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AGENDA ITEM

MEMORANDUM

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Legal Administrative Supervisor
Anna M. Caban

Senior Paralegal
Melessia Lofgren

Paralegals
Maria Vargas, ACP
Gail Stanford

TO: Mayor Jerry L. Demings
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJM*
Scott R. McHenry, Assistant County Attorney *SRM*
Contact: (407) 836-7320

DATE: November 19, 2020

SUBJECT: Consent Agenda Item for December 1, 2020
Memorandum of Understanding by and among Orange County,
Boys & Girls Clubs of Central Florida, and City of Winter Garden

This Consent Agenda item requests the approval and execution of the Memorandum of Understanding ("MOU") by and among Orange County, the City of Winter Garden ("City"), and the Boys & Girls Clubs of Central Florida, Inc. ("BGC") concerning a new Boys & Girls Clubs center to be constructed by BGC on land owned by the City at 459 9th Street in Winter Garden (the "Project"). The MOU addresses the respective responsibilities of the parties with respect to the Project.

In summary, the respective responsibilities of the parties regarding the Project are as follows: (a) the City will provide the land pursuant to a long term, rent-free ground lease; (b) the County will contribute funding up to \$440,000, which is the balance of the \$500,000 in INVEST funds the Board previously approved for a Boys & Girls Club in this vicinity, contingent upon certain conditions being met; and (c) BGC will be responsible for all other costs associated with the Project and will also be responsible for all other aspects of the Project, including design, bidding, permitting, project management, and construction.

The County Attorney's Office, Administrative Services Department, Capital Projects Division, Community and Family Services Department, and Parks and Recreation Division have reviewed the MOU and find it acceptable.

ACTION REQUESTED: Approval and execution of Memorandum of Understanding by and among Orange County, Boys & Girls Clubs of Central Florida, and City of Winter Garden. District 1.

SRM/gs
Attachment

November 19, 2020

Page 2 of 2

Copy: Byron W. Brooks, AICP, County Administrator
Anne Kulikowski, Director, Administrative Services Department
Sara Flynn-Kramer, Manager, Capital Projects Division
Lonnie Bell, Director, Community and Family Services Department
Matt Suedmeyer, Manager, Parks and Recreation Division
Carla Bell Johnson, Assistant County Administrator

**MEMORANDUM OF UNDERSTANDING BY AND AMONG
ORANGE COUNTY, BOYS & GIRLS CLUBS OF CENTRAL FLORIDA
AND CITY OF WINTER GARDEN**

THIS MEMORANDUM OF UNDERSTANDING (the “Memorandum of Understanding” or “MOU”) is made and entered by and among Orange County, Florida, a charter county and political subdivision of the State of Florida (the “County”), the City of Winter Garden, Florida, a municipal corporation of the State of Florida (the “City”) and Boys & Girls Clubs of Central Florida, Inc., a Florida non-profit corporation (“BGC”) (collectively the “Parties”) effective as of the date (“Effective Date”) set forth below.

RECITALS

WHEREAS, the County and BGC are currently parties to that certain contract, Contract No. Y16-2061, pursuant to which BGC has the right to utilize the West Orange Recreation Center in Winter Garden, Florida, to provide certain youth program services (“Current BGC Location”);

WHEREAS, the City owns certain real property located at 459 9th Street, Winter Garden, Florida 34747, Parcel ID No. 12-22-27-6496-14-003 consisting of approximately 7.49 acres (“Future Site Location”);

WHEREAS, the City is willing to have BGC construct a new building and improvements, as hereinafter described, on approximately 2.5 acres of the property owned by the City at the Future Site Location (the “Project” or sometimes the “New BGC Center”) with the City to identify the exact location (“Building Site”) within the Future Site Location to be for the provision of youth program services by BGC, contingent upon certain funding by the County and BGC for the design, construction and other costs of the Project;

WHEREAS, BGC has confirmed that it supports and desires to move from the Current BGC Location to the Future Site Location when the New BGC Center is completed in accordance with the terms and conditions stated herein; and

WHEREAS, the parties wish to memorialize their intentions with respect to the Project, subject to the parties entering into definitive final and binding agreements in the future.

