



Legislation Text

File #: 22-5462, Version: 1

ITEM: AMENDMENT TO A COMPREHENSIVE AGREEMENT FOR THE DESIGN, DEVELOPMENT, CONSTRUCTION, AND OPERATION OF WELLINGTON COMMUNITY PARK, BETWEEN WELLINGTON ATHLETICS, LLC., AND ACME IMPROVEMENT DISTRICT, A DEPENDENT DISTRICT OF THE VILLAGE OF WELLINGTON

REQUEST: Approval of amendment No.1 to a comprehensive agreement for the design, development, construction, and operation of Wellington Community Park, between Wellington Athletics, LLC and ACME Improvement District, a dependent district of the Village of Wellington.

EXPLANATION: On June 14, 2022, the Village Council approved Resolution No. R2022-19, a comprehensive agreement between Wellington Athletics, LLC and ACME Improvement District for the development, construction, operation, and maintenance of a recreational facility at the Wellington Community Park Site.

In order to address comments provided by Palm Beach County, to satisfy obligations required during the Due Diligence Period, and to address input from the Palm Beach Sports Commission, the Village of Wellington and Wellington Athletics, LLC., have determined that certain provisions of the agreement need to be revised, as summarized below:

- Extension of "Equity Funding Period"
- Extension of "Due Diligence Period"
- Amendment to the "Public Financing Period"
- Add recommended language from PBC to address existing County deed dated January 14, 1986; specifically, "Wellington Athletics shall provide Recreational Facility access to all residents of Palm Beach County, Florida, on a non-discriminatory basis, including fees required to be paid, with no preference given to Wellington residents."

Staff recommends approval of amendment No.1 to the comprehensive agreement for the design, development, construction, and operation of Wellington Community Park between Wellington Athletics, LLC., and ACME Improvement District, a dependent district of the Village of Wellington.

BUDGET AMENDMENT REQUIRED: NO

PUBLIC HEARING: NO **QUASI-JUDICIAL:**

FIRST READING: **SECOND READING:**

LEGAL SUFFICIENCY: YES

FISCAL IMPACT: No Fiscal Impact.

WELLINGTON FUNDAMENTAL: Responsive Government

RECOMMENDATION: Approval of amendment No.1 to the comprehensive agreement for the design, development, construction, and operation of Wellington Community Park between Wellington Athletics, LLC and ACME Improvement District, a dependent district of the Village of Wellington.



Village of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

**AMENDMENT NO. 1 TO
COMPREHENSIVE AGREEMENT FOR THE
DESIGN, DEVELOPMENT, CONSTRUCTION AND OPERATION
OF WELLINGTON COMMUNITY PARK**

THIS AMENDMENT NO. 1 TO COMPREHENSIVE AGREEMENT FOR THE DESIGN, DEVELOPMENT, CONSTRUCTION, AND OPERATION OF WELLINGTON COMMUNITY PARK (the "Agreement") is made and entered into this 18th day of October 2022 (the "Effective Date") by and between the **Acme Improvement District**, a dependent district of the Village of Wellington (the "District"), with its principal address at 12300 Forest Hill Boulevard, Wellington, Florida 33414, the **Village of Wellington**, a Florida municipal corporation (the "Village"), with its principal address at 12300 Forest Hill Boulevard, Wellington, Florida 33414, and **Wellington Athletics LLC**, a Florida limited liability company ("Wellington Athletics"), with its principal address at 3730 Pelican Bay Court, Wellington, Florida 33414.

WHEREAS, the District, Village, and Wellington Athletics executed the Comprehensive Agreement for the Design, Development, Construction and Operation of Wellington Community Park on June 21, 2022 (the "Agreement") to enter into a public private partnership to design, construct, operate, and maintain a recreational facility at the property known as Wellington Community Park located at 3401 South Shore Boulevard, Wellington, Florida 33414;

WHEREAS, in order to address comments provided by Palm Beach County and to satisfy obligations required during the Due Diligence Period, the District, Village, and Wellington Athletics have determined that certain provisions of the Agreement need to be revised.

NOW THEREFORE, in consideration of the mutual covenants and promises hereafter set forth and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, District, Village, and Wellington Athletics agree as follows:

Section 1. Article 3 Equity Funding Period is hereby amended and shall read as set forth herein below:

Commencing one (1) day after the Effective Date of Amendment No. 1, Wellington Athletics shall have a period of ~~ninety (90)~~ thirty (30) days (the “Extended Equity Funding Period”) to secure equity funding for the Project in the amount of Three Million Dollars and No Cents (\$3,000,000.00). If Wellington Athletics is unable to secure such equity funding for the Project, then Wellington Athletics may (1) request an extension of thirty (30) additional days to secure the required equity funding, which request shall not be unreasonably conditioned, delayed, or denied, or (2) terminate this Agreement upon written notice to the Village on or prior to the expiration of the Extended Equity Funding Period, in which case this Agreement shall be terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Agreement except those which specifically survive termination.

Section 2. Article 4 Due Diligence Period is hereby amended at subsection 4.1; providing that subsection 4.1 shall read as set forth herein below and that the remainder of Article 4 shall remain in full force and effect as originally set forth in the Agreement.

