

RESOLUTION NO. AC2013-06

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE ACME IMPROVEMENT DISTRICT, FLORIDA, APPROVING A REVISION REQUESTED BY PALM BEACH COUNTY AND APPROVAL BY THE BOYS AND GIRLS CLUB OF PALM BEACH COUNTY TO THE THIRD AMENDMENT TO THE AGREEMENT BETWEEN ACME IMPROVEMENT DISTRICT, PALM BEACH COUNTY AND THE BOYS AND GIRLS CLUB OF PALM BEACH COUNTY, INC. FOR FUNDING OF THE WELLINGTON FACILITY CONSTRUCTION AND AUTHORIZING THE PRESIDENT AND BOARD SECRETARY TO EXECUTE THE AMENDMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on August 3, 2010, the Acme Improvement District (Acme) Board of Supervisors approved Resolution No. AC2010-07 to revise the tri-party funding agreement between the parties to account for a change in the location of the facility and extensions in design and construction time associated with the project; and

WHEREAS, the County, following passage of Resolution No. AC210-07 requested further modification relating to payment for the Inspection General services and a First Amendment to the Agreement was entered into on November 16, 2010 and approved with Resolution No. AC2010-11; and

WHEREAS, Acme, following passage of Resolution AC2010-11, requested changes to the project timeline and completion milestones and a Second Amendment to the Agreement was entered into on April 24, 2012 and approved with Resolution AC2012-04; and

WHEREAS, the Village of Wellington (hereinafter "Municipality"), paid for the design and construction of the project and payments related to this Agreement need to be issued to the Municipality; and

WHEREAS, Municipality is to be included as an additional party to this Agreement and all parties desire to amend the Agreement; and

WHEREAS, a revised Third Amendment to the Agreement has been prepared and is attached hereto as Exhibit "A"; and

WHEREAS, Staff recommends that the Board of Supervisors approve the revised Third Amendment to the agreement.

NOW, THEREFORE, BE IT RESOLVED BY WELLINGTON, FLORIDA'S COUNCIL that:

1
2 **SECTION 1.** The foregoing recitals are hereby affirmed and ratified as being true
3 and correct.
4

5 **SECTION 2.** The Board of Supervisors hereby approves the Third Amendment
6 to the Agreement between Palm Beach County, Acme Improvement District, and the
7 Boys and Girls Club of Palm Beach County, Inc. for modification to the agreement to
8 include the Village of Wellington (Municipality), a Florida municipal corporation as a
9 party to the Agreement.
10

11 **SECTION 3.** This Resolution shall become effective immediately upon adoption.
12

13 **PASSED AND ADOPTED** this 26th day of November, 2013.
14

15 **ATTEST:**

WELLINGTON

16
17 By: Awilda Rodriguez
18 Awilda Rodriguez, Secretary
19
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By: Bob Margolis
Bob Margolis, President

21 **APPROVED AS TO FORM**
22 **AND LEGAL SUFFICIENCY**
23

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25 By: Laurie Cohen
26 Laurie Cohen, Board Attorney
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**THIRD AMENDMENT TO AGREEMENT BETWEEN
ACME IMPROVEMENT DISTRICT, BOYS AND GIRLS CLUBS OF PALM BEACH COUNTY,
INC., VILLAGE OF WELLINGTON, AND PALM BEACH COUNTY FOR FUNDING OF THE
WELLINGTON FACILITY CONSTRUCTION**

R2014 0069

THIS THIRD AMENDMENT TO AGREEMENT is entered into on JAN 14 2014, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", Acme Improvement District, a dependent district of the Village of Wellington, hereinafter referred to as "DISTRICT", Boys and Girls Clubs of Palm Beach County, Inc., a Florida not-for-profit corporation authorized to do business in the State of Florida, hereinafter referred to as "AGENCY", and the Village of Wellington, a Florida municipal corporation, hereinafter referred to as "MUNICIPALITY".

W I T N E S S E T H:

WHEREAS, on October 21, 2008, COUNTY entered into an Agreement with DISTRICT and AGENCY (R2008-1922) as amended on November 16, 2010 (R2010-1909) and June 5, 2012 (R2012-0837) to provide funding in an amount not-to-exceed \$600,000 for construction of a new Wellington Boys and Girls Clubs Facility (the Project) to be completed on or before the amended Project Completion date of October 20, 2013; and

WHEREAS, the MUNICIPALITY paid for the design and construction of the Project; and

WHEREAS, the payments related to this Agreement need to be issued to MUNICIPALITY;
and

WHEREAS, MUNICIPALITY is to be included as an additional party to this Agreement; and

WHEREAS, all parties desire to amend the Agreement.

