

RESOLUTION NO. AC2010-07

A RESOLUTION OF THE BOARD OF SUPERVISORS OF ACME IMPROVEMENT DISTRICT, FLORIDA, APPROVING THE FIRST 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, as set forth in Resolution AC2008-07, the Acme Improvement District, the Boys and Girls Club of Palm Beach County, Inc.; and Palm Beach County entered into a tri-party agreement to assist in the funding of a new facility at Wellington Community Park; and

WHEREAS, the Boys and Girls Club of Palm Beach County and Acme Improvement District have modified their leasing arrangement and now desire to have the new Boys and Girls Club facility constructed next to Wellington's Water Treatment Plant at 1190 Wellington Trace in order to better serve the youth of the community; and

WHEREAS, the Boys and Girls Club has requested an extension of the project completion date for twelve months to allow additional time to design and construct the project, which is needed due to the change in the location of the Project; and

WHEREAS, amendments to the County's Bond Funding Agreements now contain required Project completion milestones in order to assure timely Project completion; and

WHEREAS, the County is now required to include language in all funding Agreements or Amendments to Agreements to ensure that language relative to Inspector General requirements is provided; and

WHEREAS, the County's non-discrimination language has changed and the new language needs to be included in all Agreements or Amendments to Agreements; and

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

WHEREAS, the staff recommends the Board of Supervisors approve the First Amendment to the Agreement to facilitate funding and construction of the new Boys and Girls Club Facility in Wellington; and

NOW, THEREFORE, BE IT RESOLVED BY BOARD OF SUPERVISORS OF ACME IMPROVEMENT DISTRICT, FLORIDA, that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified as being true and correct.

SECTION 2. The Board of Supervisors hereby approves the First Amendment to the Agreement between Palm Beach County, ACME Improvement District, and Boys and Girls Club of Palm Beach County, Inc. for funding of the Wellington facility, attached hereto as Exhibit "A", and authorizes the President and Board Secretary to execute the Purchase and Sale Agreement on behalf of Acme Improvement District.

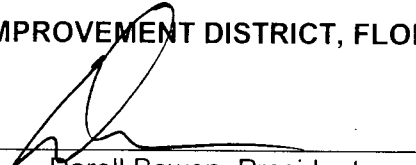
SECTION 3. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 31st day of August, 2010.

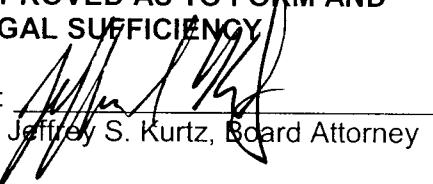
ATTEST:

ACME IMPROVEMENT DISTRICT, FLORIDA

BY: 
Awilda Rodriguez, Board Secretary

BY: 
Darell Bowen, President

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: 
Jeffrey S. Kurtz, Board Attorney

Revised thru AC2010-11

FIRST AMENDMENT TO AGREEMENT WITH ACME IMPROVEMENT DISTRICT AND BOYS AND GIRLS CLUBS OF PALM BEACH COUNTY, INC. FOR FUNDING OF THE WELLINGTON FACILITY CONSTRUCTION

THIS FIRST AMENDMENT TO AGREEMENT is entered into on _____, 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", and 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".

WITNESSETH:

WHEREAS, on October 21, 2008, COUNTY entered into an Agreement with DISTRICT and AGENCY (R-2008-1922) 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 October 20, 2011; and

WHEREAS, AGENCY and the Village of Wellington agreed that the property located at the Civic Site of Wellington Countryplace leased from DISTRICT was not the most favorable location for the new Wellington Boys and Girls Club Facility; and

WHEREAS, AGENCY entered into a new long term lease with DISTRICT for property located at 1190 Wellington Trace that will better serve the community's youth; and

WHEREAS, AGENCY has provided revisions to "Exhibit A" including a revised Project Description and Cost Estimate for the facility to be built at the new site Project and a new "Exhibit B", which is the legal description for the new site; and

WHEREAS, AGENCY has requested that COUNTY extend the project completion date of the project for twelve months to allow additional time to design and construct the project, which is needed due to the change in the location of the Project; and

WHEREAS, amendments to Bond funding Agreements now contain required Project completion milestones in order to assure timely Project completion; and

WHEREAS, COUNTY is now required to include language in all funding Agreements or Amendments to Agreements to ensure that language relative to Inspector General requirements is provided; and

WHEREAS, COUNTY'S non-discrimination language has changed and the new language needs to be included in all Agreements or Amendments to Agreements; and

WHEREAS, both parties desire to amend the Agreement.

