



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE	2020-04-21 10:00 - Regular School Board Meeting
AGENDA ITEM	ITEMS
CATEGORY	LL. OFFICE OF PORTFOLIO SERVICES
DEPARTMENT	Facility Planning and Real Estate

Special Order Request <input type="radio"/> Yes <input checked="" type="radio"/> No
Time
Open Agenda <input checked="" type="radio"/> Yes <input type="radio"/> No

ITEM No.:

LL-5.

TITLE:

Recreation License Agreement with the City of Miramar for Henry D. Perry Education Center

REQUESTED ACTION:

Approve the Recreation License Agreement with the City of Miramar for Henry D. Perry Education Center.

SUMMARY EXPLANATION AND BACKGROUND:

The City desires to enter into a new twenty-five (25) year Recreation License Agreement (RLA) with The School Board of Broward County, Florida (SBBC), which would allow the City exclusive access to the recreational areas and parking lots on the East and South sides of Henry D. Perry Education Center (Leased Premises), during non-school hours.
See Supporting Docs for continuation of Summary Explanation and Background.
This Agreement has been reviewed and approved as to form and legal content by the Office of the general Counsel. This Agreement has been approved by the City and upon the School Board's approval, shall become effective.

SCHOOL BOARD GOALS:

Goal 1: High Quality Instruction Goal 2: Safe & Supportive Environment Goal 3: Effective Communication

FINANCIAL IMPACT:

There is a positive financial impact of One Dollar (\$1.00) in annual rent payment to the SBBC.

EXHIBITS: (List)

(1) Continuation of Summary Explanation and Background (2) Executive Summary (3) Recreation License Agreement

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
4/6/2020, 10:29:35 AM

Approved In Open Board Meeting On: APR 21 2020

By: *Donna Ken*
School Board Chair

Continuation of Summary Explanation and Background

The required rent payment in the Agreement is One Dollar (\$1.00) per year.

The City has indicated its desire to invest in and make improvements on the Henry D. Perry Educational Center recreational areas, which would benefit Henry D. Perry Educational Center, surrounding school students, and the community.

EXECUTIVE SUMMARY

Recreation License Agreement with the City of Miramar for Henry D. Perry Education Center

Recreation License Agreements (RLA) (formerly referred to as Master Lease Agreements (MLA)) are long term agreements that are structured to allow for the long-term continuous use of facilities identified in the RLA. The term of RLAs vary, but typically range from twenty (20) to fifty (50) years.

The City of Miramar currently has three (3), thirty (30) to forty (40) year term RLA's with the SBBC for Annabel Perry Elementary School, Fairway Elementary School, and Miramar High School. For years the City of Miramar has had a partnership agreement with the SBBC, and since April 11, 2015, has had its Reciprocal Use Agreement (RUA) with the SBBC which is in the process of being renewed.

The long-term nature of the RLA's allows for the grantees to improve school sites into facilities such as park and recreational facilities and make it available for use by their residents. In return, it also provides the subject school/District with the ability to utilize the facilities during school hours.

The City desires to enter into a new twenty-five (25) year RLA with The School Board of Broward County, Florida (SBBC), which would allow the City exclusive access to the recreational areas and parking lots on the East and South sides of Henry D. Perry Education Center (Leased Premises), during non-school hours.

The City desires to invest in and make improvements on the Henry D. Perry Educational Center recreational areas. The RLA requires that the City shall demolish three (3) portables that run East-West across the Licensed Premises, relocate the remaining three (3) portables that are on the Licensed Premises to the existing bicycle rack location, and install up to ten (10) additional parking spaces in front of the relocated portables. The RLA also requires that the City shall make the following improvements on the Licensed Premises:

1. Construct between four (4) to six (6) new tennis courts;
2. Construct a new running track;
3. Construct a multi-purpose open field/play area;
4. Re-surface the existing outdoor basketball courts on Licensed Premises;
5. Install exercise station(s);
6. Install portable bathroom facility; and
7. Install fencing, gates, and locks where necessary to separate the School site from the Licensed Premises
8. Install a total of two (2) stop signs, at the north-west and south-east corners of SW 69th Avenue and SW 35th Street, with a delineated crosswalk, hashed to allow the adjacent Elementary School (Annabel C. Perry) students to safely gain pedestrian access to the Licensed Premises.

