

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20050753

1. ACTION REQUESTED/PURPOSE: (1) Approve the Land Lease Agreement between Lee County and the Island School, Inc. for the Boca Grande Charter School. Authorize Chairman's signature on the Land Lease Agreement. Board of County Commissioners' approval is required to finalize the agreement with the Island School, Inc. (2) Approve a one year extension of the existing lease agreement for the use of the two rooms at the Boca Grande Community Center. Authorize the Chairman's signature on the lease extension.

2. WHAT ACTION ACCOMPLISHES: Finalizes the agreement with the Island School, Inc. and allows Lee County to begin construction of the new charter school. Allows the School to continue using the community center for an additional one year period while the new school is constructed.

3. MANAGEMENT RECOMMENDATION: Staff recommends approval of the lease agreement and lease extension.

4. Departmental Category: 11 CIA **5. Meeting Date:** 06-21-2005

6. Agenda:		7. Requirement/Purpose: (specify)		8. Request Initiated:	
<input checked="" type="checkbox"/> Consent		<input type="checkbox"/> Statute		Commissioner	
<input type="checkbox"/> Administrative		<input type="checkbox"/> Ordinance		Department	Parks & Recreation/Public Works
<input type="checkbox"/> Appeals		<input type="checkbox"/> Admin. Code		Division	
<input type="checkbox"/> Public		<input checked="" type="checkbox"/> Other		By:	<u>John Yarbrough</u>
<input type="checkbox"/> Walk-On					John Yarbrough, Director

9. Background:
On July 8, 2003 the Board of County Commissioners extended the lease agreement with the Island School ("School") for the use of rooms at the Boca Grande Community Center. This lease expires on July 19, 2005 and will need to be extended for a one year period (to allow for construction of the new school).

Under the terms of the lease agreement, the County and the School agreed to enter into an interlocal agreement for the construction of a small school at the County's Community Center site. The attached "Land Lease Agreement" fulfills that condition and allows the School to lease a portion of the community center site for purposes of constructing the new charter school.

On February 7, 2005 the Lee County Qualification Selection Committee met and Casey Construction, Inc. was selected as the construction manager. Approval of this lease will allow the projects to move forward.

(Continued on Page 2)

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
<u>3/1/05</u>				<u>3/22/05</u>	Analyst	Risk	Grants	Mgr.	<u>6/2/05</u>
					<u>6/2/05</u>	<u>6/2/05</u>	<u>6/2/05</u>	<u>6/2/05</u>	<u>6/2/05</u>

11. Commission Action:
 Approved
 Deferred
 Denied
 Other

RECEIVED BY COUNTY ADMIN:
COUNTY ADMIN FORWARDED TO: <u>PA</u>
<u>6-2-05</u> 4:15

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Blue Sheet Number: 20050753

Island School Land Lease

In summary, the terms of the land lease are as follows:

- Lease is for an initial period of 30 years.
- County may terminate the lease for good cause only.
- County will construct the school and act as project manager. School will pay for all the required funding, estimated at \$2,433,652.00.

Attachment: Three (3) Land Lease Agreements

Three (3) Lease Extension Agreements

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: May 25, 2005

To: John Yarbrough
Director, Parks and Recreation

FROM: 
Kristie L. Kroslack
Assistant County Attorney

RE: **Blue Sheet for Boca Grande Island School,
Land Lease Agreement and Lease Extension**

Dear John -

Attached is a blue sheet for your review and signature with a meeting date of June 21, 2005. This will need to be in Lee Cares no later than June 9, 2005.

Attached to the blue sheet are three (3) original Land Lease Agreements for the construction of the "Island School" at Boca Grande. Please review the agreement to ensure that you are in agreement with the seven (7) parking spaces and project funding of \$2,433,652.00.

Also attached to the blue sheet is a copy of a Lease Extension Agreement which I have forwarded to Mr. Humphrey to obtain the signature of the co-president of the Island School.

The present lease agreement expires on July 19, 2005 and requires Board approval to renew or extend.

Should you require any future assistance, please do not hesitate to contact me.

