PANEBIANCO

241 My commission expires:

242
243 Approved as to form: [Signature]

244 Andrew S. Maurodis, City Attorney

COLLABORATION

SIGN-OFF FORM

Title of Agenda Request Item: First Amendment to Modular Classroom Agreement with the City of Parkland

School Board Meeting Date: 7-28-2015

- ☐ All projects have been appropriated in the Amendment to the Adopted District Educational Facilities Plan (May 19, 2015) and in the District's Capital Budget.
- ☐ The following project(s) have not been appropriated in the Amendment to the Adopted District Educational Facilities Plan (May 19, 2015) and in the District's Capital Budget.

☒  **Comments: The source of these funds is the City of Parkland and is identified in the Amendment to the Adopted District Educational Facilities Plan (AADEFP), Fiscal Year 2014-15 to 2018-19, Addendum #2, Page #259.**


Department Name

Department Head Name

Department Head Signature

Capital Budget

Omar Shim
Director

 7/8/2015

Note: By signing this collaboration the Capital Budget Department is acknowledging that the budget impact as stated is correct. Other aspects of the agenda item are the responsibility of the department submitting the item.

Modular Classroom Agreement – City of Parkland

This addendum is attached to and made a part of the Amendment to the Adopted District Educational Facilities Plan.

On March 17, 2014 the School Board approved a Modular Classroom Agreement with the City of Parkland (LL-5). Per the Agreement Parkland is paying for:

- Construction of up to 8 permanent modular classrooms within the City limits *
- Removal of 8 portable classrooms within the North School Impact Fee Service Area

The maximum funding included in the Agreement is \$2,025,000, however as of April 2015, the School Board has only received \$1,905,000 from the City of Parkland.

Funding Summary

<u>Date</u>	<u>Action</u>	<u>Amount</u>
04/03/2014	Payment Received	\$425,000
07/14/2014	Payment Received	450,000
02/11/2015	Payment Received	1,030,000
Sub-Total		\$1,905,000
Less:		
	Demolition of 8 Portables at Riverglades Elementary	(33,439)
	Balance of Funds available for construction of up to 8 permanent modular classrooms	\$1,871,561 *

The Facilities Department is actively seeking proposals to construct the modular classrooms. The current plan is to build 4 modular classrooms at Heron Heights Elementary, and 2 to 4 classrooms at Park Trails Elementary. The final determination for the number of classrooms is dependent on the prices of the construction bids.

The Adopted District Educational Facilities Plan is amended by this addendum to remove the 8 modular classroom addition at Riverglades Elementary (page 193), add a 4 classroom modular addition at Heron Heights Elementary, and add a 2 to 4 classroom modular classroom addition at Park Trails Elementary. The \$1,871,561 will be split between Heron Heights and Park Trails when more information is available based on the construction bids.

** The School Board is only obligated to construct the maximum number of modular classrooms that can be fully funded by the payments covered in the Agreement.*