



January 18, 2006

APPROVED

New Business-Real Estate Services

Title: RE1 Lease Agreement between Palm Beach County and the School Board of Palm Beach County

Recommendation:

I recommend the School Board exercise the option to extend the Lease Agreement between Palm Beach County and the School Board of Palm Beach County for the temporary use of 4.5+ acres of the Stockade Expansion Parcel by Maintenance and Plant Operations, and authorizing the Chairman and Superintendent to sign all other necessary documents.

- The initial term of the Three (3) Year Lease Agreement expires on February 9, 2006, (See Exhibit "A").
- The School District has one option to renew this Lease for one (1) additional year.
- The School District is in the process of locating a permanent location for the grounds Maintenance and Operations Program and will vacate the leased Fairground location by December 16, 2006 per the attached renewal confirmation. (See Exhibit "B")
- The Annual Rent Payable to Palm Beach County Board of county Commissioners will be \$43,411.80.
- The County will require use of this property for the expansion of the Stockade.

BOARD GOAL(S): 6 **KEY RESULT(S):** 10

LEGAL SIGN-OFF Yes **BRL** N/A

CONTACT: Joseph M. Moore (moorej@Mail.palmbeach.k12.fl.us)
Joseph M. Sanches

FINANCIAL IMPACT	The financial impact to the School District will be \$43,411.80. The source of funds is from the Modular/Portable Replacement Budget.
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CONSENT AGENDA ITEM

R2002 2261

DEC 17 2002

12-17-02
120-2

PALM BEACH COUNTY

LEASE AGREEMENT

between

PALM BEACH COUNTY

A POLITICAL SUBDIVISION OF THE

STATE OF FLORIDA

(County)

and

THE SCHOOL BOARD OF PALM BEACH COUNTY

A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA

(TENANT)

indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien.

ARTICLE IV CONDUCT OF BUSINESS AND USE OF PREMISES BY Tenant

Section 4.01 Use of Premises.

Tenant shall use and occupy the Premises solely and exclusively for use by the School Board's own grounds and maintenance operation on a temporary basis, which includes the storage of clean materials such as mulch and gravel for use at school campuses. Tenant shall not use, permit, or suffer the use of the Premises for any other purpose whatsoever without the prior written consent of County, which consent may be granted or withheld in County's sole discretion.

Section 4.02 Waste or Nuisance.

Tenant shall not commit or suffer to be committed any waste upon the Premises, commit or permit the maintenance or commission of any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect County's fee interest in the Premises or which results in an unsightly condition. All refuse is to be removed from the Premises at Tenant's sole cost and expense and Tenant will keep such refuse in proper fireproof containers on the interior of the Premises until removed. Tenant will keep the access to the Premises, the parking areas and other contiguous areas to the Premises free and clear of obstruction. Tenant, at its sole cost and expense, will keep the Premises free of rodents, vermin and other pests.

Section 4.03 Governmental Regulations.

Tenant shall, at Tenant's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Tenant or its use of the Premises, or the Premises generally. Tenant shall not use, maintain, store or dispose of any contaminants including, but not limited to hazardous or toxic substances, chemicals or other agents on the Premises or any adjacent land in any manner not permitted by law. Tenant shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Tenant's failure to perform its obligations in this Section.

Section 4.04 Non-Discrimination.

Tenant shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation or disability with respect to any activity occurring on the Premises or under this Agreement. Tenant warrants that in the event the facilities constructed or operated upon the Premises are public facilities the same shall be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis as to residents of the municipality in which the Premises are located.

Section 4.05 Surrender of Premises.

Upon termination or expiration of this Lease, Tenant, at its sole cost and expense, if so directed by County, shall remove Tenant's personal property, removable fixtures, equipment and Alterations from the Premises and shall surrender the Premises to the County in the same condition the Premises were in as of the Commencement Date of this Lease, reasonable wear and tear excepted. Tenant shall either cap or remove, at County's option, any attachments to underground utilities on the Premises. Upon surrender of the Premises, title to any and all remaining improvements, Alterations or property within the Premises shall vest in County.

Section 4.06 Hazardous Substance

Tenant shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Tenant's operations, on the Premises or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, Tenant shall not cause or permit the

Section 2.02 Assessments and Personal Property Taxes.

Tenant shall pay all sales, use or rent taxes assessed by any governmental authority against the Annual Rent and/or Additional Rent, if any, even if such tax is intended to be imposed against County. Tenant shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Premises, Tenant's leasehold interest in the Premises, Tenant's Alterations or personal property located on the Premises.

Section 2.03 Additional Rent.

Any and all sums of money or charges required to be paid by Tenant under this Lease other than Annual Rent shall be considered "Additional Rent," whether or not the same is specifically so designated and County shall have the same rights to enforce due and timely payment by Tenant of all Additional Rent as are available to County with regards to Annual Rent.

Section 2.04 Unpaid Fees, Holdover

In the event Tenant fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Lease within ten (10) days after same shall become due and payable, interest at the rate established from time to time by the Board of County Commissioners [currently set at one and one-half percent (1½ %) per month] shall accrue against the delinquent payment(s) from the date due until the date payment is received by the County. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, County shall not be prevented from terminating this Lease for default in the payment of rentals, fees, charges, and payments due to County pursuant to this Lease or from enforcing any other provisions contained herein or implied by law. In the event Tenant shall holdover, refuse or fail to relinquish possession of the Premises at the expiration or termination of this Lease, Tenant shall be liable to County for any and all damages, and in addition thereto, Tenant shall also be strictly liable to pay to County during the entire period of such holdover, double rental; as provided for in Chapter 83.06, Florida Statutes.