NOW THEREFORE, the parties hereby agree as follows:

1. Section 1.03 of this Agreement shall be amended to delete "COUNTY will pay to AGENCY a total amount not to exceed \$600,000 for the construction of the Project as more fully described in the Project Description, Conceptual Site Plan, and Cost Estimate attached hereto and made a part hereof as Exhibit "A"." and to insert COUNTY will pay to MUNICIPALITY a total amount not to exceed \$600,000 for the construction of the Project as more fully described in the Project Description, Conceptual Site Plan, and Cost Estimate attached hereto and made a part hereof as Exhibit "A".

2. Section 1.04 of this Agreement shall be amended to delete "AGENCY agrees to provide funding in an amount of \$2,250,000 or greater to complete the Project. The parties agree that COUNTY shall provide its portion of the funding only after AGENCY has expended \$2,250,000" and to insert "MUNICIPALITY agrees to provide funding in an amount of \$2,250,000 or greater to complete the Project. The parties agree that COUNTY shall provide its portion of the funding only after MUNICIPALITY has expended \$2,250,000."

3. Section 1.06 of this Agreement shall be amended to delete "AGENCY shall design and construct the Project upon property leased by AGENCY as more fully described in Exhibit "B" attached hereto and made a part hereof." and to insert "MUNICIPALITY shall design and construct the Project upon property leased by AGENCY as more fully described in Exhibit "B" attached hereto and made a part hereof."

4. Section 1.07 of this Agreement shall be amended to delete "AGENCY shall utilize its procurement process for all design and construction services required for the Project. Said procurement process shall be consistent with all federal, state and local laws, rules and regulations. COUNTY shall have no contractual obligation to any person retained by AGENCY with regard to the Project. Any dispute, claim, or liability that may arise as a result of AGENCY's procurement is solely the responsibility of AGENCY and AGENCY hereby holds COUNTY harmless for same to the extent permitted by law." and to insert "MUNICIPALITY shall utilize its procurement process for all design and construction services required for the Project. Said procurement process shall be consistent with all federal, state and local laws, rules and regulations. COUNTY shall have no contractual obligation to any person retained by MUNICIPALITY with regard to the Project. Any dispute, claim, or liability that may arise as a result of MUNICIPALITY's procurement is solely the responsibility of MUNICIPALITY and MUNICIPALITY hereby holds COUNTY harmless for same to the extent permitted by law."

5. Section 2.01 of this Agreement shall be amended to delete "AGENCY shall be responsible for the design and construction of the Project. AGENCY shall design and construct the Project in accordance with Exhibit "A", attached hereto and made a part hereof, and with all applicable federal, state and local laws, rules and regulations." and to insert "MUNICIPALITY shall be responsible for the design and construction of the Project. MUNICIPALITY shall design and construct the Project in accordance with Exhibit "A", attached hereto and made a part hereof, and with all applicable federal, state and local laws, rules and regulations."

6. Section 2.02 of this Agreement shall be amended to delete "Prior to or upon execution of this Agreement by the parties hereto, AGENCY shall initiate its procurement process to select the necessary professional engineer and/or architect to perform all engineering and/or architectural design work, including, but not limited to, the preparation of plans, permits and specifications necessary for the design and construction of the Project." and to insert "Prior to or upon execution of this Agreement by the parties hereto, MUNICIPALITY shall initiate its procurement process to select the necessary professional engineer and/or architect to perform all engineering and/or architectural design work, including, but not limited to, the preparation of plans, permits and specifications necessary for the design and construction of the Project."

7. Section 2.03 of this Agreement shall be amended to delete "AGENCY shall be responsible for completing engineering and architectural design and securing all permits and approvals necessary to construct the Project no later than April 20, 2011." and to insert "MUNICIPALITY shall be responsible for completing engineering and architectural design and securing all permits and approvals necessary to construct the Project no later than April 20, 2011."

8. Section 2.04 of this Agreement shall be amended to delete "AGENCY shall award the bid for construction of the Project and commence Project construction no later than April 30, 2012. Prior to AGENCY commencing construction of the Project, AGENCY shall provide a copy of all plans and specifications, along with the associated costs thereof, to COUNTY's Representative for review to ensure consistency with the intent of this Interlocal Agreement." and

to insert "MUNICIPALITY shall award the bid for construction of the Project and commence Project construction no later than April 30, 2012. Prior to MUNICIPALITY commencing construction of the Project, AGENCY shall provide a copy of all plans and specifications, along with the associated costs thereof, to COUNTY's Representative for review to ensure consistency with the intent of this Agreement."

