### Agenda Item #3.M.6

# PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date: May 2, 2017 [X] 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:** Second Amendment to Construction, Joint Use and Easement Agreement (R2008-1863), as amended on February 2, 2010 (R2010-0208), with Boynton Beach Associates X, LLLP and Boynton Beach Associates XVIII, LLLP (GL Homes).

Summary: On October 21, 2008, the County and GL Homes entered into a Construction, Joint Use and Easement Agreement which set forth the requirements and obligations of each party for the construction and maintenance of the recreational elements located on the 10.8 acre Canyon Town Center civic site. On February 2, 2010, the County amended the agreement to require GL Homes to maintain the bathrooms and the County to reimburse GL Homes 50% of the cost of the custodial contract amount of \$267.50 per month. GL Homes also assumed responsibility for the fire alarm monitoring for the amphitheater and the County would reimburse GL Homes 100% of the cost. At that time, the plaza was less than 50% built and the soccer fields were only partially used. Currently, both the facility and soccer fields are fully operational and the cost to maintain the custodial contract has increased as well as the need to extend service from four days per week to six days per week. As a result, this will increase the contract by more than the 5% allowable in the current agreement and require Board approval. This amendment will increase the current rate paid by GL Homes to the contractor from \$267.50 per month to \$695.50 per month. Staff has reviewed the master agreement for janitorial services and determined that the price proposed by the GL Homes Contractor is well within reason. GL Homes' total annual cost for the custodial contract is \$8,346 and the County's portion will be \$4,173, which is an increase from \$1,605. District 5 (AH)

Background and Justification: In 2007, the Board approved modifications to GL Homes' Canyon Traditional Marketplace Development, including conditions of approval which required GL Homes to construct a multi-purpose recreational field, and an amphitheater. In 2008, the County and GL Homes entered into a Construction, Joint Use and Easement Agreement to address the County and GL Homes responsibilities regarding construction, maintenance, and operation of the recreational amenities. In 2010, the agreement was amended to require GL Homes to provide fire monitoring for the amphitheater and for the County to reimburse them 100% of the cost of this service and to reassign the responsibility for the custodial maintenance from the County to GL Homes and to have the County reimburse GL Homes 50% of the cost. GL Homes is able to provide these custodial services as part of a larger contract for substantially less than the County can contract out for similar services.

#### **Attachments:**

Second Amendment to Construction, Joint Use and Easement Agreement Letter from Boynton Beach Associates XVIII, LLLP

Recommended by:	Exicoel	4-7-17
	Department Director	Date
Approved by:		4-13-17
,,	Deputy County Administrator	Date
	1 1	

## II. FISCAL IMPACT ANALYSIS

# A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures Operating Costs External Revenues Program Income (County In-Kind Match (County)	-0- 4,173 -0- ) -0- -0-	-0- 4,173 -0- -0- -0-	-0- 4,173 -0- -0- -0-	-0- 4,173 -0- -0- -0-	-0- 4,173 -0- -0- -0-
NET FISCAL IMPACT	4,173	<u>4,173</u>	4,173	<u>4,173</u>	<u>4,173</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0

Is Item Included in Current Budget? Yes X **Budget Account No.:** Fund <u>0001</u> Department <u>580</u> Unit 5221 Object 3401 Program N/A

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

FUND: General Fund **UNIT: Maintenance** 

Other Contractual Services

0001-580-5221-3401

\$4,173

C. Departmental Fiscal Review:

### **III. REVIEW COMMENTS**

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

Legal Sufficiency:

C. Other Department Review:

**Department Director** 

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

# **Boynton Beach Associates XVIII, LLLP**

1600 Sawgrass Corporate Parkway, Suite 400 Sunrise, FL 33323 954-753-1730

January 20, 2017

Ms. Rebecca Pine
Director, Financial & Support Services
Palm Beach County Parks and Recreation Department

Re: Canyon Town Center Amphitheatre Janitorial Contract Amendment

Ms. Pine,

Please find our official request to amend the current (R2010-0208) agreement between Palm Beach County, GL Homes and Boynton Beach Associates XVIII, LLLP, as it pertains to the Amphitheatre janitorial service contract rate.