These improvements, which will benefit Henry D. Perry Educational Center, surrounding school students, and the community, shall be constructed/installed by the City at its sole expense. Pursuant to Article 2.06(a) of the Agreement, the School Board is delegating the authority to approve the recreational improvements listed above to the Executive Director, Capital Projects, Office of Facilities & Construction and the Chief Building Official. The City will submit all improvement plans for the Licensed Premises to the Executive

Executive Summary

Recreation License Agreement Between The School Board of Broward County, Florida and the City of Miramar
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Director, Capital Projects, Office of Facilities & Construction and the Chief Building Official, for approval to make sure all improvements meet all codes and State Requirements for Educational Facilities (SREF).

The Licensed Premises will be fully fenced and gated from the School site, as to prevent the community from gaining access to the School grounds when recreational facilities are under City jurisdiction. This Agreement requires that the City will be generally responsible for the maintenance of the Licensed Premises and the improvements thereon and shall be solely responsible for striping the multi-purpose fields and tracks for all sporting and recreational activities.

FP&RE Department staff spoke with the Henry D. Perry Educational Center Principal about the City's proposed improvements and the new RLA, of which the School Principal does not object to moving forward with the RLA. Furthermore, the Department provides as necessary, periodic updates regarding the status of the project to the School Principal and related stakeholders.

Preliminary feedback from the City indicates that upon this Agreement becoming effective, the City anticipates the improvements cited herein could be completed in within thirty-six (36) months.

As depicted in Exhibit B the City has expressed interest in obtaining a portion of the upper Northeast corner of the Licensed Premises adjacent to the right-of-way, for safety and maintenance purposes. Discussions with the City regarding its interest in obtaining the subject area via quit claim deed, specifically to address safety/maintenance issues will commence in the near future. If District staff determines it's beneficial to the District to grant the quit claim deed, a separate Board item will be presented to the School Board at a later date.

RECREATION LICENSE AGREEMENT

THIS RECREATION LICENSE AGREEMENT is made and entered into as of this 21st day of April, 2020, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

CITY OF MIRAMAR, FLORIDA
(hereinafter referred to as "City"),
a Florida municipal corporation
whose principal place of business is
2300 Civic Center Place, Miramar, Florida 33025

WHEREAS, SBBC, as the controlling body of the district schools of Broward County, Florida owns, operates and maintains various facilities and sites throughout the County, including elementary, middle, high schools, vocational sites, training facilities and equipment, and lands/sites in the City suitable for use by City in its municipal programs; and

WHEREAS, partnerships between municipalities and SBBC instill a sense of civic pride and responsibility in students that will last far beyond their educational experience; and

WHEREAS, municipalities and the SBBC may share resources to support their goals and objectives; and

WHEREAS, SBBC and the City (hereafter referred to as the "Parties") believe that such an arrangement will be of mutual benefit to the Parties and will fill a great need in that area of the community and that cooperation between the Parties will result in great benefit to the residents of the City; and

WHEREAS, it is the purpose and policy of the City to develop, operate, and maintain parks and community recreational facilities; and

WHEREAS, SBBC and the City desire to enter into this Recreation License Agreement (hereafter referred to as the "Agreement") for the purposes of allowing the City to make improvements on and utilize portions of SBBC owned land (Site No. 101.1 a/k/a Henry D. Perry Education Center) for recreational and parking purposes.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon the execution of the Agreement by the Parties and conclude on May 01, 2045.

2.02 **Licensed Premises.** SBBC does hereby license to the City an area or areas referred to herein as "Licensed Premises" and shown on the sketch attached hereto as **Exhibit A** and **Exhibit B** and made a part hereof. **Exhibit B** shows conceptually, components of proposed improvements that the City will construct on the Licensed Premises at the City's sole expense. The Licensed Premises shall include any City Improvements provided in this Agreement, excluding those not constructed on the Lease Premises.

2.03 **Uses Permitted.** The uses and purposes of the Licensed Premises will be for recreational use by the City's residents, and as needed by SBBC, in conformity with Paragraph 2.09 herein. The Licensed Premises are to be used strictly for recreational purposes and no advertising or food concessions, nor the licensing, leasing, or renting of same, shall be permitted by the City unless prior written consent of the SBBC Superintendent or designee is obtained. Consent shall not be unreasonably withheld.

2.04 **Parking.** The City residents may use the open access parking lot(s) located on the School site to park vehicles while using the Licensed Premises.

