

**WALK-ON #6**

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

**Blue Sheet No. 20050929**

- 1. ACTION REQUESTED/PURPOSE:** Approve and execute the Second Addendum to the Interlocal Agreement for the multi-generational community center at Lexington ("JJ") Middle School.
- 2. WHAT ACTION ACCOMPLISHES:** Allows the Board to formally approve the Second Addendum to the Interlocal Agreement. Formalizes the proportionate shares of the cost of design and construction of the multi-generational community center between the Lee County School Board and Lee County, for facility located at 16730 Bass Road, Fort Myers, Florida.
- 3. MANAGEMENT RECOMMENDATION:** Approve

<b>4. Departmental Category:</b>		<b>5. Meeting Date:</b> <b>6-28-05</b>
<b>6. Agenda:</b>	<input type="checkbox"/> Consent	<b>7. Requirement/Purpose: (specify)</b>
	<input type="checkbox"/> Administrative	
	<input type="checkbox"/> Appeals	
	<input type="checkbox"/> Public	
	<input checked="" type="checkbox"/> Walk-On	
		<b>8. Request Initiated:</b>
		Commissioner _____
		Department _____
		Division <u>Construction &amp; Design</u>
		By: <u>Jim Lavender</u>

**9. Background:**

On November 25, 2003, the Board of County Commissioners approved the purchase agreement (Resolution #03-11-25) authorizing the sale of 15± acres to the School Board for the construction of a middle school, to include a school gymnasium with a multi-generational community center, outdoor basketball and soccer field. As consideration for the sale, the School Board agreed to the use of such facilities by Lee County.

On May 18, 2004, the parties entered into an Interlocal Agreement for the construction and design of a school gymnasium, multi-generational community center, outdoor basketball and soccer fields. Lee County's proportionate share of the cost of design and construction was unknown at the time.

The Second Addendum to the Interlocal Agreement sets forth the parties proportionate share of such expenses, since such is now known. Under the Second Addendum, Lee County will pay an estimated \$4,005,382.00 towards the cost of design, construction and professional services for the Center. Lee County will also cost share in the construction of the road access to the school property in an amount of \$236,998.00. Such funds will be paid from county park impact fees. The project is to be completed by October 15, 2005.

Exhibits: (3) Agreements- Second Addendum to Interlocal

Funds will come from Impact Fees- String Account #: 20187318604.508150

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>J. J. Middle</i> 6-27-05	<i>[Signature]</i> 6/27/05	N/A	<i>[Signature]</i> 6/27/05	<i>[Signature]</i> 6/27/05	<i>[Signature]</i> 6/27/05	<i>[Signature]</i> 6/27/05	<i>[Signature]</i> 6/27/05	<i>[Signature]</i> 6/27/05	<i>[Signature]</i> 6-27-05

**11. Commission Action:**

Approved

Deferred

Denied

Other

Rec. by CoAtty

Date: 6/27/05

Time: 10:30

Forwarded To: [Signature]

RECEIVED BY COUNTY ADMIN:

6-27-05

11 am.

COUNTY ADMIN FORWARDED TO:

6/27/05

11:30 am

Reply to  
Heather W. Hawkins  
Direct Dial Number 239.344.1299  
E-Mail: heather.hawkins@henlaw.com

June 27, 2005

2005 JUN 27 AM 9:30  
RECEIVED BY  
LEEDS  
CONFIRMATION

**VIA HAND DELIVERY**

Kris Kroslack, Esq.  
County Attorney's Office  
Second Street  
Fort Myers, FL 33901

Re: Second Addendum to Interlocal Agreement for Middle School JJ

Dear Kris:

Enclosed please find three copies of the Second Addendum to the Interlocal Agreement for Middle School JJ approved by the School Board and executed by Dr. Scricca. Please advise as to whether the BOCC will be deciding on this item prior to their break.

Thank you for your assistance. If you have any questions, please feel free to contact me.

Sincerely,



Heather W. Hawkins

HWH/

Enclosures

**APPROVED**

**SECOND ADDENDUM TO INTERLOCAL AGREEMENT BETWEEN JUN 14 2005  
LEE COUNTY AND THE SCHOOL BOARD OF LEE COUNTY  
FOR THE MIDDLE SCHOOL "JJ" SCHOOL BOARD OF  
LEE COUNTY**

This Amendment to that certain Interlocal Agreement entered into by the parties hereto, is made and entered into this 14<sup>th</sup> day of June 2005, by and between LEE COUNTY, a political subdivision and Charter County of the State of Florida, acting by and through its Board of County Commissioners, hereinafter referred to as the "County" and the SCHOOL BOARD OF LEE COUNTY, FLORIDA, hereafter referred to as "School Board", and collectively referred to as the "Parties"

**WITNESSETH**

**WHEREAS**, the School Board and the Board of County Commissioners both serve the people of Lee County; and

**WHEREAS**, the Parties previously entered into an Interlocal Agreement on May 18, 2004 for the completion of the design and construction of a school gymnasium, to include a multi-generational community center (hereinafter the "Center"), outdoor basketball and soccer field at Middle School "JJ", now known as Lexington Middle School, in Fort Myers; and

**WHEREAS**, the Board of County Commissioners and the School Board found that entering into the Interlocal Agreement served a public purpose, was to the public's benefit, and in the public's interest; and

**WHEREAS**, the Parties now desire to amend the Interlocal Agreement to provide for their proportionate shares of the cost of design and construction of the subject school gymnasium to include the Center (hereinafter the "Project"), since such amounts are now known and the scope of the work has been determined; and

**WHEREAS**, the Parties also desire to amend the Interlocal Agreement to provide for their proportionate shares of the cost of design and construction of the access road (the "Road"), since such amounts are now known and the scope of work has been determined.

