

AGENDA REQUEST FORM
The School Board of Broward County, Florida

Meeting Date 6/19/2007	Open Agenda <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Time Certain Request <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Agenda Item Number J-4
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TITLE:
Lease Agreement between the City of Hollywood and The School Board of Broward County, Florida for Elementary School "C" (Lincoln Park)

REQUESTED ACTION:
Approve the lease agreement between the City of Hollywood and The School Board of Broward County, Florida for Elementary School "C".

SUMMARY EXPLANATION AND BACKGROUND:
The School Board has acquired approximately 5.44 acres of land adjacent to the approximately 4.7 acre City of Hollywood's Lincoln Park. The intent of this acquisition is to make use of Lincoln Park as a part of the elementary school recreational component.

The School Board requires a 2.58 acre portion of the Lincoln Park grounds for parking, structural and recreational components of the elementary school. The City of Hollywood desires to lease approximately a 0.124 acre portion of School Board owned land for a Lincoln Park component.

The School Board and the City of Hollywood also desire to enter into a Master Recreation Lease for the shared use of approximately 2.435 acres of land portions owned by each party. This component of the agreement will allow the elementary school's use of the recreation grounds during school hours and the City of Hollywood's use of Lincoln Park after school hours and when school is not in session.

The term of this agreement is fifty (50) years.

The School Board Attorney has approved this agreement as to form.

The City of Hollywood will execute this agreement after School Board approval.

SCHOOL BOARD GOALS:
☐ Goal One: All students will achieve at their highest potential.
☐ Goal Two: All schools will have equitable resources.
☐ Goal Three: All operations of the school system will demonstrate best practices while supporting student achievement.
☒ Goal Four: All stakeholders will work together to build a better school system.

FINANCIAL IMPACT:
There is no financial impact to the school district. Since there is no financial impact, this item does not require a collaboration form from the Capital Budget Department.

EXHIBITS: (List)
1. Lease Agreement

BOARD ACTION <div style="text-align: center; font-size: 1.5em; font-weight: bold; margin: 10px 0;">APPROVED</div> <small>(For Official School Board Records' Office Only)</small>	SOURCE OF ADDITIONAL INFORMATION Name: Jonathan M. Peservich Phone: 754-321-8355 <div style="text-align: right; margin-top: 10px;"><i>JP</i> <i>St. Akers</i></div>
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THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

DIVISION OF FACILITIES AND CONSTRUCTION MANAGEMENT
MICHAEL GARRETSON, DEPUTY SUPERINTENDENT

Approved in Open Board Meeting on: JUN 19 2007
By: *Beverly D. Kelly* , School Board Chair

LEASE AGREEMENT

THIS AGREEMENT, made and entered into as of this 19th day of June, 2007, by and between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, a body corporate and political subdivision of the State of Florida, hereinafter referred to as the "SBBC," and the CITY OF HOLLYWOOD, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as the "CITY."

WITNESSETH:

WHEREAS, the CITY does own Lincoln Park, a 4.7 +/- acre parcel contiguous to a certain school site known as Elementary School "C", located between Lincoln and Pierce Streets in Hollywood, Florida; and

WHEREAS, the SBBC is the controlling body of the Public Schools of Broward County, Florida and does own a 5.44 +/- acre school site designated as Elementary School "C" located in Broward County, Florida, hereinafter referred to as "school grounds"; and

WHEREAS, by reason of the heavy demands existing in the City as a result of the increase of the population of school children and the shortage of available land, the SBBC has expended available money for the acquisition, construction and operation of classrooms facilities and thus is greatly limited in funds which can be made available for acquiring additional acreage adjacent to the school grounds well equipped playgrounds, athletic fields and play courts; and

WHEREAS, among other requirements, it is the purpose and policy of the CITY to develop, operate and maintain parks and community recreational facilities; and

WHEREAS, the CITY is willing to lease a 2.58 +/- acre portion of Lincoln Park to SBBC, as described in Exhibit "A", for the parking, structural and recreational components of the elementary school program; and

WHEREAS, the SBBC is willing to lease a 0.124 +/- acre portion of the school grounds to CITY, as described in Exhibit "B", for a recreational component of Lincoln Park; and

WHEREAS, the SBBC is willing to expend funds to equip and improve the recreational lease area, as described in Exhibit "C", for athletic fields and other recreation related facilities; and

WHEREAS, the SBBC and the CITY believe that such an arrangement will be of mutual benefit to all parties and will fill a great need in that area of the community and that cooperation between the parties hereto will result in great benefit to the citizens of the CITY;

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 is hereby acknowledged, the parties hereto do mutually agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The above recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 - GENERAL CONDITIONS

2.01 **Leased Property.**

a. The CITY does hereby lease to the SBBC the property described in Exhibit "A" as prepared by The School Board of Broward County, Florida, which is attached and made a part hereof under the terms and conditions hereinafter set forth.

b. The SBBC does hereby lease to the CITY the property described in Exhibit "B" as prepared by The School Board of Broward County, Florida, which is attached and made a part hereof under the terms and conditions hereinafter set forth.