2.05 **Conflict of Uses.** The City's use of the Licensed Premises shall not conflict with SBBC'S use of the Licensed Premises in its public education program and shall comply with the applicable laws of the State of Florida.

2.06 **Improvements.** The location of any and all recreational improvements (hereafter referred to as the "Improvements") to be placed on the Licensed Premises, shall first be approved in writing by SBBC. The SBBC shall have the sole discretion to approve the location of any Improvements the City makes on the Licensed Premises. The SBBC's approval of the location of the City's Improvements shall not be unreasonably withheld. Any Improvements placed on said Licensed Premises without the prior written approval of SBBC shall be removed or relocated within ninety (90) calendar days of written demand by SBBC. However, the Parties may agree that any unauthorized Improvements should remain and amend this Agreement to include the use and responsibility of those Improvements. The City's Improvements must include a security fence and gates, including a key and or access code, to separate the SBBC school campus from the Licensed Premises. The key and or access code shall be provided to SBBC.

(a) The authority to grant this approval regarding the Improvements and the security fencing / gates in this Agreement is hereby delegated by the SBBC to the Executive Director, Capital Projects, Office of Facilities & Construction and the Chief Building Official. Subject to the provisions of the foregoing paragraph, the Parties further agree that City will prepare and submit plans to the Executive Director, Capital Projects, Office of Facilities & Construction (hereafter referred to as the "Executive Director") and the Chief Building Official for review and approval. Any plans must meet State of Florida Building Code Requirements, Florida Fire Protection Code, and State Requirements for Educational Facilities (hereafter referred to as the

"SREF"), as may be applicable, and any other requirements imposed by applicable law. The Executive Director, and the Chief Building Official shall have forty-five (45) calendar days from the date of receipt to review and comment. In the event the Executive Director and Chief Building Official fail to provide their review or comments within the forty-five (45) day period, the City's plans shall be deemed approved. All design documents shall be approved by the Executive Director and the Chief Building Official prior to submission to the Florida Department of Education, if required. City agrees to obtain all necessary permits, inspections, and approvals to obtain a Certificate of Occupancy from the School District. If necessary, City also agrees to contract with a contractor for the construction of the Improvements, security fencing, and gates.

(b) Before the commencement of the Improvements, City shall require the engaged contractor to furnish required insurance, surety payment, and performance bonds that guarantee completion of the Improvements, to include full payment for all suppliers, material men, laborers or subcontractors employed to complete the Improvements. City shall ensure that the contractor shall be required by contract to deliver a copy of said insurance and surety bonds to the City. Such insurance shall remain current throughout the construction of the Improvements. Such bonds shall remain in effect for one (1) year after completion of the Improvements. City shall ensure that the contractor will cause the correction of any defective or faulty work or materials that appear after the completion of the Improvements, security fencing, and gates within the warranty period of such work performed.

(c) City shall be solely responsible for all contractual obligations to the contractor engaged to construct the Improvements.

(d) The Parties acknowledge that there are six (6) portables on the Licensed Premises. The City shall demolish three (3) portables that run East-West across the Licensed Premises. City shall relocate the remaining three (3) portables to the existing bicycle rack location and install up to ten (10) additional parking spaces in front of the relocated portables.

(e) City shall make the following improvements on the Licensed Premises which may include:

1. Construct a minimum of four (4) to a maximum of six (6) new tennis courts;
2. Construct a new running track;
3. Construct a multi-purpose open field/play area;
4. Re-surface the existing outdoor basketball courts;
5. Install exercise station(s);
6. Install pre-engineered/pre-fabricated bathroom facility;
7. Install fencing, gates, and locks where necessary to separate the School site from the Licensed Premises; and
8. If Broward County Traffic Engineering Division provides approval, the City shall install a total of two (2) stop signs, at the north-west and south-east corners of SW 69th Avenue and SW 35th Street, with a delineated crosswalk, hashed to allow the adjacent Elementary School (Annabel C. Perry) students to safely gain pedestrian access to the Licensed Premises.

(f) City shall construct/install all Improvements cited herein at its sole expense.

(g) The City shall act as owner's representative in completing all permit applications and other documents related to the construction and project closeout of this project.

(h) City agrees to use its best efforts to complete all improvements within thirty-six (36) months from the effective date of this Agreement.