# **BACKGROUND & JUSTIFICATION**

In 2008, (R2008-1863) Construction, Joint Use and Easement Agreement was entered into and further amended via R2010-0208. This contract provided for services, paper and soap products for four days per week of service. The contract was ample for quite some time as the plaza was less than 50% built and the soccer fields were not yet in use. GL was able to maintain the same costs and contract until 2016; however the contractor can no longer provide the same level of services as contemplated in the original contract and has provided a new agreement to provide ample service. Pursuant to the Construction, Joint Use and Easement Agreement, it provides for GL to change contracts and adjust rates, not to exceed 5% without county approval.

#### **SUMMARY**

The current contract is four days service a week, and the facility needs six days a week to properly maintain the facility based on use. In addition, the increase over the past eight years, has created additional need and expense for paper and soap products. GL Homes & Boynton Beach Associates XVIII has been provided and intends to enter into a new contract, with a rate of \$650 per month, which is more than 5% above the existing \$250 per month. This contract will provide for services six times a week and provide the proper paper and soap products.

If you should have any additional requirement prior to submittal for approval, please contact Mike Friedman at 954-603-0373.

Regards,

BOYNTON BEACH ASSOCIATES XVIII, LLLP

Richard M. Norwalk Vice President

# SECOND AMENDMENT TO CONSTRUCTION, JOINT USE AND EASEMENT AGREEMENT

THIS SECOND AMENDMENT TO CONSTRUCTION, JOINT USE AND EASEMENT AGREEMENT (the "Amendment") is made and entered into on \_\_\_\_\_\_, (the "Amendment Effective Date") by and between BOYNTON BEACH ASSOCIATES XVIII, LLLP, a Florida limited liability limited partnership, having an address of 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323 (the "BBAXVIII") and PALM BEACH COUNTY, a Political Subdivision of the State of Florida, having an address of 301 North Olive Avenue, West Palm Beach, Florida 33401-4791 ("the County"). BBAXVIII and the County are sometimes refereed to herein as a "Party" and collectively as the "Parties."

#### WITNESSETH:

WHEREAS, on October 21, 2008, BOYNTON BEACH ASSOCIATES X, LLLP, a Florida limited liability partnership ("BBAX"), BBAXVIII and the County entered into an Agreement (R2008-1863), as amended on February 2, 2010 (R2010-0208) ("the Agreement"), to convey property to the County for civic use; and

**WHEREAS**, the Parties amended the Agreement on February 2, 2010 to release and discharge BBAX from the Agreement and update contract requirements; and

WHEREAS, the Parties desire to amend the Agreement to adjust the amount reimbursed to BBAXVIII for amphitheater janitorial services; and

WHEREAS, entering into this Amendment services a public purpose.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, the County and BBAXVIII agree as follows:

1. PARAGRAPH 2(c)(iii) of the Agreement is hereby amended as follows:

BBAXVIII shall enter into a maintenance agreement with a third party provider for the maintenance of the Bathrooms (any such maintenance agreement whether now or hereafter existing is referred to herein as a "Bathroom Maintenance Contract"), and the Parties shall equally share all fees, costs and expenses payable thereunder. The County through the Director or Assistant Director of Parks and Recreation Department shall have the right to approve or disapprove any such renewal or replacement Bathroom Maintenance Contract. The County shall reimburse BBAXVIII its half of the amounts payable under a Bathroom Maintenance Contract (the "Bathroom Maintenance Reimbursement Amount") within 45 days after: (i) the expiration or earlier termination of the Bathroom Maintenance Contract; (ii) BBAXVIII provides the County with a copy of the Bathroom Maintenance Contract; and (iii) BBAXVIII provides the County with copies of all invoices sent to BBAXVIII by the third party provider for services rendered under the Bathroom Maintenance Contract, together with proof of payment of all such invoices. The County shall not require, nor shall BBAXVIII be required to provide, any other or further documentation than the required above as a prerequisite to the County's obligation to reimburse BBAXVIII the Bathroom Maintenance Reimbursement Amount as provided in this paragraph. Except for BBAXVIII's payment of its half of all amounts payment under

a Bathroom Maintenance contract, BBAXVIII shall have no further responsibility or obligation to pay for any upkeep or maintenance of the Bathrooms outside the scope of the Bathroom Maintenance Contract.