2.02 **Lease Term.** The term for which the CITY leases said premises described in Exhibit "A", and SBBC leases said premises described in Exhibit "B" and the shared use of the "recreational lease area" described in Exhibit "C" is fifty (50) years from the date of the execution of this lease agreement by the parties.

2.03 **Uses Permitted.**

a. SBBC shall use the said leased premises, as described in Exhibit "A", for parking, structural, playground and recreational purposes specifically required by the school. SBBC will be responsible for the construction of the required recreation facilities, as reflected on Exhibit "D", with the consent provided herein by the CITY.

b. CITY shall use the said leased premises, as described in Exhibit "B", for recreational purposes specifically required by the park.

c. SBBC shall use the land area, as described in Exhibit "C" as recreational grounds during the hours when the school is in session. The CITY shall use the "recreational grounds" during a portion of the day when school is not in operation and at all other times when same is not in use by SBBC.

2.04 **Conflict of Uses.** The CITY'S use of "recreational grounds", as described in Exhibit "C", shall be limited and restricted so as not to conflict in any way with the use of said property by SBBC in its Public Education Program, and the CITY'S use of said property shall at all times be in compliance with the laws of the State of Florida concerning the use of school property.

2.05 **Improvements.** The location of any and all recreational improvements to be placed on the "recreational lease area", as described in Exhibit "C", shall first be approved in writing by SBBC; it being intended that SBBC shall have absolute control over the location of

any recreational facilities before they are placed on the "recreational lease area". Any facilities placed on said "recreational lease area" without the prior written approval of the Board as to location shall immediately be removed or relocated within ten days of written demand by SBBC.

2.06 **Design and Reconstruction of Existing Improvements.** The City has elected to retain complete control of the adjacent Lincoln Park acreage contiguous to the leased property and to provide certain improvements to the park. In order to provide for proper coordination and anticipated cost savings, the CITY agrees to identify a Landscape Architect, of its choosing, to design the improvements on the retained CITY park property as identified on Exhibit "D". SBBC agrees to provide overall architectural control and coordination through the Architectural Firm retained by SBBC, including supervision of the CITY Landscape Architect. SBBC will construct improvements on the two contiguous parcels. CITY will reimburse SBBC the costs directly related to its Landscape Architect's fees, other minimal design fees related to the hardscape improvements and construction on its retained park property up to a maximum of \$350,000. The defined hardscape features the CITY is paying for include the concrete walkway, a bubbler type drinking fountain, approximately seven (7) benches, three (3) tables, 10 trash receptacles and pathway lighting.

2.07 **Construction of Sewer Lift Station.** SBBC shall enter into an agreement with Lincoln Park Development Group, L.L.C. and Hollywood Gates L.L.P. to develop jointly a lift station to be owned, operated and maintained by CITY on the retained City park property, which will serve the school and all adjacent residential developments, as opposed to separate lift stations.

2.08 **Maintenance.**

a. It shall be the responsibility of the SBBC to keep the "recreational lease area," as described in Exhibit "C" in a clean and sanitary condition, but each party agrees to clean up the premises after each and every event sponsored by that respective party. The City shall be allowed to use the recreational facilities during the portion of the day when school is not in operation and at all other times when same is not in use by SBBC.

b. All areas herein leased to SBBC, as described in Exhibit "A", shall be maintained and kept up by SBBC. All areas herein leased to the CITY, as described in Exhibit "B", shall be maintained and kept up by the City.

c. The upkeep and maintenance of all areas leased by SBBC, as described in Exhibit "A", including but not limited to any buildings constructed, parking areas and recreational areas, shall be borne by the SBBC and the SBBC agrees at all times to keep the areas properly maintained.

d. The upkeep and maintenance of all playground equipment within the SBBC recreational lease area, as described in Exhibit "C", shall be borne by the SBBC. SBBC and the CITY agree to equally share the cost of all repairs and/or replacement of playground equipment beyond fair wear and tear.

e. The CITY will be responsible for all cleanups, maintenance, repairs, replacement of damaged recreational facilities, within the "recreational lease area", as a result of vandalism due to the City's failure to secure the "recreational lease area" after dusk.

f. Notwithstanding any of the provisions of the foregoing paragraph, the parties further agree that the CITY, in addition to the above, will clean up the recreational lease area, as described in Exhibit "C", after each and every event it sponsors, and the SBBC will be responsible to clean up after each and every event it sponsors.

2.09 **Hours of Operation.** This entire "recreational lease area" will be under the control of SBBC during the hours the school is in session. During off-school hours, or when the area is not under school supervision, control and use of the recreational lease area will be under the jurisdiction of the City. The CITY will properly secure the SBBC "recreational lease area" premises between dusk and dawn.

2.10 **Termination.** At the termination of the Lease, in the event the same is not cancelled by the City prior thereto, all permanent recreational facilities within the "recreational lease area" shall become the property of the CITY, and the SBBC shall have the right to remove any movable (non-permanent) recreational facilities installed by the SBBC.

2.11 **Indemnification.**

A. The SBBC agrees to relieve the CITY from any and all liability whatsoever arising out of any injuries or accidents that may or might occur as a result of the negligence of the SBBC during the SBBC's use of the area herein leased.