KLK/kab
Attachment

xc: David M. Owen, County Attorney
Andrea R. Fraser, Acting Chief Assistant County Attorney
Jim Lavender, Director, Public Works



BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (239) 335-2236
Facsimile: (239) 335-2606

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Tammy Hall
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

David M. Owen
County Attorney

Diana M. Parker
County Hearing Examiner

May 25, 2005

James T. Humphrey, Esquire
Fowler, White, Boggs and Banker, P.A.
PO Box 1567
Fort Myers, FL 33902

Re: Boca Grande Island School

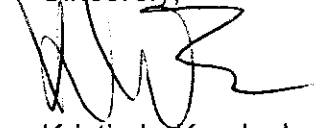
Dear Mr. Humphrey:

Enclosed please find three (3) original "Lease Extension" Agreements to be executed by the Island School, Inc. As you know, the present lease expires on July 19, 2005. Please send me the executed documents as soon as possible as this item will be presented to the Board of County Commissioners on June 21, 2005.

In addition, I am enclosing a copy of the "blue sheet" detailing the Land Lease Agreement which will also be presented to the Board of County Commissioners at the regular meeting of June 21, 2005.

As such, you are cordially invited to attend the meeting, along with members of the Island School, Inc. and address the Board during public comment, should you so choose.

Thank you in advance for your kindness and professionalism. It is always a pleasure to work with you.

Sincerely,

Kristie L. Kroslack
Assistant County Attorney

KLK/kab
Enclosure

S:\GS\Kroslack\letter\2005 Letters\Humphrey - Island School Lease.wpd

James T. Humphrey, Esquire
May 25, 2005
Page 2

Re: Boca Grande Island School

cc: David M. Owen, County Attorney
Andrea R. Fraser, Acting Chief Assistant County Attorney
Jim Lavender, Director, Public Works
John Yarbrough, Director, Public Works
[above without enclosure]

LEASE EXTENSION FOR BOCA GRANDE COMMUNITY CENTER

This Extension to that certain Amended Lease Agreement dated July 8, 2003 is made this _____ day of _____, 2005, by and between Lee County Board of County Commissioners (hereinafter referred to as "County"), and The Island School, Inc., a not-for-profit Florida corporation (hereinafter referred to as "School") In consideration of the mutual promises contained herein, the parties agree to the following:

WITNESSETH:

WHEREAS, the School wishes to extend for one (1) year its lease of a particular part of the County's Boca Grande Community Center located at 131 First Street West, Boca Grande, Florida 33921, hereinafter referred to as "Center"; and

WHEREAS, the County hereby grants the School a one (1) year extension to that certain lease agreement entered into on July 8, 2003 for the use of two dedicated rooms in the Center; and

WHEREAS, the use of the facility serves a public purpose that will benefit residents and persons employed in Boca Grande, which is a part of Lee County, Florida.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

TERM AND RENEWALS

1. This Lease Extension is for a period of one (1) year and terminates on July 19, 2006 or upon the completion of construction and opening of the new charter school (known as "The Island School"), whichever occurs sooner.
2. All other terms and conditions of the Amended Lease Agreement remain in full force and effect.

WITNESS WHEREOF, the County and the School have executed this Extension
Agreement on the _____ day of _____, 2005.

CHARLIE GREEN
OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

Deputy Clerk

BY: _____
Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney

WITNESSES:

The Island School, Inc.
a Florida Not-for-Profit Corporation

Joyce E. Anderson
Witness

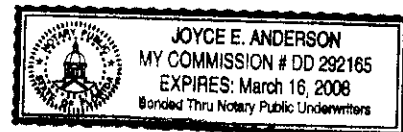
BY: SOE SLIGAR

Anna Lutz
Witness

STATE OF FLORIDA
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 1ST day of
JUNE, 2005 by SOE SLIGAR, who is personally known to me
or who has produced _____ as identification.

Joyce E. Anderson
Notary Public
Printed Name: JOYCE E. ANDERSON





**FOWLER WHITE
BOGGS BANKER**

ATTORNEYS AT LAW

ESTABLISHED 1943

Memorandum

TO: Kristie L. Kroslack, Esq.
Assistant County Attorney

FROM: James T. Humphrey, Esq.

DATE: May 23, 2005

RE: Boca Grande Island School Lease Agreement

HAND DELIVERED

Enclosed please find two originals of the Land Lease Agreement between Lee County and the Island School, Inc., both of which have been executed by Sue Sligar, President of the Island School, Inc.

After they have been executed by the Chairman of the Lee County Commission and attested to by the Clerk of Court, please return one original to me for forwarding to the President. Upon receipt of a fully executed original, the School will proceed to make the arrangements to deposit the funds with the County in accordance with Section 3 of the Agreement.

Please contact me should you have any questions or need additional information.