2.07 Maintenance.

(a) It shall be the City's responsibility to maintain and keep the Licensed Premises clean and sanitary. The City shall mow and as needed, trim the trees located on the Licensed Premises and maintain the vegetation to prevent the accumulation of weeds, tree debris, and other invasive vegetation. Upon failure of the City to comply with the provisions of this section, SBBC shall give written notice to the City of such failure to comply, by Certified Mail, Return Receipt Requested. If after a period of ten (10) calendar days from the City's receipt the notice, the City has failed to commence the deficiencies contained in the notice, SBBC shall have the right to enter upon the Licensed Premises and correct the deficiencies. The City shall pay for such costs within fifteen (15) calendar days after receipt of said billing by SBBC. Any billing for SBBC's trash, debris removal or mowing shall be on a per-cleaning or per-mowing basis and shall be due and paid by the City within fifteen (15) calendar days after receipt of said billing.

(b) Notwithstanding any of the provisions of the foregoing subsection, the Parties further agree that the City will clean the Licensed Premises after each City sponsored event and SBBC will be responsible to clean the Licensed Premises after each SBBC sponsored event. In the event that SBBC fails to maintain and clean the premises for its use of the Licensed Premises, the City shall have the right to clean the premises and charge SBBC for all cleanup costs. SBBC shall pay for such costs within fifteen (15) calendar days after receipt of said billing by the City.

(c) Except as set forth in (b) above, City shall be solely responsible for the routine upkeep and maintenance of the Licensed Premises and the improvements thereon, and shall solely bear all related costs regarding such upkeep and maintenance, including all repairs and replacement of equipment's and fixtures.

(d) The Parties agree that they shall be liable and responsible for any and all cleanup, damages, and injuries that may occur during the time the Licensed Premises is under their respective control.

(e) City will be solely responsible for striping the track and multi-purpose open field/play area for all sporting and recreational activities.

2.08 License, Lease, or Rental of Licensed Premises. The City may not license, lease or rent the Licensed Premises for the use by a third party without obtaining the prior written consent of the SBBC Superintendent or designee. Consent shall not be unreasonably withheld.

2.09 Hours of Operation. The Licensed Premises and any improvements thereto will be exclusively under the control of the SBBC during the hours school is in session and the hours of four (4) planned school events (hereafter referred to as the "school events").

The Principal or designee will provide the City with written notice of the dates and times for the school events at least fifteen (15) calendar days prior to each school event. The school events shall take priority over City's use of Licensed Premises. The Licensed Premises will be under the control of the City

during off-school hours from 5:00 pm until 10 pm during the school year and from 7:00 am to 10 pm during the weekends, SBBC Holidays, and SBBC scheduled summer months. If SBBC desires to use the Licensed Premises when the Licensed Premises is under the City's control, the School Principal or designee will complete the Notice of Facility Use Form, as shown in **Exhibit C** and submit it to the City's Parks and Recreation Director or designee for approval no less than fifteen (15) calendar days before the requested use. If the City desires to utilize the Licensed Premises when the Licensed Premises is under the control of SBBC, the City's Director of Parks and Recreation or designee will complete the Notice of Facility Use Form, as shown in **Exhibit C** and submit it to the School Principal or designee for approval no less than fifteen (15) calendar days before the requested use. The Parties acknowledged that there is a fence that is located between the School and the Licensed Premises. The fence shall remain locked until the effective date of this Agreement. Also, the City will properly secure the Licensed Premises each day between dusk and dawn.

2.10 **Ownership of Improvements at License Expiration.** The Improvement shall be the property of the SBBC at the termination of this Agreement. City shall have the right to remove all personal property, non-fixture items or removable (non-permanent) Improvements at the expiration or termination of this Agreement. In the event this Agreement is terminated by the SBBC prior to the end of the term, the Parties shall negotiate a payment amount the SBBC shall pay to the City for the Improvements.

