



Interoffice Memorandum

May 24, 2024

AGENDA ITEM

TO: Mayor Jerry L. Demings
- AND -
County Commissioners

THRU: Venerria L. Thomas, Director
Community and Family Services Department

A handwritten signature in black ink that reads "Venerria L. Thomas".

FROM: Lavon B. Williams, Deputy Director
Community and Family Services Department

SUBJECT: **Consent Agenda Item – June 4, 2024**
Memorandum of Understanding by and among Orange County, Boys and Girls Clubs of Central Florida and City of Winter Garden, Florida

In 2016, as part of the County's INVEST Program, the County, City of Winter Garden and the Boys and Girls Clubs of Central Florida executed a Memorandum of Understanding (MOU) that a new recreational facility would be constructed in east Winter Garden for operation by the Boys and Girls Club of Central Florida. That agreement expired in 2022. To date the new facility is still in the conceptual design phase, the site has been relocated and the size of the facility has expanded.

Currently, Orange County and the Boys and Girls Clubs of Central Florida (BGC) are currently parties to a certain Contract No. Y21-143, providing the BGC the right to utilize the West Orange Recreation Center in Winter Garden, Florida, to provide certain youth program services. To expand youth services available in East Winter Garden area, the City of Winter Garden is allowing the BGC to construct a new building and make improvements on a city owned property located at 459 9th Street, Winter Garden, Florida 34787, contingent upon certain funding by the County and the BGC for design, construction, and other costs of the project. The BGC will move from the West Orange Recreation Center into the newly constructed facility. The purpose of this MOU is to reinstate the expired agreement and memorialize the intentions of the organizations, subject to the parties entering into definitive final and binding agreements in the future.

Orange County is committed to providing \$400,000 to the construction of the project coming from the INVEST program budget. In addition, the County will continue to contribute \$99,996 annually to the BGC for provision of youth services at the new facility. The MOU is subject to performance for a period of two years, unless extended by a formal written amendment or superseded by a subsequent definitive agreement.

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

LBW/vt;m.s

BCC Mtg. Date: June 4, 2024

**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. Y21-143, 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 34787, 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 is anticipated to be built in two phases. The first phase consists of constructing a 9,980 sq. ft. building and associated parking and infrastructure improvements (“Phase 1”) and the Plans indicate that there could be a second

phase of the Project which could include an additional 9,980 sq. ft. building expansion and additional associated parking and infrastructure improvements ("Phase 2").

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. Y21-143, between the County and BGC, dated January 1, 2021, 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, 2026. 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 in any subsequent agreements resulting from this MOU, there will be incorporated such specific provisions whereby BGC and its contractor(s) 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 or limits of liability by County, including its elected officials, officers, employees, or agents, beyond the statutory limited waiver of immunity or limits of liability set forth in Section 768.28, Florida Statutes, as amended from time to time, or County’s 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 any dispute arising out of this MOU, or the breach, enforcement, or interpretation of this MOU, regardless of whether such dispute results in mediation, arbitration, litigation, all or none of the above, and regardless of whether such attorney and legal fees are incurred at trial, retrial, on appeal, at hearings or rehearings, or in administrative, bankruptcy, or reorganization proceedings.

14. **Venue.** Venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this MOU shall lie in the court of competent jurisdiction in and for Orange County, Florida; each party hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions shall be in the Orlando Division of the U.S. Middle District of Florida.

15. **Waiver of Jury Trial.** THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS UNDER OR CONNECTED WITH THIS MOU OR ANY OF ITS PROVISIONS AND ANY NEGOTIATIONS IN CONNECTION HEREWITH.



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: Jennifer Jan-Klincy
Deputy Clerk

Date: June 4, 2024

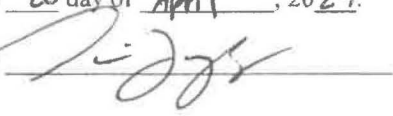
CITY OF WINTER GARDEN, FLORIDA
By: Winter Garden City Commission

By: 
Title: MAYOR

ATTEST:

Angee Grimage, CMC, City Clerk

FOR THE USE AND RELIANCE
ONLY OF THE CITY OF WINTER
GARDEN, FLORIDA: APPROVED
AS TO FORM AND LEGALITY
this 26th day of April, 2024.

APPROVED BY THE WINTER GARDEN
CITY COMMISSION AT A MEETING HELD
ON APRIL 25, 2024
UNDER AGENDA ITEM NO. 7.J

By: 

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

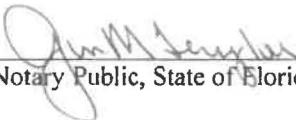
By: 
Jamie Merrill
Title: President/Chief Executive
Officer

Date: April 30, 2024

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 30th day of April, 2024, by Jamie Merrill, who, is personally known to me, or has produced _____ as identification.




Notary Public, State of Florida

Name typed, printed or stamped
My Commission Expires: 9/12/2024