

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 12, 2016

(X) Consent

() Regular

() Ordinance

() Public Hearing

Department

Submitted By: Administration

Submitted For: Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Golf Tournament Agreement with Trump International Golf Club, L.C. and the Boys and Girls Club of Palm Beach County for a one (1) day charitable golf tournament to be held on November 7, 2016.

Summary: The Development Site Lease Agreement with the Trump International Golf Club, L.C. (Trump), approved September 3, 1996 (R96-1277D), allows the use of the golf course during the months of May through October for the County to host either a single two-day, or two one-day charitable golf tournament(s). The Golf Tournament Agreement provides for the Trump International Golf Club to be available exclusively for the tournament to be held on November 7, 2016. Proceeds from the tournament will benefit the Boys and Girls Club of Palm Beach County. Countywide (AH)

Background and Policy Issues: On August 22, 2000, the Board directed the Department to establish a rotating schedule designating when each Commission District would select a charity to benefit from the charity golf tournament allowed to be held at Trump74 International Golf Club. It is District 6's turn on the rotation schedule.

Attachments:

- 1. 4 original Agreements

Recommended by:

n/a
Department Director

Date

Approved by:

Tahel J. Bulmer
Assistant County Administrator

6/22/12
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____

ADDITIONAL FTE
POSITIONS (Cumulative)

Is Item Included in Current Budget? Yes _____ No _____

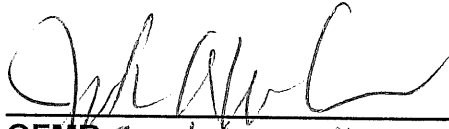
Budget Account No.: Fund _____ Dept _____ Unit _____ Object _____ Program Code _____

B. Recommended Sources of Funds/Summary of Fiscal Impact

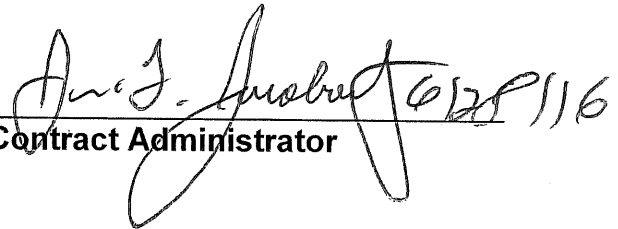
C. Department Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Administrator Comments:



OFMB ET 6/24 AU
6/24



Contract Administrator

B. Legal Sufficiency:



Assistant County Attorney

C. Other Department Review:

Department Director

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

**TRUMP INTERNATIONAL GOLF CLUB
GOLF TOURNAMENT AGREEMENT**

This Golf Tournament Agreement, made and entered into this ____ day of _____ 2016, by and among **TRUMP INTERNATIONAL GOLF CLUB, L.C.**, a Florida Limited Liability Company ("Trump"); **PALM BEACH COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County"); and the Boys and Girls Club of Palm Beach County, a Florida not for profit corporation, (hereinafter collectively referred to as "Charity").

RECITALS:

- A. Trump is the owner of that private, eighteen hole, championship golf course, and related facilities, located in Palm Beach County, Florida, and known as TRUMP INTERNATIONAL GOLF CLUB ("Club")
- B. Pursuant to that Development Site Lease Agreement between Trump and the County dated September 3, 1996, as amended (the "Lease"), the County has the right to use the Club on one (1) consecutive Saturday and Sunday of each year, between May 1 and October 31, to host one, two-day or two, one-day charitable golf tournaments sponsored by the County's Department of Airports.
- C. Notwithstanding the provision of the Lease set forth above relating to the use of the Club on a Saturday and/or Sunday, Trump has authorized the use of the Club by the Charity on November 7, 2016.
- D. The County has designated the charitable organization to be benefited by the tournament described herein, and Trump has approved such designation.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trump, the County and the Charity hereby agree as follows:

1. The Tournament:

- a. The tournament shall be designated Boys and Girls Clubs of Palm Beach County and shall be held at the Club on November 7, 2016. On the Tournament Date, the Club shall be reserved exclusively for the Tournament, and the golf course, golf carts, practice range and the clubhouse shall be made available to the Tournament participants. The County shall sponsor the Tournament and the Charity shall be responsible for the payment of all fees and charges set forth hereinbelow. The Charity shall be the sole benefited charity of the Tournament, and all proceeds of the Tournament shall be utilized by the Charity only within Palm Beach County. The Tournament shall consist of a maximum of ninety-six (96) players.

b. Pursuant to the Lease, Trump has elected to co-sponsor the Tournament with the County, and, accordingly, all advertising, invitations and similar materials shall include the names "Trump International Golf Club, L.C."; and/or "Donald J. Trump" (or variation thereof approved by Trump) as a co-sponsor of the Tournament.

2. **Fees and Charges:** Neither the County nor the Charity shall be required to pay any rent, greens fees or cart fees for the use of the Club facilities. However, the Charity shall be responsible for the payment of all costs and expenses associated with the Tournament including, without limitation, the following:

a. A caddy fee of \$120.00 per foursome, including gratuity.

b. A service fee of \$20.00 per player to cover the use of lockers.

c. A golf operation fee of \$600.00.

3. **Food and Beverage:**

a. The County, or the Charity, shall be permitted to provide a breakfast and a luncheon at the Club through a catering service approved by Trump in advance, at the sole expense of the Charity. The County or the Charity shall advise all Tournament participants of the name of the food and beverage catering service.

b. Non-alcoholic beverages may be provided by the County or Charity, at its expense. If alcohol is to be served, the Charity shall provide Trump and the County with written proof of liquor liability insurance with limits of not less than One Million Dollars (\$1,000,000) each occurrence prior to the Tournament Date naming Trump International Golf Club, L.C. and the County, each as an "additional insured." The additional insured endorsement for the County shall read: "Palm Beach County Board of County Commissioners, a political sub-division of the State of Florida, its officers, employees and agents, c/o County Administration, 301 North Olive Avenue, West Palm Beach, Florida 33401." Coverage shall be provided on a primary basis. No alcoholic beverages may be served to anyone under the age of twenty-one (21).

4. **Rescheduling:** Trump may modify this Agreement to reschedule the Tournament to a date acceptable to the parties, at any time prior to the Tournament Date due to acts of God, danger to players, guests or employees or for any other cause beyond the control of Trump. Any payments made by the County or Charity shall be applied to the rescheduled Tournament Date.

5. **Release/Indemnity:** As a material inducement to permit the Tournament to be held at the Club, the County and the Charity each hereby release Trump International Golf Club, L.C. and all members, agents, officers, employees, affiliates, partners, co-venturers, successors and assigns of the foregoing (collectively, the "Club Affiliates"), from all costs, expenses, liabilities, obligations and damages resulting from or arising out of the Agreement and the staging of the Tournament, other than Trump's specific contractual obligations as set forth in this Agreement. In addition, the Charity hereby releases the County, its officers, employees and agents (collectively, the "County Affiliates") from all costs, expenses, liabilities, obligations and damages resulting from or arising out of the Agreement and the staging of the Tournament, other than the County's specific contractual obligations as set forth in this Agreement. Further, the Charity does hereby agree to indemnify, defend (with legal counsel satisfactory to the indemnified party) and save the Club Affiliates, and each of them, and the County Affiliates, and each of them, harmless from and against all claims, damages, liabilities, costs, and expenses, including attorneys' fees and costs, resulting from or arising out of claims asserted by any third party in connection with this Agreement or the staging of the Tournament at the Club including, without limitation, claims and liabilities associated with personal injury to Tournament participants and spectators and claims and liabilities arising from use and/or operation of golf carts furnished by the Club, whether or not such liability, loss or expense occurs by reason of damage to property (including golf carts) or injury to persons (including death resulting therefrom) and whether or not such damage or injury occurs as the result of negligence of the Club, its employees or agents or of any other party or person. The Charity shall be responsible for any and all liability and damages caused directly or indirectly by any Tournament participants, guests, family members, invitees, licensees, employees, independent contractors or other agents associated with the Tournament, including without limitation, damages occurring during the specified time of the Tournament, or set up and/or tear down time. To the extent permitted by law, the County shall be responsible for any and all liability and damages resulting from the acts or omissions of any County employees, independent contractors or other agent retained by the County in connection with the Tournament Nothing in this paragraph shall be construed as an agreement by the County to indemnify Trump or as a waiver of sovereign immunity.