2.11 **Inspection of City's Records by SBBC.** City shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of City's records, regardless of the form shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC agent or its authorized representative. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to City's Records from the effective date of this Agreement, for the duration of the term of the Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to City pursuant to this Agreement. SBBC's agent or its authorized representative shall provide City with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to the City's facilities and to any and all records related to the Agreement and shall be provided adequate and appropriate workspace in order to exercise the rights permitted under this section. City shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.12 **Notice.** When any of the Parties' desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Director, Facility Planning & Real Estate Department
The School Board of Broward County, Florida

600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To City: City Manager
City of Miramar, Florida
2300 Civic Center Place
Miramar, Florida 33025

With a Copy to: Director of Parks & Recreation
City of Miramar
2300 Civic Center Place
Miramar, Florida 33025

With a Copy to: City Attorneys for
City of Miramar
Austin Pamies Norris Weeks Powell, PLLC
401 NW 7th Avenue
Ft. Lauderdale, FL 33311

2.13 **Background Screening.** The City agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who: (1) are permitted access to school grounds when students are present; (2) will have direct contact with students; (3) have access or control of school funds; (4) have successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of the City or its personnel providing any services under the conditions described in the previous sentence. The City shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the City and its personnel. The Parties agree that failure of the City to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, the City agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from City's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or the City of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.14 **Public Records.** Any party contracting with SBBC is required to: (1) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (2) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party

shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with applicable Florida law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

2.15 **Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes, FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. The Parties agree, for themselves, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC, its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

2.16 **Indemnification.** The Parties agree to be fully responsible for any acts of negligence, by their employees' when acting within the scope of their employment and agree to be liable for any damages resulting therefrom. This section shall survive termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

2.17 **Insurance.** Upon execution of this Agreement, the Parties shall submit to each other, copies of their certificate(s) of insurance or self-insurance evidencing the required coverage.

2.18 **Required Insurance Coverages.** The Parties acknowledge without waiving their rights of sovereign immunity as provided by Section 768.28, Florida Statutes, that they are insured or self-insured for general liability under state law with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary wavier limits that may change and be set forth by the legislature.

(a) The Parties shall maintain General Liability Insurance, with limits of liability not less than \$1,000,000 Each Occurrence \$2,000,000 General Aggregate. The Parties shall procure and maintain at their own expense and keep in effect during the full term of the Agreement, a policy or policies of insurance or self-insurance under a Risk Management Program in accordance with Florida Statutes, Section 768.28 for General Liability.

(b) The Parties shall procure and maintain at their expense and keep in effect during the full term of the Agreement, insured or Self-insured Worker's Compensation Insurance with Florida statutory benefits in accordance with Chapter 440, Florida Statutes including Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(c) Automobile Liability Insurance: The Parties shall maintain Automobile Liability Insurance covering all Owned, Non-Owned and Hired vehicles in an amount of not less than One Million Dollars (\$1,000,000) per occurrence Combined Single Limit for Bodily Injury and Property Damage.

(d) Self-insurance and/or insurance requirements shall not relieve or limit the liability of either party, except to the extent provided by, Section 768.28, Florida Statutes. The Parties reserve the right to require other insurance coverage that the Parties deem mutually necessary depending upon the risk of loss and exposure to liability, subject to each party's Commission or Board approval, if necessary.

(e) Violations of the terms of this section and its subparts shall constitute a material breach of the Agreement and the non-breaching party may, at its sole discretion, cancel the Agreement and all rights, title and interest shall thereupon cease and terminate.

(f) No activities under this Agreement shall commence until the required proof of self-insurance and/or certificates of insurance have been received and approved by the Risk Managers of each party.

2.19 **Environmentally Hazardous Material.** The City hereby acknowledges that SBBC prohibits at any time the storage of Environmentally Hazardous materials on SBBC's property. The City agrees not to store any Environmentally Hazardous materials on SBBC's property and understands that violation of this stipulation will result in SBBC's immediate termination of this Agreement and the City shall restore and return the property to the same condition that it was in on the date hereof, less any improvements.

2.20 **Security of Licensed Premises.** The City is solely responsible for any security needed during City sponsored events and/or activities on the Licensed Premises while the Licensed Premises are under the sole control of the City. The City will further secure separation from the School campus by locking campus gates before entering the Licensed Premises. If it is determined that any safety issues resulting during the time the Licensed Premises are under the City's control, the City will be liable for said issues. The City will secure all Licensed Premises when under City control by locking the Licensed Premises after hours of operation as stated in Section 2.09 herein.

2.21 **Equal Opportunity Provision.** The Parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the Parties' respective duties, responsibilities and obligations under this Agreement.

2.22 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.23 **Incorporation by Reference.** Exhibit A, Exhibit B and Exhibit C attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. Neither of the Parties intend to directly or substantially benefit a third party by this Agreement. The Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent Contractor.** The Parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party nor its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, and contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Default.** The Parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days written notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination pursuant to Section 3.05.