Kind regards.

cc: Sue Sligar
Barbara Manzo

**LAND LEASE AGREEMENT BETWEEN LEE COUNTY
AND THE ISLAND SCHOOL, INC.
FOR BOCA GRANDE CHARTER SCHOOL**

THIS LEASE AGREEMENT, is entered into this _____ day of _____, 2005, between the **LEE COUNTY**, a political subdivision and Charter County of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter referred to as "County" and **THE ISLAND SCHOOL, INC.**, a not for profit Florida Corporation, hereinafter referred to as "School".

WITNESSETH:

WHEREAS, the County and the School are mutually interested in providing educational facilities for the residents of Lee County; and

WHEREAS, the County and the School have determined the need to construct a charter school in Boca Grande, Lee County, Florida; and

WHEREAS, the School wishes to lease a particular portion of land located at the County's Boca Grande Community Center site at 131 First Street West, Boca Grande, Florida 33921, attached hereto as Exhibit "A", hereinafter referred to as "Center" for the purpose of constructing a small, separate building for a charter school; and

WHEREAS, the lease of this land to "School" for a charter school serves a public purpose that will benefit residents and persons employed in Boca Grande;

WHEREAS, the County is empowered, pursuant to Florida Statutes, in particular Section 125.031, to enter into lease agreements for property needed for a public purpose;

NOW, THEREFORE, the County, in consideration of the mutual covenants contained herein, hereby Leases to the School, for the term and under the conditions hereinafter set out, those certain premises in LEE COUNTY, FLORIDA, described in Exhibit "A", which is attached hereto and hereby incorporated herein.

SECTION I: PURPOSE

It is the purpose and intent of this Lease Agreement to define the terms and conditions for use of that certain real property described in Exhibit "A".

SECTION II: OBLIGATIONS OF LEE COUNTY

- A. The County owns the parcel identified in Exhibit "A". The County agrees to lease a portion of such real property for a term not to exceed thirty (30) years to the School for the construction of a new educational facility, a charter school, as defined by Florida law.

- B. The County agrees to cooperate with the School in granting such drainage, electric, telephone, cable television, potable water, sanitary sewer, access, or other easements, across property owned by the County, as may be necessary to operate the School.

- C. The County agrees to construct a new charter school to be known as "The Island School" and hereinafter called the "Project" upon receipt of funds from School in the amount of \$2,433,652.00 for said construction.

- D. The Island School will prepare and provide to the County, detailed plans and specifications for construction of the Project. The County will consult

with the School during each phase of construction.

- E. The County, through its construction manager, will secure bids for all work to be performed by contractors, in accordance with County procurement policy.
- F. Prior to award of construction contract(s), the County will submit to the School a detailed estimate of costs, a tabulation of all bids received, and furnish a copy of the contract to be awarded to the lowest, qualified bidder and a statement certifying the total Project costs.
- G. The County will act as Project Manager for the construction project.
- H. The County will inform the School in writing of any change in the Project costs.
- I. The County will establish a Project construction account for the receipt and use of all funds contributed by the School, pursuant to this Agreement.
- J. The County will keep books, records, documents and other evidence pertaining to costs and expenses incurred for the construction to the extent and in such detail as will properly reflect total Project costs and funding of the Project.

SECTION III: OBLIGATIONS OF SCHOOL

- A. The School will provide all of the required funding for this Project.
- B. The School will, within two (2) weeks after County's execution of this

agreement, furnish to County an interest-bearing escrow account in County's name in the amount of \$2,433,652.00 which represents 110% of the total cost of the project.

The amount of 110% shall represent the actual estimated project expenses (submitted by the County's Construction Manager and recommended for approval by County staff and the designated representative of the Island School) (100%), plus the additional 10% as a contingency amount to cover any unexpected costs or changes.

The contingency amount shall be used only with the express, written approval of the School. This account shall be provided to the LEE COUNTY CLERK to draw against for the County's Contractor's invoice payments.

When the Project is complete, the School shall be entitled to any remaining funds in the account plus any interest earned. If it appears that during the course of construction, the amount of funds in the above escrow account will be insufficient to cover the remaining costs, the School will, at County's written request, provide the necessary additional funds for the account, within thirty (30) days of said written notification.

The escrow account will be deemed an asset of the County. The Lee County Clerk and/or his designee shall be the sole signatory on the escrow account and shall have sole authority to authorize withdrawals from said account.

- C. The School shall design, construct and maintain seven parking spaces for staff and guests of the school sufficient to accommodate such facility as mandated by the permit.

