

AGENDA REQUEST FORM
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Added Item

Meeting Date 8/19/08	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 F- 7
--------------------------------	--	---	-----------------------------------

TITLE:
Agreement with DeFoMac for Radio Broadcasting of Athletic Events

REQUESTED ACTION:
 Approve the Agreement with DeFoMac Production, Inc. to broadcast eleven high school football and basketball games on 1470AM. There is no cost impact to The School Board of Broward County.

SUMMARY EXPLANATION AND BACKGROUND:
 DeFoMac is a corporation operating and existing under the laws of the State of Florida. The principals of DeFoMac are Jim McKinley, President of McKinley Financial and radio sports broadcaster Jeff DeForest. McKinley financial is a partner with the School Board of Broward County. The company underwrites the Broward County Athletic Association Boys BIG 8 County Basketball Championship. In addition, McKinley Financial provides scholarship awards through the BCAA Scholar Athlete Program.

 Jeff DeForest is a sports radio broadcaster with over three decades of experience on the South Florida radio market. Mr. DeForest, affectionally known as DeFo has been involved in broadcasting with both the Miami Dolphins and the University of Miami Hurricanes. DeFo teamed with sportscaster Joe Rose to help form a popular morning tandem for six years.

 (Summary Explanation and Background continued)

SCHOOL BOARD GOALS:

- Goal One: Raise achievement of all students to ensure graduation from high school and readiness for post-secondary education.
- Goal Two: Improve the health and wellness of students and personnel.
- Goal Three: Provide a safe and secure physical and technological environment for all students and employees.
- Goal Four: Promote innovation which focuses on best practices and quality efforts that improve our best-in-class position.
- Goal Five: Recruit, develop, retain, and recognize high performing and diverse faculty and personnel.
- Goal Six: Build strong partnerships with family, business, community and government at the classroom, school, area, and district level.
- Goal Seven: Ensure district's leadership as an environmental steward through innovative ecology and energy conservation programs.

FINANCIAL IMPACT:
 There is no financial impact to the District.

EXHIBITS: (List)
 Agreement with DeFoMac

APPROVED	BOARD ACTION:	SOURCE OF ADDITIONAL INFORMATION:
	(For Official School Board Records' Office Only)	Damian Hattenhoff <i>DH</i>
	Name	Phone

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
Dr. Joanne W. Harrison, Deputy Superintendent
Educational Programs & Student Support

Joanne W. Harrison
 Approved in Open Board Meeting on:

~~AUG 19 2008~~ **AUG 27 2008**

Rob Barker
 _____ School Board Chair

Summary Explanation and Background Continued

August 19, 2008

Page 2

F-7

DeFoMac will broadcast eleven high school football games, eleven basketball games on 1470AM. The games will be broadcast live. The radio broadcasts of games will begin on September 5, opening week for regular season high school football.

DeFoMac will purchase airtime on 1470AM. The Agreement provides that revenues generated after reasonable radio expenses shall be divided equally between DeFoMac and the School Board of Broward County. The School Board of Broward County reserves the right to audit and inspect all broadcast records. All radio broadcast personnel including announcers and engineers who access school grounds are required to undergo background screening. DeFoMac shall be permitted to solicit advertisers for radio broadcasts. However, standards are set forth in Section 2.04 of the Agreement regarding advertising content.

This Agreement has been reviewed and approved as to form and legal content by the School Board Attorney.

AGREEMENT FOR BROADCASTING OF ATHLETIC EVENTS

THIS AGREEMENT is made and entered into as of this 27th day of August, 2008, 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

DeFoMac PRODUCTION, INC.
(hereinafter referred to as "DeFoMac"),
a corporation operating and
existing under the Laws of the State of Florida,
whose principal place of business is
545 North Andrews Avenue, Fort Lauderdale, Florida 33301

WHEREAS, SBBC and DeFoMac desire to promote high school sports to the community at large; and

WHEREAS, DeFoMac desires to broadcast live on radio station 1470AM eleven SBBC high school football games and eleven SBBC high school basketball games; and

WHEREAS, broadcasting of SBBC high school games increases exposure and attention for SBBC and high school athletes.