3.05 **Termination.**

(a) It is specifically agreed between the Parties hereto that at any time SBBC desires to terminate this Agreement or any designated portion of the Licensed Premises which SBBC determines is needed exclusively for school building purposes or for any other school purposes, it shall have the right to do so with or without cause. SBBC's determination to cancel this Agreement shall be conclusively binding upon the Parties. In the event SBBC so elects, the City shall be given ninety (90) days written notice prior thereto and in the event of cancellation, SBBC shall reimburse the City for the then remaining value of the City-installed Improvements amortized for the remaining term. In the event the Parties hereto cannot mutually agree on said value, same shall be appraised by three (3) appraisers; one selected by SBBC; one selected by the City; and the third appraiser selected by the two appraisers appointed

(b) In the event of such appraisal of the value, the average of the three (3) appraisers shall be the amount SBBC shall pay. It is further agreed that SBBC shall be obligated to pay the fee of the appraiser selected by SBBC; the City shall be obligated to pay the fee of the appraiser selected by the City; and the City and SBBC shall each pay fifty percent (50%) of the fee of the appraiser selected by the two aforementioned appraisers.

(c) The City shall likewise have the unqualified right of cancellation of this Agreement, in whole or as to any designated portion or area of the Licensed Premises upon ninety (90) days written notice of cancellation to SBBC. If the City shall properly exercise its option to cancel this Agreement, as to the whole or part of the Licensed Premises, the City shall have the right, subject to SBBC's purchase option described below to remove any and all such Improvements to the Licensed Premises as the City had placed thereupon, except that the City shall not remove sod, landscaping, sand or earth placed upon the Licensed Premises (except as incidental to removal of other fixtures and/or improvements) and the City shall, in the case of removal of Improvements, reestablish the normal grade of the Licensed Premises to the condition which the same was found upon the City's first entering the Licensed Premises hereunder. If, upon cancellation by the City SBBC wishes to purchase the Improvements, the City shall sell the same to SBBC at a mutually agreed upon price. However, if the City and SBBC cannot mutually agree upon a price for the Improvements then the appraisal method, above described in Section 3.05(b) hereof, shall be used to arrive at a binding price.

3.06 Compliance with Laws. The Parties shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing their duties, responsibilities and obligations pursuant to this Agreement.

3.07 Place of Performance. All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 Governing Law and Venue. This Agreement shall be construed by the laws of the State of Florida. Any controversy or claim arising out of this Agreement shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida.

3.09 Entirety of Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

3.11 Assignment. Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

3.12 Captions. The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.13 Severability. In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid,

illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** 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 and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto. The City Manager has authority to amend agreement on behalf of the City.

3.16 **Waiver.** The Parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense (hereinafter referred to as "Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement 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 Agreement.

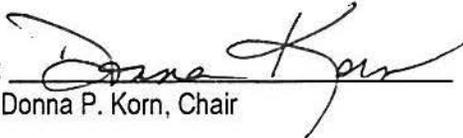
IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.



(Corporate Seal)

FOR SBBC

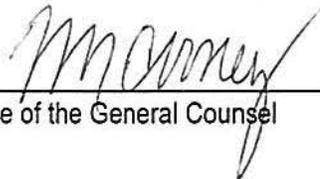
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By: 
Donna P. Korn, Chair

ATTEST:


Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content:


Office of the General Counsel

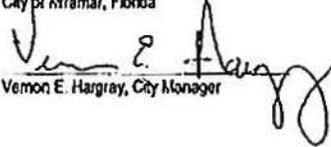
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FOR CITY

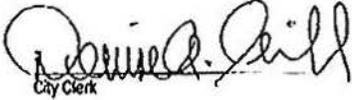
(Corporate Seal)

City of Mframa, Florida

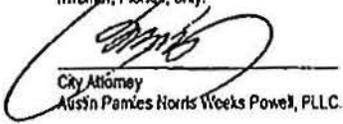
Vernon E. Hargray, City Manager



ATTEST:


City Clerk

Approved as to form and legal sufficiency
for the use of and reliance by the City of
Mframa, Florida, only.

