

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: March 6, 2012

Consent

Regular

Ordinance

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:** First Amendment to Agreement with 814 Community Center LLC and TAB Development, Inc. in an amount not-to-exceed \$500,000 for the funding of U.B. Kinsey Educational and Community Center construction costs to extend the project completion date from April 20, 2012, to March 5, 2014.

**Summary:** This First Amendment to Agreement, R2009-0674, provides a 24-month extension from the date of execution of this First Amendment, which extends the project completion date from April 20, 2012, to March 5, 2014. The Amendment to the Agreement was requested by TAB Development, Inc., to allow them additional time to arrange funding prior to the start of construction. The Amendment also includes Inspector General requirements, as now required in all County agreements. All other terms of the Agreement, including the funding amount of \$500,000, remain the same. Funding is from the 2002 \$50 Million Recreation and Cultural Facilities Bond. District 7 (PK)

**Background and Justification:** On April 21, 2009, the County entered into a tri-party Agreement with 814 Community Center LLC and TAB Development, Inc. to provide funding in an amount not-to-exceed \$500,000 to assist with construction costs for the U.B. Kinsey Educational and Community Center located at 814 Division Street in West Palm Beach. The building plan has received permits from West Palm Beach to begin project construction, but TAB Development, Inc. has requested an extension of the project completion date because of the need for additional time to complete funding arrangements prior to beginning construction. In addition to the time extension, the Amendment adds Project Milestones to the Agreement that require the construction bid to be awarded by March 5, 2013 and the project be completed by March 5, 2014. In addition to the Project Milestone reporting requirement, the Amendment also includes a revised Article 6 entitled "Access, Audits, and Inspector General" as now required for all County agreements.

Preparation of this First Amendment to Agreement is supported by the District 7 Commissioner. The Agreement has been executed on behalf 814 Community Center LLC and TAB Development, Inc., and now needs to be approved by the Board of County Commissioners.

**Attachment:** First Amendment to Agreement

Recommended by: Jennifer Sciville  
for Department Director

2-10-2012  
Date

Approved by: B. W. [Signature]  
Assistant County Administrator

\_\_\_\_\_  
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>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</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>
<b>NET FISCAL IMPACT</b>	<b>* -0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b>0</b>				

Is Item Included in Current Budget? Yes  No   
 Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_  
 Object \_\_\_\_\_ Program N/A

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

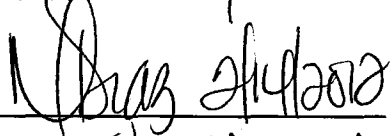
There is no additional financial impact created by this Amendment. Agreement is encumbered with document # KPO 581 PRCP051209\*6 (3019-581-P683-8201).

**C. Departmental Fiscal Review:** 

**III. REVIEW COMMENTS**

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

\* Time extension only.

  
 OFMB *WS 2-14-12* *SN 2/14/12* *cc 2/14/12* *MM 2/14/12*

 2/16/12  
 Contract Development and Control  
*2-16-12 B. Check*

**B. Legal Sufficiency:**

**This amendment complies with our review requirements.**

 2/17/12  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**FIRST AMENDMENT TO AGREEMENT BETWEEN PALM BEACH COUNTY, TAB  
DEVELOPMENT, INC., AND 814 COMMUNITY CENTER, LLC FOR CONSTRUCTION OF THE  
U.B. KINSEY EDUCATIONAL AND COMMUNITY CENTER**

**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", TAB Development, Inc., a Florida not-for-profit corporation authorized to do business in the State of Florida, hereinafter referred to as "AGENCY", and 814 Community Center LLC, a Florida Limited Liability Company, hereinafter referred to as "PROPERTY OWNER".

**WITNESSETH:**

**WHEREAS**, on April 21, 2009, COUNTY entered into an Agreement with AGENCY and PROPERTY OWNER (R-2009-0674) to provide funding in an amount not-to-exceed \$500,000 to assist with construction costs of the U.B. Kinsey Educational and Community Center to be completed on or before April 20, 201~~2~~<sup>2</sup>; and

**WHEREAS**, AGENCY has requested that an extension of the Project completion time of twenty four (24) months from the date of execution of this First Amendment to Agreement in order to complete the Project and provide reimbursement documentation to COUNTY; and

**WHEREAS**, COUNTY is now required to add project completion milestone language and Inspector General Requirements language into all Agreements and amended Agreements; and

**WHEREAS**, all parties desire to amend the Agreement.

**NOW THEREFORE**, the parties hereby agree as follows:

1. Section 2.06 of the Agreement shall be amended to read "AGENCY agrees to award the bid for construction no later than twelve (12) months from the date of execution of this First Amendment to Agreement by the parties hereto. 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 Agreement. AGENCY agrees to totally complete the project and open same to the public for its intended use within twenty four (24) months from the date of execution of this Amendment by the parties hereto. Upon notification to COUNTY at least ninety (90) days prior to that date, Agency may request an extension beyond this period for the purpose of completing the Project. COUNTY shall not unreasonably deny AGENCY's request for said extension.
2. 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.

COUNTY has established the Office of the Inspector General in County Code, Section 2-241 – 2-2-440 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 AGENCY and MUNICIPALITY, their 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 2-241 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

3. 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**

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

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Shelley Vana, Chair

**WITNESSES:**

*Gwendolyn P. Ferguson*  
*Arthur Waldon*

**TAB DEVELOPMENT, INC.**

By: GERALD D. KISNER  
Name: (Type or Print)  
EX. DIR  
Title  
*Gerald D. Kisner*  
Signature

**WITNESSES:**

*Barbara Eber*  
*Ethel Young*

**814 COMMUNITY CENTER, LLC**

By: Ulysses Smith  
Name: (Type or Print)  
CHAIR  
Title  
*Ulysses Smith*  
Signature

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney

By: \_\_\_\_\_  
Agency Attorney

**APPROVED AS TO TERMS AND CONDITIONS**

By: *Eric Call*  
Eric Call, Director  
Parks and Recreation Department