6. **Insurance:** No later than ten (10) days prior to the Tournament Date, the Charity shall provide Trump's legal counsel with a certificate of liability insurance coverage, naming Trump International Golf Club, L.C., and the County, each as an "additional insured." The additional insured endorsement for the County shall read: "Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, and its officers, employees and agents, c/o County Administration, 301 North Olive Avenue, 11th Floor, West Palm Beach Florida 33401." The certificate shall evidence liability insurance coverage in an amount, and underwritten by an insurer, satisfactory to Trump in its sole discretion. Notwithstanding the foregoing, the Charity shall maintain, at a minimum, Commercial General Liability Insurance with limits of liability of not less than One Million Dollars (\$1,000,000) each occurrence. The Charity agrees that liability insurance will be provided on a primary basis. By entering into this Agreement, the Charity agrees to a waiver of subrogation for each required policy of insurance. When required by an insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, the Charity shall request the policy be endorsed with a Waiver of Transfer of Rights and Recovery Against Others, or its equivalent. The foregoing waiver of subrogation requirement shall not apply to any policy which specifically prohibits such endorsement or which would void coverage if the Charity entered into such an agreement on a pre-loss basis.
7. **Loss of Property:** Trump shall not be responsible for damages or loss of any merchandise or articles left at the Club prior to, during or following the Tournament, and the Charity does hereby agree to indemnify, defend and save the Club Affiliates and the County Affiliates harmless from any such claims made by any of the Tournament participants, guests, invitees, licensees, family members, employees, independent contractors or other agents.
8. **Attendance:** The County or the Charity shall advise Trump in writing, no later than seventy-two (72) hours prior to the Tournament Date, of the anticipated number of attendees of the Tournament.
9. **Security/Traffic Control:** If the Club should determine that the size or nature of the Tournament warrants the hiring of additional security or traffic personnel, Trump shall provide such personnel and the Charity shall reimburse Trump for this expense. Trump shall notify the Charity as soon as reasonably possible following a determination that additional security or traffic personnel will be necessary.
10. **Refusal of Service:** Trump, in its sole discretion, may exclude or eject any and all objectionable persons from the Tournament and the Club premises, without liability to such person or to the County or the Charity.

11. **Attire:** All participants must wear appropriate golf attire, including nonmetal-spiked shoes. Arrangements can be made to change metal spikes to soft spikes for a fee of \$10.00 per pair. However, it is suggested that participants have nonmetal soft spiked shoes prior to the Tournament, as time will be limited to change the spikes on the Tournament Date.
12. **Force Majeure:** This Agreement is contingent upon the ability of Trump to perform the services described herein, and is subject to labor disputes, weather conditions or other causes beyond its control. In any event, Trump shall not be liable beyond the amount paid for the use of the Club facilities as provided herein.
13. **Rain Policy:** in the event that rain or any potentially dangerous condition (such as lightning), occurs during the Tournament, the following policy shall apply:
 - a. After one-half (1/2) of the Tournament participants have completed nine (9) holes of play, the Tournament shall be considered played and completed.
 - b. If fewer than one-half (1/2) of the Tournament participants have completed nine (9) holes of play, and the Club superintendent determines that the golf course is unplayable, the Tournament will be rescheduled to a mutually acceptable date.
14. **No Assignment:** Neither the County, nor the Charity, may assign this Agreement or any of their respective rights or obligations hereunder, without the prior written consent of Trump, which may be withheld in Trump's sole and absolute discretion. Any attempted assignment in violation of this provision shall be null and void.
15. **Advertising:** All advertising, including invitation proofs, must be submitted to Trump for approval prior to printing or distribution. Trump may withhold its approval of such materials in its sole and absolute discretion. Neither the County, nor the Charity, shall use the Trump International Golf Club logo (the "logo") (i.e., either the crest or the words "Trump International Golf Club" in stylized type) in any advertising, brochures or for any other purpose without the prior written consent of Trump. Any photographs provided by Trump shall be used only for the limited purpose of advertising the Tournament and shall not be published or distributed by the County, or the Charity, for any other purpose whatsoever. All materials bearing the Logo and/or photographs of the Club shall be tastefully presented, and neither the County, nor the Charity, shall do anything, which might adversely affect the good name, integrity and reputation of Trump.
16. **No Photography:** No photography shall be permitted during the Tournament, without the prior written consent of Trump, which may be withheld in Trump's sole and absolute discretion.