- D. The School will pay for the relocation and construction of the tennis court from its current location to the location shown on Exhibit "B". Construction of Project may not proceed until tennis courts are constructed at such site.
- E. The School agrees to permit the County to use the school, when such use does not conflict with School operations.
- F. The School is solely responsible for the supervision and monitoring of students attending the School, including the arrival and departure of the students and early drop off and late pickup. In the event that a student disturbance occurs on the County's adjacent Community Center property, county staff will contact and utilize the services of the School's Principal or Head Master. The Principal shall be responsible for resolving complaints made by county staff concerning disruptive or destructive student behavior occurring on the physical premises of the Community Center. The Director of Parks and Recreation or his/her designee, after consulting with the Principal or Head Master, may make such rules and regulations as are reasonably necessary for the safe, efficient and effective operation of the Community Center.
- G. The School will be operated to educate children in grades kindergarten through the fifth grade, unless the School Board of Lee County allows other ages to be accepted by the charter school. The student enrollment maximum for the School shall be sixty (60) students total for Grades K

through 5. The School agrees that at no time shall the student enrollment at the school exceed sixty (60) students.

SECTION IV: RENT AND TERM

A. The rent for the leased premises shall be paid by the School to the County in the amount of One Dollar (\$1.00) per year for the term of this Lease. The rent will be payable each year in advance of the year of occupancy. Rental payments will be paid to the County at:

Lee County Board of County Commissioners
Attn: Mr. John Yarbrough, Director
P.O. Box 398
Fort Myers, FL 33902

B. This Lease Agreement is for the initial term of thirty (30) years, with an option that may be renewed with 120 days notice for an additional thirty (30) year term upon written agreement of all parties.

C. At the expiration of the term and unless renewed, the School will peaceably yield the premises in good and tenant able repair.

D. It is understood and agreed between the Parties that the Lessee has the right to remove all personal property from the premises upon its departure. The Parties acknowledge that, upon the termination of this Lease, the building comprising the charter school, fixtures and real property belong to the County, and School shall have no rights with regard thereto.

SECTION V: INSURANCE

- A. The County and School agree to provide such appropriate insurance coverage as needed to protect each other's respective interest if one party is using the other party's property.
- B. Insurance shall be obtained by the School, per the attached insurance guide, prior to commencement of this Lease Agreement, naming Lee County Board of County Commissioners as an additional insured. See Exhibit "C".

SECTION VI: MAINTENANCE AND REPAIRS

- A. County will maintain the roof of the school building and the windows.
- B. County will provide routine building maintenance, such as preventative or corrective maintenance and repair on the HVAC system, paint exterior of building as needed and pest control.
- C. School will pay County for any repair work done to the HVAC system which exceeds normal routine maintenance and for monthly pest control.
- D. School will notify county of any leaks to the HVAC system within 24 hours of School discovering same.
- E. County will provide School with solutions and resources for maintaining quality indoor air.

SECTION VII: UTILITIES

The School will bear the full cost of any water and/or wastewater service(s) used by the School and will also bear the cost for trash pick-up, use of electricity, telephone services, and any other utility services provided to the school.

SECTION VIII: USE OF PREMISES

- A. The premises will be used and occupied by the School for the purpose of constructing and operating a charter school.
- B. The premises may not be used for the purpose of carrying on any private business, profession, or trade of any kind, or for purposes other than for public use by the School for a charter school.
- C. The School will not make unlawful, improper or offensive use of the premises or any use or occupancy thereof contrary to the laws of the State of Florida, or to the Ordinances of the County.

SECTION IX: HANDICAPPED STANDARDS AND ALTERATIONS

- A. The School may make alterations to the premises during the term of this Lease only with the written consent of the County. The County may not unreasonably withhold the consent to requests for alterations.
- B. Any signs or advertising to be used in connection with the premises leased will be first submitted to the County and not used without the written approval of County.

SECTION X: INJURY OR DAMAGE TO PROPERTY ON PREMISES

- A. All property that may be constructed, placed or located on the premises during the continuance of this Lease will be at the sole risk of the School, except for any property owned by County.
- B. The School will pay any insurance premiums as required on the leased premises. The County will not be liable for injury, loss, damages or theft

to persons or property or fixtures belonging to the Lessee located on the leased property.

SECTION XI: SUBLETTING AND ASSIGNMENT

The School may not assign this Lease, or sublet or grant any concession or license to use the premises or any part of the premises during the term of this Lease, without written approval of the County.

SECTION XII: RIGHT TO TERMINATE AND TERMINATION OF PRIOR LEASE

The School shall have the right to terminate this lease upon giving one (1) year written notice to the County by certified mail. The County will not have any right to terminate absent good cause.

