

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 13, 2015

☒ 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: Second Amendment to Agreement with TAB Development, Inc., and 814 Community Center, LLC, for the funding of U.B. Kinsey Educational and Community Center construction costs to extend the project completion date from March 5, 2014, to December 31, 2017, and to modify the issuance of reimbursement payments from TAB Development, Inc., to 814 Community Center, LLC.

Summary: This Second Amendment to Agreement, R2009-0674, as amended by R2012-0345, extends the project completion date from March 5, 2014, to December 31, 2017. This Amendment also acknowledges that 814 Community Center, LLC, not TAB Development, Inc., is currently under contract with D&D Constantakos, Inc., for the construction of the facility and that reimbursement payments should be made to 814 Community Center, LLC. The U.B. Kinsey Educational and Community Center is located at 720 8th Street in West Palm Beach. This request for an additional extension of the project completion date is necessary in order to finalize funding arrangements to complete the interior of the building. 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 TAB Development, Inc., and 814 Community Center, LLC, 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. The facility is located at the corner of 8th Street and Division Avenue in West Palm Beach, and is currently under construction.

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: Second Amendment to Agreement

Recommended by: 
Department Director

12-29-14
Date

Approved by: 
Assistant County Administrator

1-8-15
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
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>
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>				

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:

Susan Wang 12/17/14
OFMB 12/17 12/17

Dr. J. Jacobson 11/7/15
Contract Development and Control

B. Legal Sufficiency:

Paul F. J. 1/7/15
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 10/95
ADM FORM 01

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**SECOND 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 SECOND 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 (R2009-0674), as amended on March 6, 2012 (R2012-0345), 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 the
amended Project Completion date of March 5, 2014; and

WHEREAS, AGENCY has requested an extension to the Project completion date
until December 31, 2017 in order to complete the Project and provide reimbursement
documentation to COUNTY; and

WHEREAS, PROPERTY OWNER has entered into a construction contract to build
the Project; and

WHEREAS, the payments related to this Agreement need to be issued to
PROPERTY OWNER; and

WHEREAS, all parties desire to amend the Agreement.

NOW THEREFORE, the parties hereby agree as follows:

1. Section 1.03 of this Agreement shall be amended to delete "COUNTY will pay
to AGENCY a total amount not to exceed \$500,000 for the design and construction of the
Project as more fully described in the Project Description, Conceptual Site Plan, and Cost
Estimate attached hereto and made a part hereof as Exhibit "A"." and to insert "COUNTY
will pay to PROPERTY OWNER a total amount not to exceed \$500,000 for the
construction of the Project as more fully described in the Project Description, Conceptual
Site Plan, and Cost Estimate attached hereto and made a part hereof as Exhibit "A"."

2. Section 1.04 of this Agreement shall be amended to delete "AGENCY agrees
to provide funding in an amount of \$4,520,420 or greater to complete the Project. The
parties agree that COUNTY shall provide its portion of the funding only after AGENCY has
expended \$4,520,420." and to insert "PROPERTY OWNER agrees to provide funding in an
amount of \$4,520,420 or greater to complete the Project. The parties agree that COUNTY
shall provide its portion of the funding only after PROPERTY OWNER has expended
\$4,520,420."

3. Section 1.06 of this Agreement shall be amended to delete "AGENCY shall design and construct the Project upon property leased by AGENCY under a long term lease as more fully described in Exhibit "B" attached hereto and made a part hereof." and to insert "PROPERTY OWNER shall construct the Project upon property leased by AGENCY under a long term lease as more fully described in Exhibit "B" attached hereto and made a part hereof."

4. Section 1.07 of this Agreement shall be amended to delete "AGENCY shall utilize its procurement process for all design and construction services required for the Project. Said procurement process shall be consistent with all federal, state and local laws, rules and regulations. COUNTY shall have no contractual obligation to any person retained by AGENCY with regard to the Project. Any dispute, claim, or liability that may arise as a result of AGENCY's procurement is solely the responsibility of AGENCY and AGENCY hereby holds COUNTY harmless for same to the extent permitted by law." and to insert "PROPERTY OWNER shall utilize its procurement process for all construction services required for the Project. Said procurement process shall be consistent with all federal, state and local laws, rules and regulations. COUNTY shall have no contractual obligation to any person retained by PROPERTY OWNER with regard to the Project. Any dispute, claim, or liability that may arise as a result of PROPERTY OWNER's procurement is solely the responsibility of PROPERTY OWNER and PROPERTY OWNER hereby holds COUNTY harmless for same to the extent permitted by law."

5. Section 2.01 of this Agreement shall be amended to delete "AGENCY shall be responsible for the design and construction of the Project. AGENCY shall design and construct the Project in accordance with Exhibit "A", attached hereto and made a part hereof, and with all applicable federal, state and local laws, rules and regulations." and to insert "PROPERTY OWNER shall be responsible for the construction of the Project. PROPERTY OWNER shall construct the Project in accordance with Exhibit "A", attached hereto and made a part hereof, and with all applicable federal, state and local laws, rules and regulations."