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is 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.** This Agreement shall be effective upon execution by all parties and shall terminate on June 30, 2009 unless terminated earlier pursuant to section 3.04 of this Agreement.

2.02 **Contests.** DeFoMac shall be permitted to broadcast eleven (11) SBBC high school football and basketball games conducted in Broward County, Florida on 1470AM. SBBC shall provide to DeFoMac a schedule of all football and basketball contests during the designated winter and fall seasons. The games to be broadcast on radio are regular season contest and the BIG 8 Boys Basketball Tournament. The Florida High School Athletic Association reserves the right to grant broadcast rights for FHSAA State Championship contests. SBBC is not authorized under this contract to extend to DeFoMac broadcast rights for FHSAA State Championship events and no contract rights are granted for events conducted outside of Broward County, Florida.

2.03 **Insurance Requirements.** Proof of the following insurance will be furnished to SBBC by Certificate of Insurance within 15 days of notification from SBBC. Such certificate must contain a provision for notification to SBBC 30 days in advance of any material change in coverage or cancellation. SBBC shall be named as an additional insured under the General Liability policy. The insurance information must be submitted on an insurance carrier's Certificate of Insurance.

- A. **General Liability Insurance**, with bodily injury and property damage limits of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.
- B. **Auto Liability Insurance** covering all owned, non-owned and hired vehicles with bodily injury and property damage limits of liability of not less than \$1,000,000 combined single limits.
- C. **Workers' Compensation** in accordance with Florida Statutory limits and Employer's Liability Insurance.

2.04 **Advertising.** DeFoMac shall be permitted to solicit advertisers for radio broadcasts. DeFoMac shall not authorize or permit any advertising during the broadcast of the high school games publicizing or promoting the sale and/or consumption of alcoholic beverages, tobacco products, guns or other weapons, gambling organizations, gambling publications or services, political advertisements, contraceptives, exotic dance clubs or other adult oriented businesses.

2.05 **Revenue.** DeFoMac shall collect all advertising, underwriters and promotional revenue derived from the broadcasts. After payment of reasonable broadcast operation costs, including the purchasing of airtime on 1470AM, any remaining revenue from the broadcasts shall be divided equally between DeFoMac and SBBC.

2.06 **Disclaimer.** Radio broadcast rights to each SBBC event is intended solely for the enjoyment of the listening audience. Any rebroadcast, retransmission or other use of this production including internet streaming of this event without the express written consent of SBBC is prohibited.

2.07 **Display of Contests.** The date, time and location of all contests to be broadcasted by DeFoMac shall be displayed on SBBC's high school sports website, bccasports.com.

2.08 **Expenses.** SBBC shall not be responsible or liable for any expenses incurred by DeFoMac. DeFoMac is responsible for any expenses incidental to setting up the broadcasting arrangement.

2.09 **Promotion of Contests by SBBC.** DeFoMac shall periodically throughout the radio broadcast inform the audience that information on high school sports and the schedule of live radio broadcasts may be accessed through bccasports.com.

2.10 **Scheduling of Contests.** SBBC high school football and basketball events are subject to change. If the scheduled game is cancelled or rescheduled by SBBC, reasonable efforts will be made to provide DeFoMac alternative games to select from.

2.11 **Florida High School Athletic Association.** DeFoMac agrees to hold harmless the Florida High School Athletic Association, its member schools and SBBC for any injury to person or property resulting from the performance of this Agreement. DeFoMac further agrees to assume all responsibility for any and all damages, which are direct result of the broadcast. DeFoMac also agrees to defend all claims made against the Florida High School Athletic Association, its member schools and SBBC for damages arising from the broadcasts accounts and descriptions by DeFoMac of any events under this agreement.

2.12 **Broadcast Records.** DeFoMac broadcast records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by SBBC's agent(s) or authorized representative(s) to the extent necessary to adequately permit the evaluation and verification of any statements for payment, invoices, descriptions of construction improvements or claims submitted by DeFoMac or any of its payees pursuant to this Agreement. For the purposes of this Agreement, the term broadcast records shall include, but not be limited to, accounting records, payroll time sheets, contracts, financial records, receipts and other records regarding advertising revenue, operational costs, audited and un-audited financial statements to substantiate overhead rates, written policies and procedures, contractor and sub-contractor files (including proposals of successful and unsuccessful subcontractors), original estimates, estimating worksheets, computer records, disks and software, videos, photography, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this Agreement. DeFoMac shall be responsible for compliance with any public documents requests made by third persons regarding the broadcast records and for any costs and attorney's fees associated with such requests. Records specifically made privileged by state law shall remain privileged notwithstanding the provisions of this Agreement.