NOW, THEREFORE, the City, County and BGC agree as follows:

1. ***Incorporation.*** The recitals set forth in the Whereas clauses of this Memorandum of Understanding are true and correct and are incorporated by reference herein as if fully set forth verbatim.

2. ***Project Description.*** The Project or New BGC Center is anticipated to consist of a +/- 9,100 square foot single-story building containing classrooms, office space, a warming kitchen, a storage/mechanical room and an assembly room.

3. ***General Responsibilities of the Parties.*** The City shall provide the land at the Future Site Location pursuant to a long term rent-free ground lease, the terms of which are subject to the mutual agreement of the City and BGC. BGC will confirm whether the Future Site Location is a suitable site for the Project in terms of size, shape, location, environmental condition, title, and other attributes. BGC shall be responsible, at its sole cost and expense (except as hereinafter specifically provided) for all aspects of the Project, including, but not limited to, design, bidding, procurement, permitting, site preparation, including bringing or relocating utilities and environmental remediation, project management and construction. BGC, by and through its designated agents, shall also manage and coordinate all aspects of the Project in accordance with construction plans approved by the City, which approval shall not be unreasonably withheld so long as such plans comply with all applicable codes and legal requirements. All contracts shall be in the name of BGC, and BGC shall be solely responsible for any payments required thereunder. BGC shall be the owner of the building and other improvements and shall retain all naming rights for the building. BGC shall be solely responsible for all maintenance, repairs, and future capital improvements with respect to same.

4. ***Funding of the Project/Restriction on Use of Funds.*** Contingent upon: (a) written confirmation by BGC (supported by appropriate backup documentation if requested by the County) that all other funds necessary to complete the Project based on the final construction plans have been secured; and (b) review by the County of a professionally prepared contract that is within the total Project budget (i.e. permitting, construction, utilities, FF&E, etc.) the County shall provide up to a maximum of FOUR HUNDRED FORTY THOUSAND DOLLARS (\$440,000) in cash funds for the Project, in accordance with a progress payment schedule to be mutually agreed upon in the definitive agreement to be negotiated hereinafter. No additional funds shall be provided by the County other than those described in section 6 of this MOU. Any funds advanced by the County which are not utilized for the Project shall be refunded to the County as soon as practicable. Any funds advanced by the County shall be utilized only for the Project, as defined herein. Any and all other funds of any kind required for the Project shall be provided by BGC. BGC currently has funds in hand in excess of \$1,000,000 which have been reserved for the Project. It is BGC's intention that BGC will contribute all remaining funds required for construction of the Project (collectively "BGC's Capital Contribution"). The additional funds needed to construct and complete the Project include and are not limited to those costs through the issuance of a final certificate of completion and City approval of all landscaping and all other site work. The Parties agree that construction of the building and site improvement shall not commence unless all funds necessary for Project have been secured.

5. ***Impact and Other City Fees for Construction.*** The City agrees that it will waive applicable impact fees and building permit fees for the Project, where legally permissible.

6. ***BGC Continuing Use of Current Location Until Completion.*** BGC and the County confirm that there is a current contract (as amended), Contract No. Y16-2061, between the County and BGC, dated January 7, 2016, which sets forth, among other things, the services that BGC is to perform at the Current BGC Location and the compensation that BGC is entitled to receive for the performance of such services which is fixed at NINETY-NINE THOUSAND, NINE HUNDRED AND NINETY- SIX DOLLARS (\$99, 996) annually. BGC and the County acknowledge that the contract is set to expire on January 6, 2021. BGC and the County agree to extend the aforementioned contract in accordance with its current terms until the New BGC Center is completed – anticipated to be within two (2) years. Upon completion of the Project and BGC’s commencement of occupancy of the New BGC Center, BGC’s right to utilize space at the Current BGC Location shall terminate and BGC will enter into a new lease agreement with the City for its use and occupancy of the New BGC Center. The County agrees to continue to pay the annual compensation amount , rounded to \$100,000, to BGC upon commencement of its occupancy at the New BGC Center to be set forth in a new contract between BGC and the County. BGC acknowledges and agrees that the \$100,000 annual compensation is acceptable to it and that the County shall not be liable for payment of any other or additional amounts of any kind.