4.1 Commencing one (1) day after the Effective Date of Amendment No. 1, Wellington Athletics shall have a period of ~~ninety (90)~~ thirty (30) days (the “Extended Due Diligence Period”) to investigate the Property and to satisfy itself with respect to the condition of the Property, the feasibility of operating the Recreational Facility on the Property, and the ability to maintain the Property’s tax-exempt status. Wellington Athletics shall have the right to enter upon and investigate any and all aspects of the Property it deems appropriate, in its sole and absolute discretion, and District and Village agree to reasonably cooperate with Wellington Athletics in Wellington Athletics’ review and inspection of the Property for the Project. During the Extended Due Diligence Period, District will provide Wellington Athletics and its agents and consultants with access to the Property for the purposes of conducting any and all testing, sampling and investigation that Wellington Athletics deems appropriate with respect to the Property. Wellington Athletics hereby indemnifies and holds District harmless from any loss, cost or expense arising out of Wellington’s Athletics’ physical inspections of the Property (i.e., for damage caused by such inspections, but not as a result of the discovery of any defects or other matters with respect to the Property). Wellington Athletics shall make prompt reasonable repair of all damages caused by its inspections. Wellington Athletics may terminate this Agreement on or prior to the expiration of the Extended Due Diligence Period for any reason or for no reason in which case this Agreement shall be terminated, the parties hereto shall be relieved of all liabilities and obligations under this Agreement except those which specifically survive termination. Prior to commencing any inspections, and during the inspections and any physical testing of the Property, Wellington Athletics, and any agent or vendor of Wellington Athletics conducting any inspections or physical testing on or about the Property, shall maintain (a) workers’ compensation insurance in accordance with applicable law, (b) commercial general liability insurance, on a per occurrence basis, in the amounts of at least One Million Dollars (\$1,000,000.00) per occurrence for bodily or personal injury or death, and (c) commercial automobile insurance, owned,

hired, non-owned or leased in the amount of at least One Million Dollars (\$1,000,000.00). Wellington Athletics shall deliver to the District/Village evidence of such workers' compensation insurance and a certificate evidencing the commercial general liability, and commercial automobile insurance prior to conducting any inspections or physical testing on or about the Property, and all such policies, to the extent applicable, shall name the District and Village as additional insured(s) thereunder.

Section 3. Article 6 Public Financing Period is hereby amended at subsection 6.1; providing that subsection 6.1 shall read as set forth herein below and that the remainder of Article 6 shall remain in full force and effect as originally set forth in the Agreement.

- 6.1 Commencing one (1) day after the expiration of the Extended Due Diligence Period, the Village shall have a period of ~~one hundred eighty (180)~~ one hundred fifty (150) days (the "Public Financing Period") to secure public financing for the design and construction of the Project. The amount of the bonds to be issued shall be based upon the estimated design and construction costs of the approved site plan but shall not exceed Thirty-Three Million Fifteen Thousand Five Hundred Thirty-Nine Dollars and No Cents (\$33,015,539.00) plus bond issuance costs. Prior to bond closing, Village shall notify Wellington Athletics in writing of the financing terms available for the design and construction of the Project and the resulting debt service. If the financing terms are mutually acceptable to Wellington Athletics and the Village, then Wellington Athletics shall notify Village in writing to proceed to bond closing. Wellington Athletics understands that it will be necessary for it to agree upon a not to exceed annual debt service figure rather than the exact terms of the debt, which will not be known until approximately 30 days prior to bond closing. If such not to exceed amount is not acceptable to Wellington Athletics, in its sole and absolute discretion, then Wellington Athletics may terminate this Agreement upon written notice to the Village prior to the bond closing, in which case this Agreement shall be terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Agreement except those which specifically survive termination. If Village is unable to secure the public financing prior to the expiration of the Public Financing Period, Wellington Athletics may provide a reasonable extension of time to secure such financing or may terminate this Agreement upon written notice to the Village on or prior to the expiration of the Public Financing Period, in which case this Agreement shall be terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Agreement except those which specifically survive termination.

Section 4. Article 14 Use of Facilities; Operation and Maintenance is hereby amended to add subsection 14.10, which shall read as set forth herein below.

14.10 The Property is subject to County Deed dated January 14, 1986, recorded in Official Records Book 4779, Page 297 of the public records of Palm Beach County, Florida. Wellington Athletics shall provide Recreational Facility access to all residents of Palm Beach

County, Florida on a non-discriminatory basis, including fees required to be paid, with no preference given to Wellington residents.

Section 5. This Amendment No. 1 shall become effective and part of this Agreement when signed by all parties.

Section 6. Each and every other term and provision of the Agreement shall remain in full force and effect as previously written.


[Executions on the Following Page]

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand this Amendment No. 1 and have caused this Amendment No. 1 to be executed by their duly authorized officers on the date hereinabove first written.

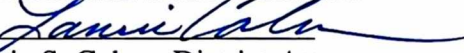
ACME IMPROVEMENT DISTRICT

By: 
Anne Gerwig, Board President

ATTEST:

By: 
Chevelle D. Addie, District Secretary


**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: 
Laurie S. Cohen, District Attorney

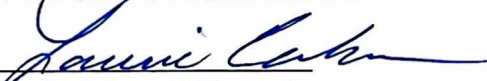
VILLAGE OF WELLINGTON, FLORIDA

By: 
Anne Gerwig, Mayor

ATTEST:

By: 
Chevelle D. Addie, Village Clerk


**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: 
Laurie S. Cohen, Village Attorney

WELLINGTON ATHLETICS LLC

By: 
Jonathan Bostic, Manager

WITNESSES:

By: 
Print Name: Danika Mason

WITNESSES:

By: 
Print Name: Stephen Henninger