9. Section 3.01 of this Agreement shall be amended to delete "The total not to exceed amount as set forth in Section 1.03 hereinabove shall be paid by COUNTY to AGENCY on a reimbursable basis. Any costs incurred in connection with the Project in excess of that amount shall be the sole responsibility of AGENCY. Should the total cost of the Project exceed the amount as projected by AGENCY, AGENCY shall obtain and expend the excess funds required for completion of the Project. COUNTY shall not dispense any funds to AGENCY for the Project until AGENCY has obtained and expended said excess funds for the Project." and to insert "The total not to exceed amount as set forth in Section 1.03 hereinabove shall be paid by COUNTY to MUNICIPALITY on a reimbursable basis. Any costs incurred in connection with the Project in excess of that amount shall be the sole responsibility of MUNICIPALITY. Should the total cost of the Project exceed the amount as projected by AGENCY, AGENCY or MUNICIPALITY shall obtain and expend the excess funds required for completion of the Project. COUNTY shall not dispense any funds to MUNICIPALITY for the Project until AGENCY or MUNICIPALITY has obtained and expended said excess funds for the Project."

10. Section 3.02 of this Agreement shall be amended to delete "COUNTY shall reimburse project costs under the terms of this Agreement to AGENCY on a quarterly basis from the date of execution of this Agreement; however, should the need arise for AGENCY to be reimbursed on a more frequent basis, then COUNTY will, at AGENCY's specific request for each instance, make its best efforts to reimburse AGENCY within forty five (45) days of such special request. For each requested payment, AGENCY shall provide to COUNTY's Representative a fully completed and executed Contract Payment Request Form and a Contractual Services Purchase Schedule Form, attached hereto and made a part hereof as Exhibit "C". Said forms shall include information listing each invoice as paid by AGENCY and shall include the vendor invoice number; invoice date; and the amount paid by AGENCY along with the number and date of the respective check or proof of payment for said payment. AGENCY shall attach a copy of each vendor invoice paid by AGENCY along with a copy of each respective check or proof of payment and shall make reference thereof to the applicable item listed on the Contractual Services Purchase Schedule Form. Further, AGENCY's Project Administrator and Project Financial Officer shall certify the total funds spent by AGENCY on the Project and shall also certify that each vendor invoice as listed on the Contractual Services Purchase Schedule Form was paid by AGENCY as indicated." and to insert "COUNTY shall reimburse project costs under the terms of this Agreement to MUNICIPALITY on a quarterly basis from the date of execution of this Agreement; however, should the need arise for MUNICIPALITY to be reimbursed on a more frequent basis, then COUNTY will, at MUNICIPALITY's specific request for each instance, make its best efforts to reimburse MUNICIPALITY within forty five (45) days of such special request. For each requested payment, MUNICIPALITY shall provide to COUNTY's Representative a fully completed and executed Contract Payment Request Form and a Contractual Services Purchase Schedule Form, attached hereto and made a part hereof as Exhibit "C". Said forms shall include information listing each invoice as paid by MUNICIPALITY and shall include the vendor invoice number; invoice date; and the amount paid by MUNICIPALITY along with the number and date of the respective check or proof of payment for said payment. MUNICIPALITY shall attach a copy of each vendor invoice paid by MUNICIPALITY along with a copy of each respective check or proof

of payment and shall make reference thereof to the applicable item listed on the Contractual Services Purchase Schedule Form. Further, MUNICIPALITY's Project Administrator and Project Financial Officer shall certify the total funds spent by MUNICIPALITY on the Project and shall also certify that each vendor invoice as listed on the Contractual Services Purchase Schedule Form was paid by MUNICIPALITY as indicated."

11. Section 3.03 of this Agreement shall be amended to delete "COUNTY shall retain not less than ten percent (10%) of the total amount allocated to AGENCY for the Project until AGENCY completes the Project and provides COUNTY with either a Certificate of Occupancy or a Project Completion Certification as determined by COUNTY, and COUNTY receives and approves all documentation as required in accordance with this Agreement." and to insert "COUNTY shall retain not less than ten percent (10%) of the total amount allocated to MUNICIPALITY for the Project until MUNICIPALITY completes the Project and provides COUNTY with either a Certificate of Occupancy or a Project Completion Certification as determined by COUNTY, and COUNTY receives and approves all documentation as required in accordance with this Agreement."

12. Section 3.04 of this Agreement shall be amended to delete "AGENCY shall provide a request for final reimbursement to COUNTY no later than ninety (90) days following completion of the Project and provision of either a Certificate of Occupancy or Project Completion Certification to COUNTY." and to insert MUNICIPALITY shall provide a request for final reimbursement to COUNTY no later than ninety (90) days following completion of the Project and provision of either a Certificate of Occupancy or Project Completion Certification to COUNTY."