2.13 **Auditor Access.** For the purpose of audits, inspections, examinations and evaluations conducted under this Agreement, SBBC's agent(s) or authorized representative(s) shall have access to broadcast records from the effective date of this Agreement, for the duration of the work on the project, and until five (5) years after the date of final payment by SBBC to DeFoMac pursuant to this Agreement.

2.14 **Auditor Work Space.** SBBC's agent(s) or its authorized representative(s) shall have access to all necessary records and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with this Agreement. SBBC's agent(s) or its authorized representative(s) shall give DeFoMac reasonable advance notice of intended audits.

2.15 **Background Screening.** DeFoMac agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and DeFoMac and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will 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 DeFoMac or its personnel providing any services under the conditions described in the previous sentence. DeFoMac will bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, to be reimbursed per Section 2.04, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to DeFoMac and its personnel. The Parties agree that the failure of DeFoMac 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. DeFoMac 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 in

DeFoMac's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.

2.16 **Indemnification.**

(a) By SBBC: SBBC agrees to be fully responsible for its acts of negligence, or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

(b) By DeFoMac: DeFoMac agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by DeFoMac, its agents, servants or employees; the equipment of DeFoMac, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of DeFoMac, or the negligence of DeFoMac's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by DeFoMac, SBBC or otherwise.

(c) By DeFoMac: DeFoMac agrees to indemnify, hold harmless and defend FHSAA, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which FHSAA, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by DeFoMac, its agents, servants or employees; the equipment of DeFoMac, its agents, servants or employees while such equipment is on premises owned or controlled by FHSAA; or the negligence of DeFoMac, or the negligence of DeFoMac's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by DeFoMac, FHSAA or otherwise.

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 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon forty five (45) days written notice to the other parties of its desire to terminate this Agreement.

3.05 **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.

3.06 **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.

3.07 **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.

3.08 **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.

3.09 **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.

3.10 **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.

3.11 **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.

3.12 **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 or 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 assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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 commotion, 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 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 effect 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 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
Fax: (754) 321-2701

With a Copy to: Director, Athletics & Student Activities
The School Board of Broward County, Florida
600 Southeast Third Avenue, Third Floor
Fort Lauderdale, Florida 33301
Fax: (754) 321-2552

To DeFoMac: DeFoMac Productions, Inc.
545 North Andrews Avenue
Fort Lauderdale, Florida 33301

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 effect 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.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

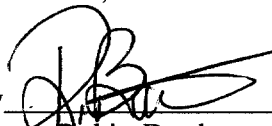
IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

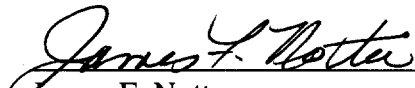
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By



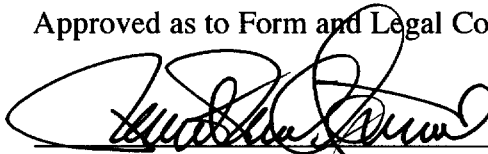
Robin Bartleman, Chair

ATTEST:



James F. Notter
Superintendent of Schools

Approved as to Form and Legal Content:



School Board Attorney

FOR DeFoMac

[Handwritten Signature]
DeFoMac Productions, Inc.

(Corporate Seal)

ATTEST

By JEFF DEFORREST

[Handwritten Signature]
_____, Secretary

-or-

Witness

Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 7th day of August, 2008 by Jeff De Forrest of DeFoMac Production, Inc. on behalf of the corporation/agency. DeFoMac PRODUCTION, INC.

He/She is personally known to me or produced N/A as Identification and did/did not first take an oath N/A Type of Identification

My Commission Expires: 5/26/11

[Handwritten Signature]
Signature – Notary Public

SAFIAH M. KHAN
Printed Name of Notary



DD 646900
Notary's Commission No.