

**FOURTH AMENDMENT TO
LEASE AND FUNDING AGREEMENT
FOR
LEASE OF RECREATIONAL FACILITIES
AT
CYPRESS BAY HIGH SCHOOL**

THIS FOURTH AMENDMENT TO AGREEMENT is made and entered into as of this _____ day of _____, 2014 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

THE CITY OF WESTON, FLORIDA
(hereinafter referred to as "CITY"),
a municipal corporation operating and existing under the Laws of the state of Florida,
whose principal place of business is
~~2500 Weston Road, Weston, Florida 33331~~
17200 Royal Palm Boulevard, Weston, Florida 33326

WHEREAS, SBBC and CITY entered into a certain Lease and Funding Agreement for the Lease of Recreational Facilities dated March 2, 2004, hereinafter Agreement, which funded certain improvements to the athletic stadium complex at Cypress Bay High School including, general site work, bleachers, press box, fencing, sports lighting and electrical site work; and

WHEREAS, SBBC and CITY entered into a First Amendment to the Agreement on February 1, 2005, which authorized the CITY to fund, purchase and install sports field lighting for Cypress Bay High School softball and baseball fields; and

WHEREAS, SBBC and CITY entered into a Second Amendment to the Agreement on December 13, 2005, which authorized the CITY to fund the expansion of the home field bleachers at the athletic stadium complex; and

WHEREAS, SBBC and CITY entered into a Third Amendment to the Agreement on August 4, 2009, which authorized the CITY to maintain the fields and grounds of the Cypress Bay High athletic complex; and

WHEREAS, SBBC and CITY through the Fourth Amendment to the Agreement seek to convert the athletic field from the existing natural turf to synthetic turf; and

WHEREAS, the synthetic turf field shall benefit both boys and girls sports and activities at Cypress Bay including tackle football, flag football, soccer, track and field, cross country, lacrosse, physical education activities and marching band; and

WHEREAS, the synthetic turf field shall be enjoyed by other public high schools who compete against Cypress Bay; and

WHEREAS, the Agreement designated the CITY as the construction manager of the athletic stadium project.

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

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

B. **Amended Provisions.** The Parties hereby agree to the following amended provisions of the Agreement.

Section 2.02 of the Agreement is hereby amended to provide as follows:

2.02 **Project Funding.** The improvements to the Stadium Site shall be funded as follows:

(a) **City Funding.** CITY agrees to fund certain improvements as described in Exhibit C, which is attached hereto and incorporated herein by reference ("City Improvements"). CITY agrees to fund CITY improvements in an amount not to exceed Four Hundred Thousand Dollars (\$400,000.00). CITY further agrees to fund the installation of sports field lighting for the softball and baseball fields in an amount not to exceed Three Hundred Forty Four Thousand, Two Hundred and One Dollars (\$344,201.00). CITY also agrees to fund the expansion of the home field

bleachers at the athletic stadium complex in an amount not to exceed Fifty Three Thousand Dollars (\$53,000.00).

Further, the CITY agrees to fund and cause the preparation of construction drawings and specifications, bidding and contract documents, and construction inspection services for the conversion of the athletic field from natural turf to synthetic turf, to include the resurfacing of the track surrounding the athletic field. The CITY agrees to be the recipient of and the custodian of the funds raised by Cypress Bay High School donors for the project; to segregate such funds from all other CITY funds; to use such funds solely for payment for the construction of the project; and to return any such unexpended funds to Cypress Bay High School donors. The CITY agrees to publicly bid the project in accordance with the CITY's Code of Ordinances; to award a bid and enter into a contract for construction with a contractor only upon the CITY having received funds raised by the Cypress Bay High School donors equal to the initial contract amount plus ten percent (10%) at least fourteen (14) days prior to the CITY's scheduled award of such bid; and the CITY agrees to be responsible for any costs of construction above the initial contract amount plus ten percent (10%). In the event that the Cypress Bay High School donors deposits funds with the CITY and such funds are insufficient to fund the initial contract amount plus ten percent (10%), the CITY shall return such funds to the Cypress Bay High School donors without interest and this Third Amendment shall no longer have any force or effect.