NOW THEREFORE, the parties hereby agree as follows:

1. The Project Description and Cost Estimate in "Exhibit A" within the Exhibits Section of the Agreement shall be replaced with the attached revised "Exhibit A" forms.

2. The Project Legal Description in "Exhibit B" within the Exhibits Section of the Agreement shall be replaced with the attached revised "Exhibit B" legal description; and

3. Sections 2.03 through 2.07 of the Agreement shall be deleted and the following Sections 2.03 through 2.07 shall be inserted:

"Section 2.03 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.

Section 2.04 AGENCY shall award the bid for construction of the Project and commence Project construction no later than October 20, 2011. 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.

Section 2.05 AGENCY shall totally complete the Project and open same to the public for its intended use on or before October 20, 2012.

Section 2.06 AGENCY shall submit quarterly project status reports to COUNTY's Representative on or before January 10, April 10, July 10, and October 10 as well as separate Status Reports at such times that design and construction milestones have been met during the design and construction of the Project. The Quarterly reports shall include but not be limited to, a summary of the work accomplished, problems encountered, percentage of completion, and other information as deemed appropriate by COUNTY's Representative."

4. Section 5.01 of the Agreement shall be amended to delete the last line and to insert the following: "AGENCY AND DISTRICT shall not discriminate on the basis of race, color, sex, national origin, age, disability, religion, ancestry, marital status, or sexual orientation or gender identity and expression with respect to use of the Project."

5. Article 6 of the Agreement shall be deleted and the following language shall be inserted:

"ARTICLE 6. ACCESS, AUDITS, AND INSPECTOR GENERAL

AGENCY shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the construction of the Project for at least five (5) years after the end of the fiscal year in which the final payment is released by COUNTY, except that such records shall be retained by AGENCY until final resolution of matters resulting from any litigation, claim, or special audit that starts prior to the expiration of the five (5) year period. COUNTY reserves the right, upon reasonable request and during normal business hours, to inspect said Project and shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit.

The COUNTY has established the Office of the Inspector General, Ordinance R2009-049, which is authorized and empowered to review past, present and proposed COUNTY contracts, transactions, accounts and records. All parties doing business with the COUNTY and receiving COUNTY funds shall fully cooperate with the Inspector General including receiving access to records relating to this Interlocal Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the parties hereto, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud.

6. Article 8 of the Agreement shall be deleted and the following Article 8 shall be inserted:

"ARTICLE 8. TERMINATION FOR NON-COMPLIANCE

Upon occurrence of one or more of the following events set forth below, COUNTY may find AGENCY in non-compliance and shall use any and all rights and remedies to this Interlocal Agreement as indicated in Article 9 for non-compliance by AGENCY in the performance of any of the terms and conditions as set forth herein:

1. Failure to complete engineering and architectural design and securing all permits and approvals necessary to construct the Project no later than April 20, 2011.
2. Failure to award the bid for construction of the Project and commence Project construction no later than October 20, 2011.
3. Failure to totally complete the Project and open same to the public for its intended use by October 20, 2012.
4. Failure in the performance of any of the material terms and conditions as set forth herein."

7. Article 9 of the Agreement shall be deleted and the following Article 9 shall be inserted:

ARTICLE 9. REMEDIES

In the event of any non-compliance by AGENCY in the performance of any of the terms and conditions as set forth in Article 8 and if AGENCY does not cure said non-compliance within ninety (90) days of receipt of written notice from COUNTY to do so, COUNTY may at any time thereafter elect to pursue any and all remedies available pursuant to this Interlocal Agreement, either in whole or in part, including interest paid by COUNTY to

retire bond funds during the term of this Interlocal Agreement.

This Interlocal Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Interlocal Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. The parties hereto may pursue any and all actions available under law to enforce this Interlocal Agreement including, but not limited to, actions arising from the breach of any provision set forth herein."

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

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

ATTEST:

**SHARON R. BOCK, Clerk &
Comptroller**

By: _____
Deputy Clerk

WITNESSES:

WITNESSES:

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
AGENCY Attorney

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

By: _____
Burt Aaronson, Chair

ACME IMPROVEMENT DISTRICT

By: _____
Name: (Type or Print)

President

Signature

**BOYS AND GIRLS CLUBS OF PALM BEACH COUNTY,
INC. FEI/EIN # 23-7060561**

By: _____
Name: (Type or Print)

President

Signature

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY**

By: _____
COUNTY Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: _____
Dennis L. Eshleman, Director
Parks and Recreation Department