**NOW, THEREFORE**, in consideration of the foregoing, and of the mutual covenants and conditions hereinafter set forth, the County and the School Board, intending to be legally bound, hereby agree to this Second Addendum to the Interlocal Agreement, as follows:

1. The recitals as set forth above are hereby incorporated into the terms of the original agreement.

2. **SECTION II: OBLIGATIONS OF THE COUNTY:** The following paragraph is added to Section II: (3) Lee County agrees that on or about April 15, 2005, it will furnish to the School Board, the first of four (1 of 4) quarterly payments in an amount not to exceed \$1,001,345.50 each, which represent one quarter of the County's estimated

pro-rata share of the total estimated design and construction cost of the Center and professional services cost of \$186,390.00. The School Board agrees that the total amount to be paid by the County for the design, construction and professional services cost for the Center is estimated at \$4,005,382.00, to be paid from County park impact fee funds.

The School Board shall place such funds in an interest-bearing escrow account in the School Board's name, with interest thereon to be reported to the County's Taxpayer Identification number. The amount of \$4,005,382.00 represents the actual expenses for the Project together with a contingency amount of \$103,472.00 to cover any unexpected costs or change orders. The contingency amount shall be used only with the express, written approval of County, such consent not to be unreasonably withheld. The escrow account shall be used by the School Board to pay the invoices for monthly progress payments received from the contractor responsible for construction of the Project. The School Board shall provide a copy of the contractor's monthly draw request to the County for approval prior to withdrawing such funds from the escrow account. Within 10 days of receipt of the draw request, the County shall notify the School Board, in writing, of its approval of the draw request. If the County does not notify the School Board of its approval within said 10 day period, the draw request shall be deemed approved by the County. When the Center is complete and all costs of design and construction thereof have been paid, County shall be entitled to any remaining funds in the account plus all interest earned. School Board shall provide reports to the County each quarter detailing the withdrawals made from the escrow account. The Project will be completed by October 15, 2005. At the time of completion of the Project, if the total amount to be paid by the County for the design, construction, and professional services for the Project exceeds \$4,005,382.00, the School Board will provide a written request to the County for any additional amounts due, along with copies of invoices for the Project documenting the costs of design and construction. The County will reimburse the School Board for any additional amount due within thirty (30) days of receipt of said request.

3. **SECTION III: OBLIGATIONS OF THE SCHOOL BOARD:** The following paragraph is added to Section III: (9) The School Board has constructed road access to the School Board Property and the County Property from Summerlin Road and will construct access from Bass Road. The cost of that portion of the access roads that are to provide access to both the County Property and the School Board Property will be shared equally. The costs of the access road from Summerlin Road is \$473,996.00. The County will reimburse the School Board the amount of \$236,998.00 for their portion of the cost of the access road from Summerlin Road. The cost of the access road from Bass Road will be determined once a proposal for the roadwork has been accepted.

4. **SECTION V: DEFAULT** is hereby deleted.

5. **SECTION VII: DISPUTE RESOLUTION** is hereby amended to read as follows

As a condition precedent to termination of this Agreement by one party or 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 dispute 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. This remedy is supplemental to any other remedies available at law. If, as a result of negotiation or alternative dispute resolution, the parties elect to terminate this Agreement, the School Board shall reimburse the County the dollar amount expended from any park impact fees that the County contributed in the construction of the Center and the parties shall further negotiate the return of any other funds contributed by the County pursuant to this Agreement. However, any park impact fees that have been contributed by the County shall be prorated over the expected life of the building and the amount to be reimbursed shall be reduced in proportion to the period of time in which the building has been used.

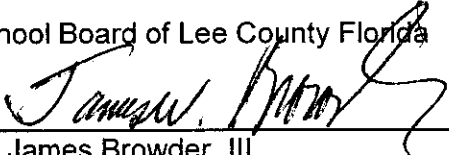
6. All other terms and conditions of the Interlocal Agreement remain unchanged and in full force and effect.

7. This Addendum to the Interlocal Agreement shall become effective upon its execution by the Parties. The Interlocal Agreement, as amended, and any subsequent Amendments thereto, shall be filed with the Clerk of the Circuit Court for Lee County.

**IN WITNESS WHEREOF**, the County and School Board hereto have set their hands and seals on the date and year indicated:

The School Board of Lee County Florida

Lee County, Florida by its  
Board of County Commissioners

By:   
Dr. James Browder, III  
Its: Superintendent


By: \_\_\_\_\_  
John Albion  
Its: Chairman

Date: 6-16-05

Date: \_\_\_\_\_

RATIFIED AND APPROVED:

Charlie Green, Clerk

By:   
Elinor C. Scricca, Ph.D.  
Its: Chairman

By: \_\_\_\_\_  
Deputy Clerk

Date: 6-23-05

Date: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By:   
Keith B. Martin, Esq.  
School Board Attorney

By: \_\_\_\_\_  
Office of the County Attorney

Date: 6/16/05 **APPROVED**

Date: \_\_\_\_\_

**JUN 14 2005**

**SCHOOL BOARD OF  
LEE COUNTY**