(b) **SBBC Funding.** During the term of the Agreement, SBBC shall fund certain improvements as described in Exhibit B, which is attached hereto and incorporated herein by reference ("SBBC Improvements"). The Parties agree that the CITY shall construct, or cause to be constructed, the SBBC Improvements in conformance with all applicable building codes. In no event shall SBBC be obligated to spend any public funds for the SBBC Improvements in excess of One Hundred and Fifty Thousand Dollars (\$150,000.00). The SBBC funding shall be paid to the CITY in accordance with Section 2.04 of the Agreement.

In addition, SBBC agrees to fund the expansion of home field bleachers at the athletic stadium complex in an amount not to exceed Fifty Thousand Dollars (\$50,000). The parties agree that the CITY shall construct, or cause to be constructed, the home field bleacher expansion in conformance with all applicable building codes.

Further, the SBBC authorizes Cypress Bay High School to solicit donations for the athletic field to be converted from natural turf to synthetic turf, to have such donations deposited with the CITY, and in no event shall SBBC be obligated to spend any public funds for the athletic field to be converted from natural turf to synthetic turf, but shall rely solely on the funds raised by Cypress Bay High School donors to fund the project.

Section 3.03 of the Agreement is hereby amended to provide as follows:

3.03 Use of Leased Premises. The CITY, for the purpose of this Section only to include the teams of the sports leagues sanctioned by the CITY, may utilize the Leased Premises for recreational purposes subject to the limitations contained in this Agreement. The CITY's use of the Leased Premises shall not conflict in any way with SBBC's use of its school sites for the delivery of academic and athletic programs provided, however, that once CITY has received SBBC's approval of a reservation for a CITY use of the Leased Premises, that approval may not be unreasonably withdrawn. The CITY's use of the Leased Premises shall at all times be in compliance with the laws of the state of Florida concerning the use of school property.

3.14 Order of precedence among agreement to documents. In the event of conflict between the provisions of the agreement and the provisions contained herein, the provisions of the following documents shall take precedence in this order:

- (a) this Fourth Amendment to the Agreement, and
- (b) the Third Amendment to the Agreement, and
- (c) the Second Amendment to the Agreement, and
- (d) the First Amendment to the Agreement, and
- (e) the Agreement.

Section 4.16 of the Agreement is hereby amended to provide as follows:

4.16 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 of Athletics and Student Activities
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301
Fax: (754) 321-2552

To CITY: John R. Flint, City Manager
City of Weston, Florida
~~2500 Weston Road, Suite 101~~
17200 Royal Palm Boulevard
Weston, Florida 33331 33326
Fax: (954) 385-2010

With a copy to: Jamie Alan Cole, City Attorney
Weiss Serota Helfman Pastoriza ~~Guedes~~ Cole & Boniske, P.A. PL
~~3107 Stirling Road, Suite 300~~
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33312 33301
Fax: (954) 764-7770

3.15 **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 written above.

FOR THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Corporate Seal)

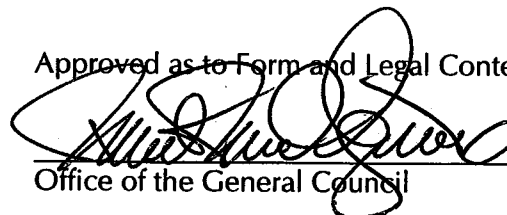
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By: _____
Patricia Good, Chair

ATTEST:

Robert W. Runcie
Superintendent of Schools

Approved as to Form and Legal Content:

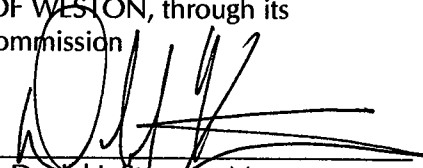

Office of the General Council 01/07/14

FOURTH AMENDMENT TO LEASE AND FUNDING AGREEMENT FOR LEASE OF
RECREATIONAL FACILITIES AT CYPRESS BAY HIGH SCHOOL

FOR THE CITY OF WESTON, FLORIDA

CITY OF WESTON, through its
City Commission

By: _____


Daniel J. Stermer, Mayor


13th day of December, 2013

ATTEST:



Patricia A. Bates, City Clerk

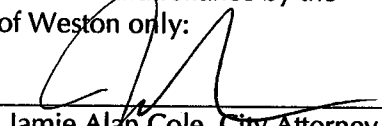
By: _____


John R. Flint, City Manager

13th day of December, 2013

Approved as to form and legality
for the use of and reliance by the
City of Weston only:

By: _____


Jamie Alan Cole, City Attorney

13th day of December, 2013

(CITY SEAL)