# 2. PARAGRAPH 3 of the Agreement is hereby amended as follows:

BBAXVIII has entered into a Bathroom Maintenance Contract with a term of one year pursuant to which a third party provider maintains the Bathrooms for \$650 per month during the term thereof. The County hereby approves such Bathroom Maintenance Contract and agrees to reimburse BBAXVIII the Bathroom Maintenance Reimbursement Amount as provided in paragraph 2(c)(iii) of this Agreement. The Parties hereby agree that the County's obligation to reimburse BBAXVIII the Bathroom Maintenance Reimbursement Amount shall commence as of the date on which the "Civic Site" was conveyed to the County; such date being April 23, 2009.

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.

forth after their respective signatures below. Signed, Sealed and Delivered **BBAXVIII:** In the Presence of: BOYNTON BEACH ASSOCIATES XVIII, LLLP, a Florida limited liability limited partnership By: Boynton Beach XVIII Corporation, a Florida corporation, its general partner STATE OF FLORIDA **COUNTY OF BROWARD** I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instructed was acknowledged before me by Kichin New New , a VP of Boynton Beach XVIII Corporation, a Florida corporation, the General Partner of Boynton Beach Associates XVIII LLLP, a Florida limited liability limited partnership, freely and voluntarily on behalf of such corporation and partnership. She is personally known to me, or has produced as identification. WITNESS my hand and official seal in the County and State last aforesaid this  ${\mathcal Z}_{-}$  day of \_\_ 2017. (orn's; Printed or Stamped Name of Notary Public My Commission Expires:

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the dates set

[signatures and notary acknowledgements follow on next page]

CAROLYN C TORRISI
MY COMMISSION #FF177184
EXPIRES January 3, 2019
FloridaNotaryService.com

407) 398-0153

ATTEST:	COUNTY:
SHARON R. BOCK CLERK & COMPTROLLER	PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida
By: Deputy Clerk	By: Paulette Burdick, Mayor
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:	APPROVED AS TO TERMS AND CONDITIONS:  By:   APPROVED AS TO TERMS AND CONDITIONS:
By: County Attorney	Eric Call, Director Parks and Recreation Department

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**WHEREAS**, the Parties amended the Agreement on February 2, 2010 to release and discharge BBAX from the Agreement and update contract requirements; and

**WHEREAS**, the Parties desire to amend the Agreement to adjust the amount reimbursed to BBAXVIII for amphitheater janitorial services; and

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**NOW THEREFORE**, in consideration of the mutual promises contained herein, the County and BBAXVIII agree as follows:

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Signed, Sealed and Delivered In the Presence of:	BBAXVIII:
110 Um	BOYNTON BEACH ASSOCIATES XVIII, LLLP, a Florida limited liability limited partnership
Print: MICHAR FRIAM	By: Boynton Beach XVIII Corporation, a Florida corporation, its general partner  By:
Print: Caroly Cloris:	Date:3/2/17
STATE OF FLORIDA )	
) ss: COUNTY OF BROWARD )	
and in the County aforesaid to take acknowne by 1/1/400 Notation, a vicorporation, the General Partner of Boynt partnership, freely and voluntarily on behat to me, or has produced	
MACL 2017.	seal in the County and State last aforesaid this 2 day of
	Notary Public Notary Public
My Commission Expires:	Typed, Printed or Stamped Name of Notary Public  CAROLYN C TORRISI  MY COMMISSION #FF177184  EXPIRES January 3, 2019  (407) 398-0153 FloridaNotaryService.com

ATTEST:	COUNTY:
SHARON R. BOCK CLERK & COMPTROLLER	PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida
By: Deputy Clerk	By:Paulette Burdick, Mayor
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Print: Music Fucor	By: Boynton Beach XVIII Corporation, a Florida corporation, its general partner By:
Print: Caroly CTonis:	Date: 3/2/17
STATE OF FLORIDA ) ) ss: COUNTY OF BROWARD )	
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Nota	ry Public
My Commission Expires: Type	d, Printed or Stamped Name of Notary Public  CAROLYN C TORRISI  MY COMMISSION #FF177184  EXPIRES January 3, 2019  FloridaNotaryService.com

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