B. The CITY agrees to relieve SBBC from any and all liability whatsoever arising out of any injuries or accident that may or might occur as a result of negligence of the CITY during the CITY'S use of the area herein leased. .

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

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. None 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 manner arising out of any contract.

3.03 **Non-Discrimination.** The Parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 **Records.** 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 that law.

3.05 **Entire 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.

3.06 **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.

3.07 **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 expresses 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.

3.08 **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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.09 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.10 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the seventeenth Judicial Circuit of Broward County, Florida.

3.11 **Default.** If either party institutes suit or other proceeding against the other party to enforce or seek damages with respect to a default under this Lease Agreement, the prevailing party shall be entitled to recover all damages provided by law or under this Lease Agreement, including all costs and reasonable attorney's fees (including appeal).

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

3.13 **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. There shall be no partial assignment of this Agreement, including without limitation, the partial assignment of any right to receive payments from SBBC. Notwithstanding the provisions of this section or the restrictions on use of the leased premises set forth in section 2.03 of this Agreement, in connection with the financing of Elementary School "C", the subleasing by SBBC of the leased premises to the Broward School Board Leasing Corp. (the "Leasing Corp."), the leasing back of such leased premises together with the improvements to be constructed, the assignment of the Leasing Corp.'s interests in the leased premises to U. S. Bank, National Association (the "Trustee"), and any future re-letting of the leased premises by the Trustee at the direction of Financial Guaranty Insurance Company (the "Bond Insurer") upon nonappropriation or default, together with all of the documents to be executed in connection with such financing (the "Master Lease Program Documents") shall not constitute a default under this Agreement. CITY hereby consents to the financing of Elementary School C and the execution by SBBC of the Master Lease Program Documents. Further, the provisions of Sections 2.03 and 3.13 of this Agreement are declared to be subject and subordinate to the Master Lease Program Documents and the interests of the Trustee and the Bond Insurer thereunder. The City shall not exercise any default remedies under this Agreement as a result of violation of the provisions of Section 2.03 or Section 3.13 of this Agreement prior to the earlier to occur of July 1, 2042 (the latest final expiration date of the Series 2007A-1 Ground Lease) or the termination of the Series 2007A-1 Ground Lease (if the Series 2007A-1 Ground Lease terminates earlier than its final expiration date). This subordination and standstill provision shall be self-operative; however, CITY shall execute any and all documentation reasonably requested from time to time by the Trustee or Bond Insurer to further effectuate or evidence the same.

3.14 **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 ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.15 **Place of Performance.** All obligations of SBBC and the CITY 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.

3.16 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.17 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by US 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 the paragraph. For the present, the parties designate the following as the respective places for giving notice.

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

With a copy to: Executive Director, Facility Management, Planning &
Site Acquisition
The School Board of Broward County, FL
1643 N. Harrison Parkway
Sunrise, Florida 33323

To CITY: Director of Parks, Recreation & Cultural Arts
City of Hollywood
1405 South 28th Avenue
Hollywood, Florida 33020

With a copy to: City Attorney
City of Hollywood, FL
2600 Hollywood Boulevard
Hollywood, FL 33020

3.18 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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.

3.19 **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.

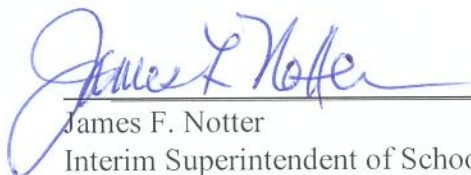
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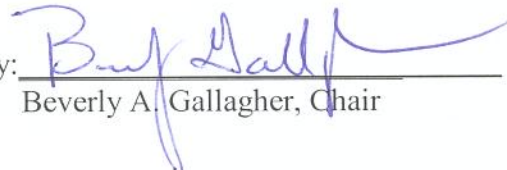
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed in their respective names by the proper officials and under their corporate seals this 19th day of June, 2007.

FOR SBBC

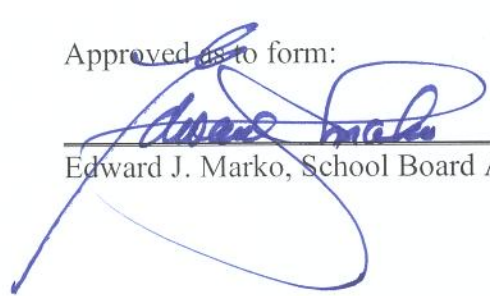
(SEAL)

THE SCHOOL BOARD OF BROWARD COUNTY,
FLORIDA


James F. Notter
Interim Superintendent of Schools

By: 
Beverly A. Gallagher, Chair

Approved as to form:


Edward J. Marko, School Board Attorney

FOR CITY

(SEAL)

Signed, sealed and delivered
in the presence of:

Billy Low

Sandra P. Betton

The City of Hollywood, Florida

By:

Mayor

Attest:

CITY Clerk

Approved as to form:

CITY Attorney

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF HOLLYWOOD, FLORIDA, ONLY.

BY:

CITY ATTORNEY

EXHIBIT A
GROUND LEASE TO SBBC