7. ***No Joint Venture; Release; Indemnification; Sovereign Immunity.*** Nothing herein shall constitute or be construed as a partnership or joint venture between the County and the City and BGC. The parties intend that there will be provisions in any definitive agreement whereby BGC will release, indemnify and hold the County and the City harmless with respect to its construction of the Project. The parties agree that the County’s sole responsibility shall be limited to funding. Nothing herein shall be construed as a waiver of sovereign immunity by the County or consent to be sued.

8. ***Term.*** This MOU, including, but not limited to, the County’s funding obligations hereunder, shall remain in effect for a period of two (2) years from the Effective Date at which time they shall expire without further notice, unless extended by a formal written amendment to this MOU or superseded by a subsequent definitive agreement.

9. ***No Third-Party Beneficiaries/No Assignment.*** This MOU is for the exclusive benefit of the parties and not for the benefit of any third party. The rights and responsibilities under this MOU may not be assigned.

10. ***Counterparts.*** This MOU may be signed in one or more counterparts, each of which will be deemed an original, but all of which shall together constitute one and the same instrument.

11. ***Effective Date.*** The Effective Date of this MOU shall be the date that the last party executes the MOU following any required governing board approval.

12. **Nonbinding.** The parties agree that this MOU shall be nonbinding unless and until the terms hereof are incorporated into final definitive agreements executed by the parties.

13. **Attorney's Fees and Costs.** Each of the Parties shall be responsible for their own attorney's fees and costs, including expert fees, in connection with this MOU.

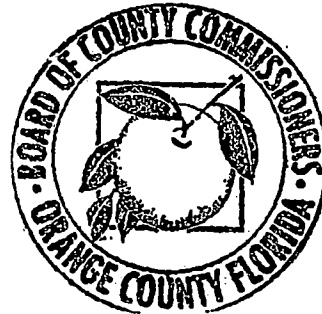
ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
as Clerk of the Board of County Commissioners

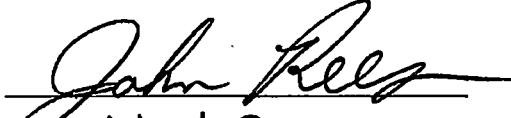
By: *Katell Smith*
Deputy Clerk

Date: 12/01/20



CITY OF WINTER GARDEN, FLORIDA


By: Winter Garden City Commission

By: 
Title: MAYOR

ATTEST:

Angela Grummage, CMC, City Clerk

FOR THE USE AND RELIANCE
ONLY OF THE CITY OF WINTER
GARDEN, FLORIDA: APPROVED
AS TO FORM AND LEGALITY
this 12th day of November, 2020.

By: 

APPROVED BY THE WINTER GARDEN
CITY COMMISSION AT A MEETING HELD
ON NOVEMBER 12, 2020
UNDER AGENDA ITEM NO. 5.D

**BOYS & GIRLS CLUB OF CENTRAL
FLORIDA, INC.**

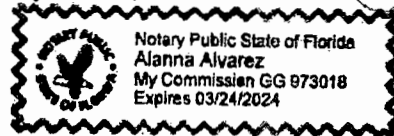
By: *Gary W. Cain*
Gary Cain
Title: President/CEO

Date: 11/11/20

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me, a Notary Public, by means of physical presence, or online notarization, this 11th day of November 2020, by Gary W. Cain, who, is personally known to me, or has produced na. as identification.

Alanna A. Alvarez
Notary Public, State of Florida



Name typed, printed or stamped
My Commission Expires: 03/24/2024