

Agenda Item #3.M.3.

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 20, 2011

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a non-standard Sponsorship Agreement with developer GL Homes, d/b/a Boynton Beach Associates XVIII, LLLP for the cash sponsorship of a series of eight concerts at the Canyon Town Center Amphitheater.

Summary: The Parks and Recreation Department (Department) utilizes a standard sponsorship agreement which is executed by the Department Director. This standard agreement includes a requirement that the sponsor indemnify the County. Boynton Beach Associates requested deleting the indemnification provision from the Agreement since the Agreement only requires Boynton Beach Associates to provide funding to the County for sponsorship rights. Due to the nature of this sponsorship, which includes Boynton Beach Associates providing the County with \$8,208 to sponsor eight events at Canyon Town Center Amphitheater, the liability exposure is minimal. These eight events are scheduled between the months of January through September 2012. District 5 (AH)

Background and Justification: On March 11, 2008, the Department was authorized by the Board, R2008-0442, to execute standard sponsorship agreements for the provision of benefits to a sponsor and the County when an event or program is hosted by the Parks and Recreation Department. The Department customarily budgets operating funds to host a variety of leisure activities and seeks donations to supplement these events. Sponsors often request a reciprocal relationship with the County, and in response to these requests, the Department established a Donations/Sponsorships PPM. This PPM dictates procedures for the acceptance of donations and sponsorships from the public for Palm Beach County Parks and Recreation purposes, wherein the sponsor provides cash and/or in-kind services to the Department in return for access to commercial and/or marketing potential through a sponsorship agreement. The standard Sponsorship Agreement includes requirements for the sponsor to indemnify the County. The attached Sponsorship Agreement with Boynton Beach Associates deletes the indemnification requirement because there is no on-site presence by the sponsor during the event. Boynton Beach Associates is only providing funding to the County in exchange for the County displaying Boynton Beach Associates' logo on flyers, on the County's website and in public announcements during events at Canyon Town Center Amphitheater. There is minimal liability exposure to the County by modifying the standard Sponsorship Agreement.

Attachment: Sponsorship Agreement with Boynton Beach Associates XVIII, LLLP

Recommended by: _____


Department Director

11/22/11
Date

Approved by: _____


Assistant County Administrator

12-7-11
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>8,208</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(8,208)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

Is Item Included in Current Budget? Yes X No _____
 Budget Account No.: Fund 0001 Department 580 Unit 5207-03
 Object 3401 & 3405 / Revenue 6600 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Sponsor	Revenue	Expense
Boynton Beach Associates XVIII, LLLP	\$8,208	\$8,208
Totals	\$8,208	\$8,208

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB  11/30/11
 SD 11/29/11
 11/28/11
 CC 11/28/11

 12/5/11
 Contract Development and Control
 B. Wheeler

B. Legal Sufficiency:

Anne Delaney 12/7/11
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment

AGREEMENT BETWEEN PALM BEACH COUNTY
AND BOYNTON BEACH ASSOCIATES XVIII, LLLP
FOR A SPONSORSHIP AGREEMENT
AT THE CANYON TOWN CENTER AMPHITHEATER

This Agreement is made as of the _____ day of _____, 20____, by and between Palm Beach County, a Political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the "County" and Boynton Beach Associates XVIII, LLLP herein after referred to as the "Sponsor", both being referred to collectively as the "parties".

WHEREAS, County owns and operates Canyon Town Center Amphitheater, hereinafter referred to as the "Venue"; and

WHEREAS, County is hosting the Canyon Concert Series, once each month in January, February, March, April, May, June, August and September 2012 at the Venue; and each concert being hereinafter individually referred to as an "Event" and collectively referred to as the "Events"

WHEREAS, County desires to expand its services offered to the public with the least amount of financial impact to its citizens; and

WHEREAS, County established a sponsorship program, which earns revenue from commercial advertising through Sponsors who receive sponsorship benefit appropriations based on the size and cost of the Event; and

WHEREAS, County desires to generate revenue at the Venue by allowing Sponsor to become a concert series sponsor for the Event; and

WHEREAS, Sponsor desires to Sponsor the Event as a Sponsor and receive sponsorship benefits in accordance with this Agreement; and

WHEREAS, generating revenue at the Venue serves a public purpose; and

WHEREAS, both parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, the parties agree as follows:

Section 1. Recitals.

The above recitals are true and correct and are incorporated herein.

Section 2. Term.

The term of this Agreement shall commence on January 1, 2012 and shall terminate on September 30, 2012.

Section 3. Payment.

The total amount to be paid by Sponsor to the County under this Agreement for sponsorship of the events shall be **two (2) payments each of Four Thousand, One Hundred and Four Dollars (\$4,104.00) for a total of Eight Thousand, Two Hundred and Eight Dollars (\$8,208.00)**. Sponsor shall make one (1) payment of Four Thousand, One Hundred and Four Dollars (\$4,104.00) by **Tuesday November 15, 2011** and one (1) payment of Four Thousand, One Hundred and Four Dollars (\$4,104.00) by **Thursday March 1, 2012**. Failure by Sponsor to make payments within the specified time frame may result in termination of this Agreement by County. Payment shall be mailed to Parks and Recreation Dept., 2700 6th Avenue South, Lake Worth, Florida 33461, Attention Tom Landy. Checks should be payable to Palm Beach County Board of County Commissioners.

Section 4. Sponsorship Benefits.