6. Section 2.04 of this Agreement shall be amended to delete "AGENCY shall be responsible for securing all permits and approvals necessary to construct the Project." and to insert "PROPERTY OWNER shall be responsible for securing all permits and approvals necessary to construct the Project."

7. Section 2.06 of this Agreement shall be amended to delete "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." and to insert "PROPERTY OWNER agrees to award the bid for construction no later than twenty (20) months from the

date of execution of this First Amendment to Agreement by the parties hereto. Prior to PROPERTY OWNER commencing construction of the Project, PROPERTY OWNER 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. PROPERTY OWNER agrees to totally complete the project and AGENCY agrees to open same to the public for its intended use by December 31, 2017. 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."

8. Section 3.01 of this Agreement shall be amended to delete "The total not to exceed amount as set forth in Section 1.03 hereinabove shall be paid by COUNTY to AGENCY on a reimbursable basis. Any costs incurred in connection with the Project in excess of that amount shall be the sole responsibility of AGENCY. Should the total cost of the Project exceed the amount as projected by AGENCY, AGENCY shall obtain and expend the excess funds required for completion of the Project. COUNTY shall not dispense any funds to AGENCY for the Project until AGENCY has obtained and expended said excess funds for the Project." and to insert "The total not to exceed amount as set forth in Section 1.03 hereinabove shall be paid by COUNTY to PROPERTY OWNER on a reimbursable basis. Any costs incurred in connection with the Project in excess of that amount shall be the sole responsibility of PROPERTY OWNER or AGENCY. Should the total cost of the Project exceed the amount as projected by AGENCY, AGENCY or PROPERTY OWNER shall obtain and expend the excess funds required for completion of the Project. COUNTY shall not dispense any funds to PROPERTY OWNER for the Project until PROPERTY OWNER or AGENCY has obtained and expended said excess funds for the Project.

9. Section 3.02 of this Agreement shall be amended to delete "COUNTY shall reimburse project costs under the terms of this Agreement to AGENCY on a quarterly basis from the date of execution of this Agreement; however, should the need arise for AGENCY to be reimbursed on a more frequent basis, then COUNTY will, at AGENCY's specific request for each instance, make its best efforts to reimburse AGENCY within forty five (45) days of such special request. For each requested payment, AGENCY shall provide to COUNTY's Representative a fully completed and executed Contract Payment Request Form and a Contractual Services Purchase Schedule Form, attached hereto and made a part hereof as Exhibit "C". Said forms shall include information listing each invoice as paid by AGENCY and shall include the vendor invoice number; invoice date; and the amount paid by AGENCY along with the number and date of the respective check for said payment. AGENCY shall attach a copy of each vendor invoice paid by AGENCY along with a copy of each respective check and shall make reference thereof to the applicable item listed on the Contractual Services Purchase Schedule Form. Further, AGENCY's Project Administrator and Project Financial Officer shall certify the total funds spent by AGENCY on the Project and shall also certify that each vendor invoice as listed on the Contractual Services Purchase Schedule Form was paid by AGENCY as indicated." and to insert "COUNTY shall reimburse project costs under the terms of this Agreement to PROPERTY OWNER on a quarterly basis from the date of execution of this Agreement; however, should the need arise for PROPERTY OWNER to be reimbursed on a more frequent basis, then COUNTY will, at PROPERTY OWNER's specific request for each instance, make its best efforts to reimburse PROPERTY OWNER within forty five (45) days of such special

request. For each requested payment, PROPERTY OWNER shall provide to COUNTY's Representative a fully completed and executed Contract Payment Request Form and a Contractual Services Purchase Schedule Form, attached hereto and made a part hereof as Exhibit "C". Said forms shall include information listing each invoice as paid by PROPERTY OWNER and shall include the vendor invoice number; invoice date; and the amount paid by PROPERTY OWNER along with the number and date of the respective check for said payment. PROPERTY OWNER shall attach a copy of each vendor invoice paid by PROPERTY OWNER along with a copy of each respective check and shall make reference thereof to the applicable item listed on the Contractual Services Purchase Schedule Form. Further, PROPERTY OWNER's Project Administrator and Project Financial Officer shall certify the total funds spent by PROPERTY OWNER on the Project and shall also certify that each vendor invoice as listed on the Contractual Services Purchase Schedule Form was paid by PROPERTY OWNER as indicated.

10. Section 3.03 of this Agreement shall be amended to delete "COUNTY shall retain not less than ten percent (10%) of the total amount allocated to AGENCY for the Project until AGENCY completes the Project and provides COUNTY with either a Certificate of Occupancy or a Project Completion Certification as determined by COUNTY, and COUNTY receives and approves all documentation as required in accordance with this Agreement." and to insert "COUNTY shall retain not less than ten percent (10%) of the total amount allocated to PROPERTY OWNER for the Project until PROPERTY OWNER completes the Project and provides COUNTY with either a Certificate of Occupancy or a Project Completion Certification as determined by COUNTY, and COUNTY receives and approves all documentation as required in accordance with this Agreement."