Section 2.05 Accord and Satisfaction

In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Lease or under the law.

ARTICLE III CONDITION OF LEASED PREMISES, ALTERATIONS

Section 3.01 Acceptance of Premises by Tenant.

Tenant certifies that Tenant has inspected the Premises and accepts same "As Is", in its existing condition together with any defects, latent or patent, if any, subject to all easements, encumbrances, restrictions and matters of record. Tenant further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Premises, including, without limitation, the physical condition of the Premises, any improvements or equipment located therein, if any, or the suitability thereof for Tenant's intended use thereof. No repair work, alterations, or remodeling of the Premises is required to be done by County as a condition of this Lease. Tenant agrees to perform any and all work at its own cost and expense which is necessary to fully equip and maintain the Premises for the lawful use of the Premises by Tenant as specified in Section 4.01 of this Lease.

Section 3.02 Construction of Improvements

Tenant shall be solely responsible for any and all improvements, repairs alterations or other work necessary to render the Premises suitable for Tenant's intended use.

ARTICLE VII INSURANCE

Without waiving the right to sovereign immunity as provided by s.768.28 f.s., Tenant acknowledges and represents that Tenant is self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event Tenant maintains third-party Commercial General Liability and Business Auto Liability, in lieu of exclusive reliance of self-insurance under s.768.28 f.s., Tenant agrees to maintain said insurance policies at limits not less than \$500,000 each occurrence. Tenant agrees to add the COUNTY as an "Additional Insured" with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or similar endorsement, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Parks & Recreation Department". Tenant agrees the Additional Insured endorsement provides coverage on a primary basis. Claims-bill indemnification style coverage shall not be considered third-party liability for the purpose of this paragraph.

Tenant agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

When requested, Tenant agrees to provide a statement or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing requirements shall not relieve Tenant of its liability and obligations under this Agreement.

Tenant agrees its self-insurance, general liability, automobile liability, and property insurance shall be primary as respects to any coverage afforded to or maintained by COUNTY.

ARTICLE VIII INDEMNIFICATION

Each party shall be liable for its own actions and negligence and shall indemnify, defend and hold harmless the other party against any actions, claims or damages arising out of the indemnifying party's negligent, willful, or intentional acts or omissions in connection with this Lease. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by party to indemnify the other party for such other party's negligent, willful, or intentional acts or omissions.

ARTICLE IX DESTRUCTION OF PREMISES

Section 9.01 Damage or Destruction by Fire, War or Act of God.

In the event the Premises shall be destroyed or damaged or injured by fire or other casualty during the Term of this Lease, Tenant shall restore the Premises to the same or better condition than that which existed prior to such casualty. Tenant shall commence such restoration within a reasonable time after such casualty but in no event later than one thirty (30) days of such casualty. Tenant shall thereafter diligently pursue such restoration to completion.

**ARTICLE XIV
MISCELLANEOUS**

Section 14.01 Entire Agreement.

This Lease, the Interlocal, and any Exhibits attached thereto, constitute all agreements, conditions and understandings between County and Tenant concerning the Premises. All representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Lease shall be binding upon County or Tenant unless reduced to writing and signed by them.

Section 14.02 Notices.

Any consents, approvals and permissions by the County shall be effective and valid only if in writing, and any notice by either party to the other shall be in writing and shall be deemed to be duly given only if mailed prepaid by certified mail return receipt requested, addressed:

- (a) If to the County at:

Property and Real Estate Management Division
Ross C. Hering, Director
3323 Belvedere Road, Building 503
West Palm Beach, FL 33406-1548

with a copy to:

County Attorney's Office
Howard J. Falcon, III, Assistant County Attorney
301 N. Olive Ave, Suite 601
West Palm Beach, Fl. 33401

- (b) If to the Tenant at:

The School Board of Palm Beach County
3300 Forest Hill Boulevard, Suite C-214
West Palm Beach, Florida 33406-5813
Attn: Barry Present, Director of Real Estate Services

Either party hereto may change the address for service of notices required or permitted hereunder upon ten (10) days prior written notice. All notices given hereunder shall be effective and deemed to have been duly given only upon receipt by the party to which notice is being given, said receipt being deemed to have occurred upon such date as the postal authorities shall show the notice to have been delivered, refused, or undeliverable, as evidenced by the return receipt.

Section 14.03 Severability.

If any term of this Lease or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 14.04 Broker's Commission.

Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder or broker in connection with this Lease and further agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

Section 14.1 Effective Date of Agreement.

This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

Section 14.16 Termination by Tenant.

Notwithstanding anything in this Lease to the contrary, Tenant may cancel and/or terminate this Lease for any reason upon three (3) months prior written notice to the County. In the event that Tenant exercises the right granted in this Section, or in the event that County cancels this Lease pursuant to Section XII, the Annual Rent set forth in Section 2.01 shall be prorated.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

ATTEST:

By: Alicia Palmer
Secretary

THE SCHOOL BOARD OF PALM BEACH COUNTY

By: [Signature]
Thomas Lynch, Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
School Board Attorney

By: [Signature]
Art Johnson, Superintendent

R2002 2261

ATTEST:
DOROTHY H. WILKEN, CLERK

By: [Signature]
Deputy Clerk



PALM BEACH COUNTY, FLORIDA, A Political Subdivision of The State of Florida

By: [Signature]
Chair

DEC 17 2002

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]
Audrey Wolf, Director
Facilities Development & Operations

EXHIBIT "B" To Lease

The Premises