- A. Sponsor shall be considered a concert sponsor during each of the eight Events, to be held at Canyon Town Center Amphitheater for the months of January, February, March, April, May, June, August and September 2012.
- B. The sponsorship benefits Sponsor shall receive for sponsoring the Events shall be company logo inclusion on flyers and on the County web site for each of the eight events, as more particularly described in Exhibit "A".

Section 5. Sponsorship Standards/Criteria.

- A. The logo shall be limited to speech which proposes a commercial transaction. Speech that proposes a commercial transaction is speech that promotes a commercial service or product, as opposed to an idea.
- B. Logos, advertisements or a manner of presentation which negatively impact the County, promote a product, service, or activity offensive to the general public, or which negatively impact, disrupt, intrude upon or interfere in any manner, with the efficient and cost effective operation and administration of the County, or any other advertising the County determines to be inappropriate or likely to hinder or interfere with the goal of earning revenue from long term commercial advertisements at the Venue are not permitted.
- C. Sponsor may not pursue advertisements or logos that:
 - 1. include false, misleading or deceptive statements or material;
 - 2. relates to an illegal activity;
 - 3. include explicit sexual material, obscene material, or material harmful to minors;
 - 4. advertises tobacco;
 - 5. includes language that is obscene, vulgar, profane or scatological;
 - 6. relates to instruments, devices, items, projects, or paraphernalia that are designed for use in connection with specific sexual activities;
 - 7. depicts violence and/or anti-social behavior.

- D. By approving Sponsor's Logo County is in no way establishing or promoting Sponsor's view as the County's.
- E. During the Event, County may prohibit Sponsor from displaying or passing out material County determines to be inappropriate or likely to hinder or interfere with the goal of earning revenue from long term commercial advertisements at the Venue. County shall not be liable for any damage in connection therewith.

Section 6. Sponsor's Responsibilities.

- A. At least ten (10) days prior to the first Event, Sponsor shall submit logo to County for review and approval. If County determines the logo does not comply with County's advertising standards, the Sponsor shall submit another sample to County until approval is granted. Any logo previously approved, which may subsequently be considered objectionable by County shall no longer be eligible for display. The County shall not be liable for any damages in connection therewith. Once approved Sponsor may use the logo for all eight events or modify logo by providing the new logo to the County at least ten (10) days prior to the next event.

Section 7. County's Responsibilities.

- A. County shall determine, in County's sole discretion, the size of Sponsor's logo and where the logo will be displayed on the advertising material for the Event.
- B. County is to host the events at the venue as set forth in this agreement. In the event a particular event is canceled or does not occur on scheduled date, County shall attempt to reschedule prior to expiration of the term of this agreement.

Section 8. Termination

This Agreement may be terminated by Sponsor upon sixty (60) days prior written notice to the County's representative in the event of substantial failure by County to perform in accordance with the terms of this Agreement through no fault of the Sponsor. It may also be terminated, in whole or in part, by County, with or without cause, immediately upon five (5) days written notice to the Sponsor.

Section 10. Remedies.

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall 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 hereafter existing at law or equity, 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.

Section 11. Insurance.

County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the rights to require insurance coverages throughout the term of this Agreement. If County determines insurance is required to perform this Agreement, Sponsor shall, at its sole cost and expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described in Exhibit "B". Sponsor shall provide the County with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements of Sponsor to maintain or not to maintain insurance is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Sponsor under this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

Section 12. Severability.

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

Section 13. Notice.

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service.

If sent to the County, notices shall be addressed to:
Director, Special Facilities
2700 6th Avenue South
Lake Worth, Florida, 33461

With a copy to:

Palm Beach County Attorney's Office
301 North Olive Ave. Suite 601
West Palm Beach, Florida 33401

If sent to the Sponsor, notices shall be addressed to:
Boynton Beach Associates XVIII, LLLP
1600 Sawgrass Corp. Parkway, Ste 400
Sunrise, Fl. 33323
Attention: Mike Freidman

Section 14. Independent Contractor Relationship.

Sponsor, is and shall be, in the performance of all work, services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of County. The Sponsor does not have the power or authority to bind the County in any promise, agreement or representation.

Section 15. Entirety of Contractual Agreement.

The County and Sponsor agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Section 16. Nondiscrimination.

Sponsor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression.

Section 17. Inspector General Audit Requirements

Palm Beach County has established the Office of the Inspector General in Palm Beach County *Code, Section 2-421 - 2-440*, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Consultant, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals in the date first above written.

ATTEST:

PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS


SHARON R. BOCK, Clerk & Comptroller

By: _____
Deputy Clerk

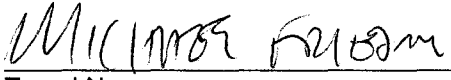
Shelley Vana, Chair

Boynton Beach Associates XVIII, LLP
A Florida limited liability limited partnership
By: Boynton Beach XVIII Corporation
A Florida corporation, its general partner

WITNESS: 



Signature



Typed Name

Richard M Norwalk

Typed Name

VP

Title

Approved as to Form and Legal Sufficiency

By: _____
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: 

Director, Parks and Recreation

EXHIBIT "A"

Sponsorship Benefits

The Sponsor logo will be included in the following print media:

- a) All flyers created for distribution to the Canyon Town Center email database. The flyer will be released via email to 870 homeowners, community TV channel and placed in common areas.
- b) Palm Beach County website as premier event listing in January, February, March, April, May, June, August and September 2012
- c) Public acknowledgement and thank you over PA system during events

Sponsor shall supply a black and white logo in Vector based EPS format (preferred for manipulation without distortion) OR TIFF 300 resolution OR higher format OR JPEG format via email.

EXHIBIT "B"

Insurance

Not required, logo only being supplied by Sponsor.