11. Section 3.04 of this Agreement shall be amended to delete "AGENCY shall provide a request for final reimbursement to COUNTY no later than ninety (90) days following completion of the Project and provision of either a Certificate of Occupancy or Project Completion Certification to COUNTY." and to insert "PROPERTY OWNER shall provide a request for final reimbursement to COUNTY no later than ninety (90) days following completion of the Project and provision of either a Certificate of Occupancy or Project Completion Certification to COUNTY."

12. Section 3.07 of this Agreement shall be amended to delete "COUNTY shall reimburse project costs only after AGENCY has expended its share of project funding in its entirety. AGENCY shall provide COUNTY with a certification, in a form acceptable to COUNTY, from AGENCY's President, CEO, Chairman of the Board, Chief Financial Officer, or independent auditor that AGENCY has complied with this Project funding provision. COUNTY will be entitled to rely on that certification in reimbursing Project costs to AGENCY under this Agreement." and to insert "COUNTY shall reimburse project costs only after PROPERTY OWNER has expended its share of project funding in its entirety. PROPERTY OWNER shall provide COUNTY with a certification, in a form acceptable to COUNTY, from PROPERTY OWNER's President, CEO, Chairman of the Board, Chief Financial Officer, or independent auditor that PROPERTY OWNER has complied with this Project funding provision. COUNTY will be entitled to rely on that certification in reimbursing Project costs to PROPERTY OWNER under this Agreement."

13. Section 5.01 of this Agreement shall be amended to delete "AGENCY warrants that the Project shall serve a public recreational or cultural purpose and be open

to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis. AGENCY shall not discriminate on the basis of race, color, sex, national origin, age, disability, religion, ancestry, marital status, sexual orientation, gender identity, or expression with respect to use of the Project.” and to insert “AGENCY warrants that the Project shall serve a public recreational or cultural purpose and be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis. AGENCY shall not discriminate on the basis of race, color, sex, national origin, age, disability, religion, ancestry, marital status, sexual orientation, gender identity and expression or genetic information with respect to use of the Project.”

14. Article 10 of this Agreement shall be amended to delete “It is understood and agreed that PROPERTY OWNER is merely a recipient of COUNTY funding and is an independent contractor and is not an agent, servant or employee of COUNTY or its Board of County Commissioners. In the event a claim or lawsuit is brought against COUNTY or any of its officers, agents or employees AGENCY shall indemnify, save and hold harmless and defend COUNTY, its officers, agents, and/or employees from and against any and all claims, liabilities, losses, judgments and/or causes of action of any type arising out of or relating to any intentional or negligent act or omission of AGENCY, its agents, servants and/or employees in the performance of this Agreement.” and to insert “It is understood and agreed that AGENCY is merely a recipient of COUNTY funding and is an independent contractor and is not an agent, servant or employee of COUNTY or its Board of County Commissioners. In the event a claim or lawsuit is brought against COUNTY or any of its officers, agents or employees PROPERTY OWNER shall indemnify, save and hold harmless and defend COUNTY, its officers, agents, and/or employees from and against any and all claims, liabilities, losses, judgments and/or causes of action of any type arising out of or relating to any intentional or negligent act or omission of PROPERTY OWNER, its agents, servants and/or employees in the performance of this Agreement.”

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

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

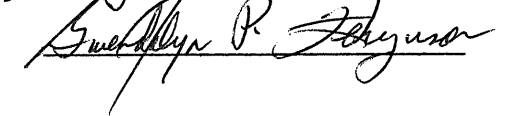
By: _____
Deputy Clerk

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

By: _____
Shelley Vana, Mayor

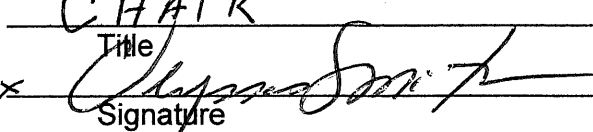
WITNESSES:



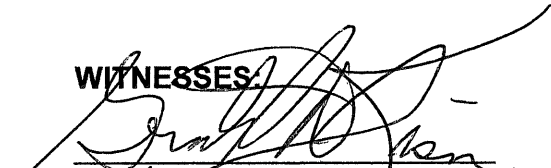



Gwendolyn P. Ferguson

TAB DEVELOPMENT, INC.

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

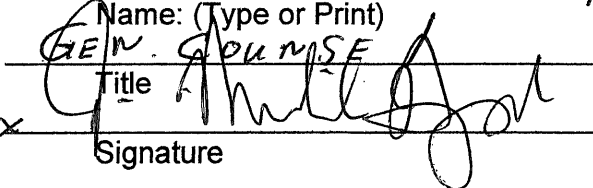
WITNESSES:





Gwendolyn P. Ferguson

814 COMMUNITY CENTER, LLC

By: J. Michael Haygood, Esq
Name: (Type or Print)
GEN. COUNSEL
Title
x 
Signature

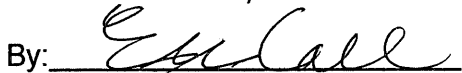
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
Agency Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: 
Eric Call, Director
Parks and Recreation Department