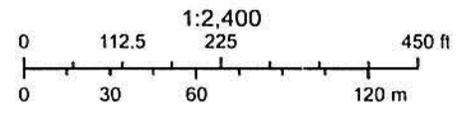

City Attorney
Austin Pamela Norris Weeks Powell, PLLC

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EXHIBIT A



LEGEND:
[] SBBC owned License Premises



LIST OF PROPOSED COMPONENTS

Proposed Acquisition of School Board Property

EXERCISE STATIONS
RELOCATED PORTABLES
RELOCATED TENNIS COURTS

MULTI-PURPOSE OPEN-FIELD/PLAY AREA

TRACK
RE-SURFACED BASKETBALL COURTS
EXISTING PARKING LOT (TO REMAIN)

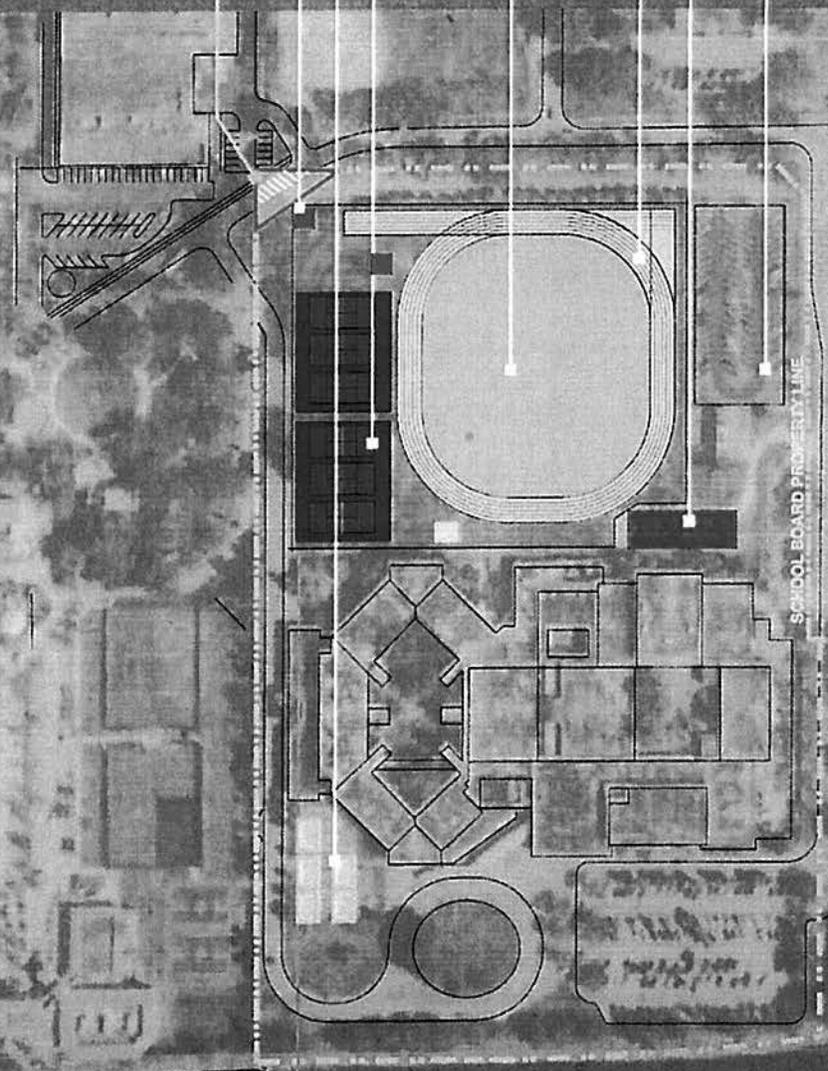


EXHIBIT "C"

NOTICE OF FACILITY USE FORM FOR RECREATION LICENSE AGREEMENT BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA AND DESIGNATED
LOCAL GOVERNMENTAL AGENCY

Name of Local Government

Date Filed

Location

Type of Activity

Facility

Date(s) Needed

Time(s) Needed

CHARGES (IF APPLICABLE)

Service/Item

Fee

Total Fee(s) Due

NOTE: Please list the Service/Item on additional blank page(s) if you need space for additional information

CONTACTS/AUTHORIZED SIGNATURE

For School: Principal

For Local Government: Parks and Recreation Director or
Equivalent Position

Name

Title

Date

Signature:

Approve Disapprove

Name

Title

Date

Signature:

Approve Disapprove

RATIONALE FOR DISAPPROVAL