The lease agreement dated July 8, 2003 for temporary use of the Boca Grande Community Center by School shall automatically terminate upon the construction of the new charter school.

SECTION XIII: LIABILITY

- A. The School shall defend, hold harmless and indemnify the County from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including but not limited to attorney's fees and court costs, brought by third parties arising from the acts or omissions of the School, its agents, employees, contractors or during the School's use of the County's property.
- B. The County will be liable for money damages in tort for any injuries to or

losses of property, personal injury, or death caused by the negligent or wrongful acts(s) or omission(s) of any official or employee of the County while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be held to be liable in accordance with the general laws of the State of Florida, subject to the limitations as set out in section 768.28, Florida Statutes, as it may be revised or amended from time to time.

SECTION XIV: NOTICES AND INVOICES

All notices required to be served upon the School will be served by Registered or Certified Mail, Return Receipt Requested at: The Island School, Inc., P.O. Box 1090, Boca Grande, Florida 33921-1090 and copy to Mr. James T. Humphrey, Esq. % Fowler, White, Boggs & Banker, 2201 2nd Street, 5th Floor, Wachovia Building, Fort Myers, FL 33901 and all notices required to be served upon the County will be served by Registered or Certified Mail, Return Receipt Requested, at: Mr. John Yarbrough, Director, Parks and Recreation, P.O. Box 398, Fort Myers, Florida 33902.

SECTION XVIII: DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of

any costs for the services provided by such a third party as such costs are incurred.

The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

SECTION XIX: WRITTEN AGREEMENT

This Lease contains the entire Agreement between the Parties hereto.

It may be modified only with the Agreement to such modification by the County, and by Resolution approved by the Board of County Commissioners.

This Lease Agreement shall be interpreted pursuant to the laws and administrative rules of the State of Florida, and the United States, when applicable.

IN WITNESS WHEREOF, the County and the School have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first written above.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

Lessor:
LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Chairman


APPROVED AS TO FORM:

By: _____
Office of the County Attorney

Lessee:
The Island School, Inc.



Witness





Witness

By: SEAN C. SLIG-AC

CEO - PRESIDENT

Building construction availabilty as of May 18, 2005

Capital account cash on hand	653,649
Accounts receivable	1,742,503
To be transferred from securities	<u>37,500</u>
	2,433,652

Accounts receivable detail:

Amount due by June 30, 2005	1,658,652
Amount due September 30, 2005	25,000
Amount due upon permitting*	250,000
Amount due at 50% completion*	250,000
Amount due at substantial completion*	<u>250,000</u>
	2,433,652

* Single donor pledge of \$750,000 with phased-in payments

1. Minimum Insurance Requirements: Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendor's interest or liabilities, but are merely minimums.

a. Workers' Compensation - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Individual employees may be exempted per State Law. Employers' liability will have minimum limits of:

\$100,000 per accident
\$500,000 disease limit
\$100,000 disease limit per employee

b. Commercial General Liability - Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:

\$1,000,000 bodily injury per person (BI)
\$1,000,000 bodily injury per occurrence (BI)
\$1,000,000 property damage (PD) or
\$1,000,000 combined single limit (CSL) of BI and PD

c. Business Auto Liability - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 bodily injury per person (BI)
\$1,000,000 bodily injury per occurrence (BI)
\$1,000,000 property damage (PD) or
\$1,000,000 combined single limit (CSL) of BI and PD

****The required limit of liability shown in Major Contracts: 1.a; 1.b; 1.c; may be provided in the form of "Excess" or "Commercial Umbrella Insurance Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."***

2. Verification of Coverage:

a. Ten (10) days prior to the commencement of any work under this contract a certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall

Exhibit "C"

provide for the following:

1. ***“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and its public officials,”*** will be named as an **“Additional Insured”** on the **General Liability policy.**
 2. Lee County will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Manager (P.O. BOX 398 Ft. Myers, FL 33902).
3. **Special Requirements:**
- a. An appropriate **“Indemnification”** clause shall be made a provision of the contract.
 - b. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.



FOWLER WHITE
BOGGS BANKER

ATTORNEYS AT LAW

ESTABLISHED 1993

Memorandum

TO: Kristie Kroslack, Assistant County Attorney

FROM: James T. Humphrey, Esq.

DATE: June 2, 2005

RE: Boca Grande Island School

Enclosed please find three original Lease Extension Agreements for the Boca Grande Community Center which have been executed by The Island School, Inc. I plan on being present at the Board of County Commissioners meeting on June 21, 2005, and hopefully some members from the Island School will also be present.

Enclosures