17. **Non-profit Organizations:** No later than ten (10) day prior to the Tournament Date, the Charity must submit to Trump proof of the Charity's tax-exempt status, Section 501 c (3) of the Internal Revenue Code and State of Florida Consumer Exemption Certificates. The Charity must comply with all laws and regulations.
18. **Audit:** The Charity shall maintain adequate books and records of any distributions made by the charity of the proceeds of the Tournament for at least three (3) years from the effective date of this Agreement. The County shall have the right to audit and examine all such books and records during normal business hours of the Charity. The Charity shall arrange for all such books and records to be brought to a location convenient to the auditors for the County upon request.
19. **Notices:** All notices required to be given under this Agreement shall be in writing and deemed sufficient to each party when sent by United States Mail, hand delivery or nationally recognized overnight delivery service to the following:

If to Trump:

Mr. Shawn McCabe, Managing Director
Trump International Golf Club, L.C.
3505 Summit Blvd.
West Palm Beach, FL 33406

If to the County:

Todd Bonlarron, Assistant County Administrator
301 North Olive Avenue, Suite 1101
West Palm Beach, Florida 33401

With a copy to:

Anne Helfant, Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401

If to the Charity:

Boys and Girls Clubs of Palm Beach County
Mark Casale, VP of Philanthropy (561) 315 - 8311
800 Northpoint Parkway, Suite 204
West Palm Beach, Florida 33407

20. **Discrimination:** Notwithstanding any provision of this Agreement to the contrary, the parties agree that no person shall, on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information be discriminated against in the performance of this Agreement.

21. **Governing Law:** This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Florida.
22. **Disputes:** Any dispute concerning this Agreement shall be resolved in a court of competent jurisdiction in Palm Beach County, Florida. The PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY LITIGATION RESULTING FROM OR ARISING OUT OF THIS AGREEMENT.
23. **Binding Effect:** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and permitted assigns
24. **Conflict with Lease:** In the event of any conflict between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall control.
25. **Entire Agreement:** This Agreement sets forth the entire understanding of the parties with regard to the subject matter hereof, and supersedes all prior discussions and understandings with regard to the subject matter hereof. This Agreement may be modified only by a written document executed by all parties hereto.
26. **Counterparts:** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original. All of which together shall constitute one (1) and the same instrument.
27. **Effective Date:** This Agreement shall become effective when executed by the parties hereto and approved by the Palm Beach County Board of County Commissioners.
28. **Office of the Inspector General:** 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 Charity, 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.
29. **No Third Party Beneficiary:** No provision of this Agreement is intended to or shall be construed to create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen

or employees of the County, Trump, Club or Charity.

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PALM BEACH COUNTY, FLORIDA,
a political Subdivision of the State of Florida

ATTEST:
Sharon R. Bock, Clerk & Comptroller

By: _____
Mary Lou Berger, Mayor

By: _____
Deputy Clerk

Date: _____

Approved as to form and legal sufficiency:

Approved as to terms and conditions:

By: *Anne Delgent*
Assistant County Attorney

By: *Todd Bonlarron*
Todd Bonlarron
Assistant County Administrator

The Boys and Girls Clubs of Palm Beach County
a Florida not-for-Profit Corporation

By: *Shawn McCabe*

Date: _____

TRUMP INTERNATIONAL GOLF CLUB, L.C.
A Florida Limited Liability Company

By: *Shawn McCabe*
Mr. Shawn McCabe/Managing Director

Date: 6/21/16