13. Section 3.07 of this Agreement shall be amended to delete "COUNTY shall reimburse project costs only after AGENCY has expended its share of project funding in its entirety. AGENCY shall provide COUNTY with a certification, in a form acceptable to COUNTY, from AGENCY's President, CEO, Chairman of the Board, Chief Financial Officer, or independent auditor that AGENCY has complied with this Project funding provision. COUNTY will be entitled to rely on that certification in reimbursing Project costs to AGENCY under this Agreement." and to insert "COUNTY shall reimburse project costs only after MUNICIPALITY has expended its share of project funding in its entirety. MUNICIPALITY shall provide COUNTY with a certification, in a form acceptable to COUNTY, from MUNICIPALITY's President, CEO, Chairman of the Board, Chief Financial Officer, or independent auditor that MUNICIPALITY has complied with this Project funding provision. COUNTY will be entitled to rely on that certification in reimbursing Project costs to MUNICIPALITY under this Agreement."

14. Article 7 of this Agreement shall be amended to insert

"As to MUNICIPALITY:

Village Manager
Village of Wellington
12300 Forest Hill Boulevard
Wellington, FL 33414

With a Copy to:

Village Attorney
Village of Wellington
12300 Forest Hill Boulevard
Wellington, FL 33414"

15. Article 10 of this Agreement shall be amended to delete "It is understood and agreed that AGENCY is merely a recipient of COUNTY funding and is an independent contractor and is not an agent, servant or employee of COUNTY or its Board of County Commissioners. In the event a claim or lawsuit is brought against COUNTY or any of its officers, agents or employees AGENCY shall indemnify, save and hold harmless and defend COUNTY, its officers, agents, and/or employees from and against any and all claims, liabilities, losses, judgments and/or causes of action of any type arising out of or relating to any intentional or negligent act or omission of AGENCY, its agents, servants and/or employees in the performance of this Agreement." and to insert "It is understood and agreed that MUNICIPALITY is merely a recipient of COUNTY funding and is an independent contractor and is not an agent, servant or employee of COUNTY or its Board of County Commissioners. In the event a claim or lawsuit is brought against COUNTY or any of its officers, agents or employees MUNICIPALITY shall indemnify, save and hold harmless and defend COUNTY, its officers, agents, and/or employees from and against any and all claims, liabilities, losses, judgments and/or causes of action of any type arising out of or relating to any intentional or negligent act or omission of MUNICIPALITY, its agents, servants and/or employees in the performance of this Agreement."

16. Except as provided herein, each and every other term of this Agreement shall remain in full force and effect and the Agreement is reaffirmed as modified herein.

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IN WITNESS WHEREOF, the parties, by and through their duly authorized agents, have hereunto set their hands and seals on the date indicated above.

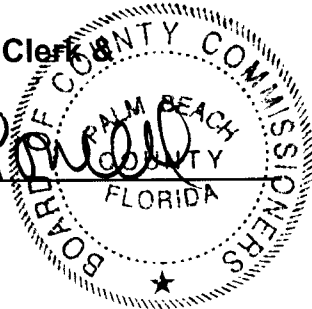
R2014 0069

JAN 14 2014

ATTEST:

SHARON R. BOCK, Clerk &
Comptroller

By: Nancy Ponce
Deputy Clerk



**PALM BEACH COUNTY, FLORIDA, BY
IT BOARD OF COUNTY COMMISSIONERS**

By: Priscilla A. Taylor
Steven L. Abrams, Mayor
Priscilla A. Taylor

ATTEST:

By: Anilda Rodriguez
MUNICIPALITY Clerk

VILLAGE OF WELLINGTON

By: Bob Margolis
Bob Margolis, Mayor

WITNESSES:

Jackie P. Allen
Laura Alden

ACME IMPROVEMENT DISTRICT

By: Bob Margolis
Bob Margolis, Supervisor

WITNESSES:

Daniel J. [Signature]
[Signature]

**BOYS & GIRLS CLUBS OF PALM
BEACH COUNTY, INC.**

By: Jaene Miranda
Jaene Miranda, President

**APPROVED AS TO FORM AND
AND LEGAL SUFFICIENCY**

By: Laurie [Signature]
MUNICIPALITY Attorney

**APPROVED AS TO FORM
LEGAL SUFFICIENCY**

By: Paul F. [Signature]
COUNTY Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**

By: Eric Call
Eric Call, Director
Parks and Recreation Department